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FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1343]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The final rule limits the ability of a financial institution to assess an overdraft fee for paying automated teller machine (ATM) and one-time debit card transactions that overdraw a consumer's account, unless the consumer affirmatively consents, or opts in, to the institution's payment of overdrafts for these transactions.

DATES: The rule is effective January 19, 2010, with a mandatory compliance date of July 1, 2010.

FOR FURTHER INFORMATION CONTACT: Dana Miller, Attorney, Ky Tran-Trong, Counsel, or Vivian Wong, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) (EFTA or Act), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of the types of transactions covered by the Act and regulation include transfers initiated through an ATM, point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation provide for the disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; certain rights related to preauthorized EFTs; and restrictions on the unsolicited issuance of access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) interprets the requirements of Regulation E to facilitate compliance and provides protection from liability under Sections 915 and 916 of the EFTA for financial institutions and other persons subject to the Act who act in conformity with the Board's official interpretations. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

II. Background on Overdraft Services

Historical Overview of Overdraft Services

Historically, if a consumer tried to make a payment using a check that would overdraw his or her deposit account, the consumer's financial institution used its discretion on an ad hoc basis to determine whether to pay the overdraft. If an overdraft was paid, the institution usually imposed a fee on the consumer's account. In recent years, many institutions have automated the overdraft payment process, which reduces costs and ensures consistent treatment of consumers.[1] Automation is used to apply specific criteria for determining whether to honor overdrafts and to set limits on the amount of coverage provided.

Overdraft services vary among institutions but often share certain common characteristics. In most cases, consumers that meet a depository institution's criteria are automatically enrolled in overdraft services. While institutions generally do not underwrite on an individual account basis when enrolling the consumer in an overdraft service, most institutions review individual accounts periodically to determine whether the consumer continues to qualify for the service and the amount of overdraft coverage provided. Most institutions disclose that the payment of overdrafts is discretionary, and that the institution has no legal obligation to pay any overdraft. Many institutions offer their customers alternative overdraft protection plans, such as a link to a savings account or an overdraft line of credit. These programs, for which the consumer must qualify and enroll, are distinguishable from the financial institution's overdraft service.

In the past, institutions generally provided overdraft coverage only for check transactions. In recent years, however, the service has been extended to cover overdrafts resulting from non-check transactions, including ATM withdrawals, debit card transactions at POS, on-line transactions, preauthorized transfers, and ACH transactions.[2] Generally, institutions charge a flat fee each time an overdraft is paid, although some larger institutions have a tiered fee structure and charge higher fees as the number of overdrafts increases. Institutions commonly charge the same amount for paying check and ACH overdrafts as they would if they returned the item unpaid. Some institutions also impose a fee for each day the account remains overdrawn.

According to a recent report from the Government Accountability Office (GAO), the average cost of overdraft and insufficient funds fees was just over $26 per item in 2007.[3] The GAO also

[1] According to the FDIC's Study of Bank Overdraft Programs, nearly 70 percent of banks surveyed implemented their automated overdraft program after 2001. *See FDIC Study of Bank Overdraft Programs* at 8 (November 2008) (*FDIC Study*) (available at: *http://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_FinalTOC.pdf*). ATM and POS overdrafts arose from automated overdraft programs.

[2] Eighty-one percent of banks surveyed that operate automated overdraft programs now allow overdrafts to be paid at ATMs and POS debit card terminals. *See FDIC Study* at 10.

[3] *See Bank Fees: Federal Banking Regulators Could Better Ensure That Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts,* GAO Report 08–281, at 14 (January 2008) (*GAO Report*). *See also* ''Consumer Overdraft Fees Increase During Recession: First-Time Phenomenon,'' Press release, Moebs $ervices (July 15, 2009) (*Moebs 2009 Pricing*

Continued

reported that large institutions on average charged between $4 and $5 more for overdraft and insufficient fund fees compared to smaller institutions.[4]

Industry and Consumer Advocate Perspectives

From the industry's perspective, automated overdraft services enable institutions to reduce the cost of manually reviewing individual items, and also ensure that all consumers are treated consistently with respect to overdraft payment decisions. Industry representatives observe that overdraft services provide access to funds in urgent situations and prevent embarrassment and inconvenience at the point-of-sale.[5] Some industry representatives have indicated that a majority of debit transactions that are authorized into overdraft later settle into good funds, without fees being assessed on the consumer's account.

In contrast, consumer advocates assert that overdraft transactions are a high-cost form of lending that trap low- and moderate-income consumers into paying high fees. Consumer advocates also state that consumers are often enrolled in overdraft services automatically without their consent. In addition, consumer advocates believe that by honoring overdrafts, institutions encourage consumer reliance on the service and therefore, consumers incur greater costs in the long run than they would if the transactions were not honored. Consumer advocates have noted, for example, that historically, institutions declined a consumer's request for an ATM withdrawal or debit card transaction if the consumer did not have sufficient funds in his or her account. Today, however, institutions are more likely to cover those overdrafts and assess a fee on the consumer's account for doing so. According to consumer advocates, this practice can be particularly costly in connection with debit card overdrafts because the dollar amount of the fee is likely to considerably exceed the dollar amount of the overdraft.[6] In addition, multiple fees may be assessed in a single day for a series of small-dollar transactions. Because of these costs, consumer advocates contend that most consumers would prefer that their bank decline ATM or debit card transactions if the transactions would overdraw their account.[7]

Previous Agency Actions

In February 2005, the Board, along with the other federal banking agencies, issued guidance on overdraft protection programs in response to the increased availability and customer use of overdraft protection services (Joint Guidance).[8] The Joint Guidance addresses three primary areas—safety and soundness considerations, legal risks, and best practices.[9] The best practices described in the Joint Guidance address the marketing and communications that accompany the offering of overdraft services, as well as the disclosure and operation of program features, including the provision of consumer choice to opt out of the overdraft service.

In May 2005, the Board revised Regulation DD and the staff commentary pursuant to its authority under the Truth in Savings Act (TISA) to provide uniformity and improve the adequacy of disclosures provided to consumers about overdraft and returned-item fees.[10] The 2005 Regulation DD revisions also addressed concerns about institutions' marketing of overdraft services.

May 2008 FTC Act and Regulation DD Proposals; January 2009 Regulation DD Final Rule

In May 2008, the Board, along with the OTS and the NCUA (collectively, the Agencies), proposed to exercise their authority under the Federal Trade Commission Act (FTC Act) to prohibit institutions from assessing any fees on a consumer's account in connection with an overdraft service, unless the consumer was given notice and the right to opt out of the service, and the consumer did not opt out.[11] The proposed opt-out right would have applied to overdrafts resulting from all methods of payment, including checks, ACH transactions, ATM withdrawals, recurring payments, and POS debit card transactions. The proposed rule was intended to ensure that consumers understand overdraft services and have the choice to avoid the associated costs where such services do not meet their needs.

The Board concurrently issued a proposal under Regulation DD (Truth in Savings), which set forth requirements on the delivery of the opt-out notice, as well as a model opt-out form.[12] The Regulation DD proposal required all institutions to provide aggregate totals for overdraft fees and for returned item fees for the periodic statement period and the year-to-date. The Regulation DD proposal also addressed account balance disclosures provided to consumers through automated systems, such as ATMs and on-line banking services. In January 2009, the Board published the revisions to Regulation DD in final form addressing the aggregate fee and balance disclosures, with an effective date of January 1, 2010.[13]

Based on the Board's review of comments received with respect to the 2008 FTC Act and Regulation DD proposals, the results of consumer testing, and its own analysis, the Board concluded that concerns about consumer choice regarding overdraft services should be addressed under the EFTA and Regulation E. First, participants in consumer testing indicated that they would prefer to have their checks paid into overdraft, because those transactions represented important bills. In contrast, consumer testing indicated that many participants would prefer to have ATM withdrawals and debit card transactions declined if

Survey Press Release) (available at: *http://www.moebs.com/AboutUs/Pressreleases/tabid/58/ctl/Details/mid/380/ItemID/65/Default.aspx*) (reporting an average overdraft fee of $26).

[4] *See GAO Bank Fees Report* at 16. Another recent survey suggests that the cost difference in overdraft fees between small and large institutions may be larger than reported by the GAO, however. *See Moebs 2009 Pricing Survey Press Release* (reporting that banks with more than $50 billion in assets charged on average $35 per overdrawn check compared to $26 for all institutions).

[5] *See ABA Survey: More Consumers Avoid Overdraft Fees,* Press Release, American Bankers Association (Sept. 9, 2009) (*ABA Survey*) (available at: *http://www.aba.com/Pressrss/090909ConsumerSurveyOverdraftFees.htm*) (reporting survey results indicating that of those consumers who had paid an overdraft fee in the past 12 months, 96 percent wanted the payment covered).

[6] *See, e.g., Overdraft Protection: Fair Practices for Consumers: Hearing before the House Subcomm. on Financial Institutions and Consumer Credit, House Comm. on Financial Services,* 110th Cong., at 72 (2007) (*Overdraft Protection Hearing*) (available at: *http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr0705072.shtml*) (testimony noting that as recently as 2004, 80 percent of banks still declined ATM and debit card transactions without charging a fee when account holders did not have sufficient funds in their account).

[7] *See* Leslie Parrish, *Consumers Want Informed Choice on Overdraft Fees and Banking Options,* Ctr. for Responsible Lending (April 16, 2008) (available at: *http://www.responsiblelending.org/overdraft-loans/research-analysis/final-caravan-survey-4-16-08.pdf*) (reporting the results of a survey indicating that 80 percent of consumers would prefer that a debit card transaction be declined if a $5 purchase would result in an overdraft and an accompanying $34 fee); Consumers Union, *Financial Regulation Poll* (February 13, 2009) (*Consumers Union Poll*) (available at: *http://www.federalreserve.gov/SECRS/2009/March/20090317/R-1343/R-1343_031209_12532_455058226232_1.pdf*) (65% of consumers would prefer that an ATM or debit card transaction be denied if it would result in an overdraft).

[8] *See* Interagency Guidance on Overdraft Protection Programs, 70 FR 9127, Feb. 24, 2005.

[9] The Office of Thrift Supervision (OTS) issued separate guidance that focuses on safety and soundness considerations and best practices. OTS Guidance on Overdraft Protection Programs, 70 FR 8428, Feb. 18, 2005.

[10] 70 FR 29582, May 24, 2005.

[11] 73 FR 28904, May 19, 2008

[12] 73 FR 28730, May 19, 2008.

[13] 74 FR 5584, January 29, 2009.

they had insufficient funds, rather than incur an overdraft fee, because those transactions tend to be more discretionary in nature.

Second, a consumer will generally be charged the same fee by the financial institution whether or not a check is paid; yet, if the institution covers an overdrawn check, the consumer may avoid other adverse consequences, such as the imposition of additional merchant returned item fees.[14] For ATM and one-time debit card transactions, however, if the transaction is declined because the consumer's account contains insufficient funds, the consumer would not incur any merchant returned item fees and would avoid any fees assessed by the financial institution.

Third, consumer testing indicated that many consumers are unaware that they can incur overdrafts at the ATM or at POS, and that they believe instead that their transactions will be declined.[15] Consequently, consumers may overdraw their accounts based on the erroneous belief that a transaction would be paid only if the consumer has sufficient funds in the account to cover it.

Finally, the Board believed it was appropriate to focus the proposal on ATM and one-time debit card transactions because these transactions have been a key driver behind the growth in the volume and cost of overdraft fees—particularly POS/debit overdraft transactions, which according to one study accounted for 41% of surveyed institutions' insufficient funds transactions.[16] With respect to debit card transactions in particular, the amount of fees assessed may substantially exceed the amount overdrawn.[17] Given the costs associated with overdraft services in these circumstances, consumers may prefer to have these transactions declined.

Accordingly, the Board published a revised proposal in January 2009 to amend Regulation E and the official staff commentary accompanying the regulation.[18]

[14] According to one survey, the average merchant fee for a returned check is $25. *See* ''National Survey Reveals Retail Merchants' Bad-Check Fees Double Consumer Penalties for Overdrafts,'' Press release, Moebs $ervices (July 28, 2009) (available at: *http://www.moebs.com/AboutUs/Pressreleases/tabid/58/ctl/Details/mid/380/ItemID/66/Default.aspx*). *See also FDIC Study* at 16 n.18.

[15] *See also Consumers Union Poll* at 9 (48% of consumers polled incorrectly thought ATM transaction would be declined if they attempted to overdraw).

[16] *FDIC Study* at 78–79.

[17] *See Overdraft Protection Hearing* at 72 (stating that consumers pay $1.94 in fees for every one dollar borrowed to cover a debit card POS overdraft).

[18] 74 FR 5212, January 29, 2009.

III. The Board's Proposed Revisions to Regulation E

Summary of Proposal

The January 2009 Regulation E proposal was intended to assist consumers in understanding how overdraft services provided by their institutions operate and to ensure that consumers have the opportunity to limit the overdraft costs associated with ATM and one-time debit card transactions where such services do not meet their needs.[19] The proposal established a consumer's right to opt out of, or into, an institution's payment of overdrafts with respect to ATM withdrawals and one-time debit card transactions. The proposal also addressed debit holds placed by an institution on a consumer's funds in an amount exceeding the actual transaction amount.

The Board proposed two alternative approaches for giving consumers a choice regarding an institution's payment of overdrafts for ATM and one-time debit card transactions. The first approach would prohibit account-holding financial institutions from assessing overdraft fees or charges on a consumer's account for paying an overdraft on an ATM withdrawal or one-time debit card transaction (whether at POS, on-line or by telephone), unless the consumer is given notice and a reasonable opportunity to opt out of the institution's overdraft service in connection with those transactions, and the consumer does not opt out. Under this approach, the opt-out notice would be provided to the consumer at account opening (or any time before any overdraft fees are assessed) and again in each periodic statement cycle in which the institution assesses a fee or charge to the consumer's account for paying an overdraft.

The second approach would prohibit an account-holding financial institution from assessing any fees on a consumer's account for paying an ATM withdrawal or one-time debit card transaction that overdraws the account, unless the consumer is provided notice and a reasonable opportunity to opt in, or affirmatively consent, to the service, and the consumer opts in. Under this approach, opt-in notices would not have to be provided again to consumers who opt in when the financial institution pays overdrafts on these transactions and assesses a fee on the consumer's account. The proposed opt-in rule would apply to all consumers, including accounts existing prior to the mandatory compliance date. However, the Board solicited comment on a hybrid approach that would apply an opt-out to existing accounts and an opt-in to accounts opened on or after the mandatory compliance date.

[19] *Id.*

The proposal provided two alternatives for implementing the consumer's choice for both the opt-out and opt-in approaches. Under one alternative, the proposal would require an institution to provide consumers who do not opt in an account that has the same terms, conditions, or features that are provided to consumers who elect to have overdraft coverage for ATM withdrawals and one-time debit card transactions, except for features that limit the institution's payment of such overdrafts. Under the second alternative, institutions could vary the terms, conditions, or features of the account that does not permit the payment of ATM and one-time debit card overdrafts, provided that the differences are not so substantial that they would discourage a reasonable consumer from exercising his or her right to opt out of the payment of such overdrafts (or compel a reasonable consumer to opt in).

Further, the Board proposed to permit, or alternatively to prohibit, (1) conditioning the payment of checks, ACH transactions, or other types of transactions that overdraw the consumer's account on the consumer not opting out of (or opting into) the institution's overdraft service with respect to ATM and one-time debit card transactions, or (2) declining to pay checks, ACH transactions, or other types of transactions that overdraw the consumer's account because the consumer has opted out of (or not opted into) the institution's overdraft service for ATM and one-time debit card transactions. To facilitate compliance, the proposal provided model forms that institutions could use to satisfy their disclosure obligations.

The Board also proposed to prohibit institutions from assessing an overdraft fee where the overdraft would not have occurred but for a debit hold placed on funds in an amount that exceeds the actual transaction amount and where the merchant can determine the actual transaction amount within a short period of time after authorization of the transaction.

Overview of Public Comments

The Board received over 20,700 comment letters on the proposal, including approximately 16,000 form letters. The majority of the comment letters were submitted by individual consumers. The remaining comment letters were submitted by banks, savings

associations, credit unions, industry trade associations, industry processors and vendors, consumer advocates, members of Congress, other federal banking agencies, state and local governments and regulators, and others. Many commenters reiterated comments made in response to the 2008 FTC Act proposal.[20]

Some consumer advocates, federal and state regulators, and others generally expressed support for the more narrowly tailored approach under Regulation E. However, some other consumer advocates urged the Board to reconsider using its authority under the FTC Act to provide, at a minimum, the right to opt out of the payment of overdrafts with respect to checks, ACH, and recurring debit card transactions.

Industry commenters generally supported the Board's decision to issue a proposal under Regulation E, rather than pursuant to the FTC Act. Many industry commenters argued that consumers derive substantial benefits from overdraft services, and expressed concern about the operational feasibility of limiting the opt-out, or opt-in, right only to overdrafts paid in connection with ATM withdrawals and one-time debit card transactions.

In response to the proposed opt-out and opt-in alternatives, consumer advocates, members of Congress, federal and state regulators, and the overwhelming majority of individual consumers who commented urged the Board to adopt the proposed opt-in approach. These commenters argued that the harm to consumers from overdraft fees outweigh any benefits. Further, these commenters maintained that most consumers would prefer to have an ATM or one-time debit card transaction declined, rather than trigger one or more overdraft fees. These commenters also stated that an opt-in should apply to *all* account holders.

In contrast, the majority of industry commenters favored the proposed opt-out approach. These commenters maintained that an opt-out regime would more effectively provide consumers the benefits of overdraft services while causing fewer disruptions to consumers and other participants in the banking system. Further, these commenters argued that any opt-in requirement should apply only to *new* accounts.

Consumer advocates and federal and state banking regulators supported the proposed prohibition on conditioning the payment of overdrafts for checks, ACH transactions, or other types of transactions on the consumer also affirmatively consenting to the institution's payment of overdrafts for ATM withdrawals and one-time debit card transactions. These commenters stated that consumers would otherwise feel compelled to opt into the institution's overdraft service in order to have check and ACH overdrafts paid. For similar reasons, these commenters argued that institutions should be required to provide consumers who do not opt into the institution's overdraft service for ATM and one-time debit card transactions an account with identical terms, conditions and features as an account provided to consumers who do opt in. In contrast, industry commenters supported the alternative permitting conditioning the opt-in, because it would be costly to implement a system that pays overdrafts for certain types of transactions but not others. These commenters also urged the Board to permit institutions to vary the account terms, conditions, and features for consumers who do not opt in.

Consumer group commenters stated that the Board should not provide any exceptions to the prohibition on fees, even if overdrafts are inadvertently paid due to delays in transaction processing and settlement. Industry commenters, on the contrary, supported the proposed exceptions. Many industry commenters urged the Board to provide for additional exceptions for transactions for which authorization is not requested at the time of the transaction.

Consumer Testing

Following the January 2009 proposal, the Board engaged a testing consultant, Macro International, Inc. (Macro), to revise and test the proposed model opt-out notice and the newly proposed opt-in notice. Four additional rounds of interviews were conducted with a diverse group of consumers between May and September 2009. Testing was conducted at various locations across the United States. The findings from each round of interviews were incorporated in revisions to the model forms for the following round of testing.

In general, after reviewing the model disclosures, testing participants understood the concept of overdraft coverage, and that they would be charged fees if their institution paid their overdrafts. Consistent with previous testing efforts undertaken in connection with the 2008 FTC Act proposal, participants generally indicated that they would want their checks paid into overdraft. The majority of participants also indicated that they would prefer an opt-in over an opt-out even if they would choose to have ATM and one-time debit card transactions paid.[21]

IV. Summary of Final Rule

The Board is adopting a final rule under Regulation E and the official staff commentary to assist consumers in understanding how overdraft services provided by their institutions operate. The rule gives consumers the opportunity to limit the overdraft costs associated with ATM and one-time debit card transactions, where such services do not meet their needs. The following is a summary of the final rule and related commentary provisions. The revisions are discussed in greater detail in the section-by-section analysis below.

Opt-In Approach

The final rule requires institutions to provide consumers with the right to opt in, or affirmatively consent, to the institution's overdraft service for ATM and one-time debit card transactions. Under the final rule, notice of the opt-in right must be provided, and the consumer's affirmative consent obtained, before fees or charges may be assessed on the consumer's account for paying such overdrafts. The opt-in requirement applies to both existing and new accounts. Based on comments received and consumer testing efforts, the final rule adopts a revised model form that institutions may use to satisfy the notice requirement.

The final rule also prohibits institutions from conditioning the payment of overdrafts for checks, ACH transactions, or other types of transactions on the consumer also affirmatively consenting to the institution's payment of overdrafts for ATM and one-time debit card transactions. Institutions are also prohibited from declining to pay check, ACH transactions, or other types of transactions that overdraw the consumer's account because the consumer has not opted into the institution's overdraft service for ATM and one-time debit card transactions. For consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions, the final rule requires institutions to provide those consumers with the same account terms, conditions, and features that they provide to consumers who do affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions.

The final rule does not adopt the proposed exception to the fee

[20] 74 FR at 5214.

[21] *See Design and Testing of Overdraft Notices: Phase Two,* Macro International, October 12, 2009.

prohibition for transactions authorized on an institution's reasonable belief that the consumer's account has sufficient funds to cover the transaction. The final rule also does not adopt the proposed exception for transactions where a merchant or other payee presents a debit card transaction by paper-based means, rather than electronically using a card terminal, and the institution has not previously authorized the transaction.

Debit Holds

The Board is not adopting the proposed provisions on debit holds. The proposal put the obligation on financial institutions to address concerns about overdrafts caused by debit holds. However, upon further consideration, the Board believes that a more comprehensive approach that involves financial institutions, card networks, and merchants may be required to effectively address these problems. The Board will continue to monitor developments with respect to debit holds and assess whether to take further action.

V. Legal Authority

The Board is adopting the final rule pursuant to its authority under Sections 904(a) and 904(c) of the EFTA (15 U.S.C. 1693b). Section 904(a) of the EFTA authorizes the Board to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA are to establish ''the rights, liabilities, and responsibilities of participants in electronic fund transfer systems'' and to provide ''individual consumer rights.'' *See* EFTA Section 902(b); 15 U.S.C. 1693. In addition, Section 904(c) of the EFTA provides that regulations prescribed by the Board may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers, that the Board deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance.

The legislative history of the EFTA makes clear that the Board has broad regulatory authority. According to the Senate Report, regulations are ''essential to the act's effectiveness'' and ''[permit] the Board to modify the act's requirements to suit the characteristics of individual EFT services. Moreover, since no one can foresee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply.'' [22]

The final opt-in rule is intended to carry out the express purposes of the EFTA by: (a) Establishing notice requirements to help consumers better understand the cost of overdraft services for certain EFTs; and (b) providing consumers with a choice as to whether they want overdraft services for ATM and one-time debit card transactions in light of the costs associated with those services. The final opt-in rule's prohibition on conditioning the opt-in and limitations on how the opt-in may be implemented have been designed to prevent circumvention or evasion of the requirement to provide the consumer with meaningful choice regarding overdraft services. The final rule does not require financial institutions to pay overdrafts on checks, and does permit them to offer consumers a choice regarding overdraft services for checks.

The disclosures implementing the opt-in requirement are issued pursuant to the Board's authority under Sections 904(b) and 905 of the EFTA. 15 U.S.C. 1693b(b) and 1693c.

VI. Section-by-Section Analysis

Section 205.12 Relation to Other Laws

Section 205.12(a) explains the relationship between Regulation E and Regulation Z when an access device permits a consumer to obtain an extension of credit incident to an EFT. In general, Regulation E governs the issuance of access devices and the addition of an EFT service to an accepted credit card, and Regulation Z governs the issuance of a combined credit card and access device and the addition of a credit feature to an accepted credit card. *See* § 205.12(a). The final rule is adopted substantially as proposed to clarify that both the issuance of an access device with an overdraft service and the addition of an overdraft service to an accepted access device are governed by Regulation E.

Currently, § 205.12(a)(1)(ii) states that the EFTA and Regulation E govern the ''issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.'' As the Board stated in the original March 1979 final rule, this provision (originally in § 205.4(c)) was intended to clarify that Regulation E, rather than Regulation Z, applies to the issuance of ''access devices that are also credit cards solely by virtue of their capacity to access an existing overdraft credit line attached to the consumer's account.'' 61 FR 18468, 18472, March 28, 1979.

When the rule was originally adopted, the primary means of covering overdrafts incurred in connection with EFTs was through an overdraft line of credit linked to a debit card or other access device. Today, however, consumers are more likely to have these overdrafts covered by their institution's overdraft service, rather than by a separate overdraft line of credit. Commenters generally agreed with the proposed rule and commentary. Some consumer advocates, however, argued that overdraft services should be subject to TILA and Regulation Z.

In the final rule, the Board is amending § 205.12(a)(1)(ii) substantially as proposed, with non-substantive edits for clarity, to provide that Regulation E governs the issuance of an access device that permits extensions of funds under an overdraft service (as defined below under § 205.17). New § 205.12(a)(1)(iii) provides that Regulation E also covers the addition of an overdraft service to a previously accepted access device. *See also* comment 12(a)–2. Comment 12(a)–3 clarifies that the addition of an overdraft service to an accepted access device does not constitute the addition of a credit feature under Regulation Z.

In addition, the Board is amending § 205.12(a)(1)(i) as proposed, to conform the regulation to reflect the January 2009 redesignation of the definition of the term ''accepted credit card'' under Regulation Z. *See* 12 CFR 226.12, comment 226.12–2. Finally, current § 205.12(a)(1)(iii), which provides that Regulation E's liability limits and error resolution rules also apply to extensions of credit under an overdraft line of credit, is redesignated as § 205.12(a)(1)(iv) and revised, as proposed, to include a reference to overdraft services.

Section 205.17 Requirements for Overdraft Services

To ensure consumers are given a meaningful choice regarding overdraft services, § 205.17 requires institutions to provide consumers with the right to opt in, or affirmatively consent, to the institution's overdraft service for ATM and one-time debit card transactions. Under the final rule, notice of the opt-in right must be provided, and the consumer's affirmative consent obtained, before fees or charges may be assessed on the consumer's account for paying such overdrafts. The final rule also prescribes how the consumer's opt-in choice must be implemented. The

[22] S. Rep. No. 95–1273, 95th Cong., 2d Sess., at 26 (Oct. 4, 1978).

opt-in requirement applies to all consumers, including account holders who opened accounts prior to the mandatory compliance date of July 1, 2010.

Background

Consumers are often enrolled in overdraft services automatically without their consent. Thus, in the February 2005 Joint Guidance on overdraft protection services, the Board and the other federal banking agencies recommended as a best practice that institutions obtain a consumer's affirmative consent to receive overdraft protection. Alternatively, the Joint Guidance stated that where overdraft protection is provided automatically, institutions should provide consumers the opportunity to opt out of the overdraft program and provide consumers with a clear disclosure of this option.[23]

Although many institutions provide consumers the right to opt out of overdraft services, this practice is not uniform across all institutions.[24] Even where an opt-out right is provided, institutions may not clearly disclose this right to consumers, or may make it difficult for consumers to exercise this right. For example, some institutions may disclose the opt-out right in a clause in their deposit agreement, which many consumers may not notice or may not consider relevant because they do not expect to overdraw their accounts. In other cases, the opt-out provisions may not be written in clearly understandable language.

In the January 2009 Regulation E proposal, the Board proposed to provide consumers with the right to opt out of, or in the alternative, opt into the payment of overdrafts with respect to their ATM withdrawals and one-time debit card transactions. The Board proposed to apply the new rules to both existing and new accounts, but solicited comment on a hybrid approach which would permit institutions to offer an opt-out to existing accounts.

Consumer advocates, members of Congress, federal and state regulators, and the overwhelming majority of individual consumers who commented urged the Board to adopt the proposed opt-in alternative that would require institutions to obtain a consumer's affirmative consent before fees could be charged for paying an overdraft. These commenters argued that any benefit from permitting ATM and debit card overdrafts to be paid without prior consumer consent was far outweighed by the harm to consumers stemming from overdraft fees, which may be significantly higher than the transactions causing the overdraft. Further, these commenters maintained that most consumers would prefer to have an ATM or one-time debit card transaction declined rather than pay one or more overdraft fees.

In contrast, the majority of industry commenters favored the proposed opt-out approach. These commenters contended that an opt-out regime would provide consumers the benefits of overdraft services while causing fewer disruptions to consumers and other participants in the banking system. Industry commenters also remained concerned about the operational feasibility and costs of an opt-in. For the following reasons, the Board adopts an opt-in approach in the final rule.

Discussion

Due to various factors such as consumer inertia and the difficulty in anticipating future costs, consumers may end up with suboptimal outcomes even when given a choice. As some studies have suggested, consumers are likely to adhere to the established default rule, that is, the outcome that would apply if the consumer takes no action.[25] Under an opt-out rule, consumers would default to having their financial institution's automatic overdraft coverage, resulting in some consumers incurring overdraft fees even if their preferred course would be for ATM and debit card transactions to be declined. The opposite would be true with an opt-in rule. Specifically, consumers could avoid fees for a service they did not request.

The Board believes that, on balance, an opt-in rule creates the optimal result for consumers with respect to ATM and one-time debit card transactions. First, the cost to consumers of overdraft fees assessed in connection with ATM and debit card overdrafts is significant.[26] For one-time debit card transactions in particular, the amount of the fee assessed may substantially exceed the amount overdrawn.[27] If the consumer incurs multiple debit card overdrafts in one day, fees may accrue into the hundreds of dollars. Many consumers may prefer such transactions not to be paid.

Second, an opt-in rule that is limited to ATM and one-time debit card transactions may result in fewer adverse consequences for consumers than a rule applicable to a broader range of transactions. While a check or ACH transaction that is returned for insufficient funds might cause the consumer to incur a merchant fee for the returned item, in addition to an insufficient funds fee assessed by the consumer's financial institution, a declined ATM or debit card transaction does not result in any fees to the consumer.

Third, available research indicates that the large majority of overdraft fees are paid by a small portion of consumers who frequently overdraw their accounts.[28] These consumers may have difficulty both repaying overdraft fees and bringing their account current, which may in turn cause them to incur additional overdraft fees. An opt-in approach could therefore best prevent these consumers from entering into a harmful cycle of repeated overdrafts.

Fourth, many consumers may not be aware that they are able to overdraft at an ATM or POS. Debit cards have been promoted as budgeting tools, and a means for consumers to pay for goods and services without incurring additional debt. Additionally, the ability

[23] 70 FR at 9132. The OTS made similar recommendations in its separate guidance. *See* 70 FR at 8431.

[24] According to the FDIC's Study of Bank Overdraft Programs, 75.1% of institutions surveyed permit consumers to opt out of their automated overdraft program, while 11.1% of institutions require consumers to opt in. According to the FDIC, banks that do not promote automated programs were less likely to give consumers either the option to opt in or to opt out of the automated overdraft program. *See FDIC Study* at 27. *See also Moebs 2009 Pricing Survey Press Release* (reporting that 86% of institutions that offer overdraft services allow the consumer to opt out).

[25] *See,* e.g., Brigette Madrian and Dennis Shea, ''The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior,'' 116 *Quarterly Journal of Economics* 1149 (2001); Gabriel D. Carroll, James J. Choi et al., ''Optimal Defaults and Active Decisions,'' *Quarterly Journal of Economics* (forthcoming November 2009) (both studies of automatic enrollment in 401(k) savings plans indicating a significant increase in employee participation if the default rule provides that a consumer is automatically enrolled in the plan unless they opt out, instead of requiring employees to affirmatively agree to participate in the plan).

[26] According to the *FDIC Study,* the median dollar amount for debit card transactions resulting in an overdraft is $20. *See FDIC Study* at 78–79. This compares to the average cost of overdraft and insufficient funds fees of over $26 per item in 2007, as reported by the GAO Report. *GAO Report* at 14. *See also FDIC Study* at 15, 18 (reporting a median per item overdraft fee of $27 for banks surveyed). The FDIC Study also reported that POS/debit overdraft transactions accounted for the largest share of all surveyed institutions' insufficient funds transactions (41.0%). *FDIC Study* at 78–79.

[27] Eric Halperin, Lisa James and Peter Smith, *Debit Card Danger: Banks Offer Little Warning and Few Choices as Customers Pay a High Price for Debit Card Overdrafts,* Ctr. for Responsible Lending at 8 (Jan. 25, 2007) (estimating that the median amount by which a consumer overdraws his or her account for a debit card purchase is $17, and that consumers pay $1.94 in fees for every one dollar borrowed to cover a debit card POS overdraft).

[28] Seventy-five percent of consumers did not overdraw their accounts at all during the survey year; consumers who overdrew their accounts five or more times per year paid 93% of all overdraft fees. *See FDIC Study* at iv.

to overdraft at an ATM or POS is a relatively recent development. Consequently, consumers may unintentionally overdraw their account based on the erroneous belief that a transaction would be paid only if the consumer has sufficient funds in the account to cover it. With an opt-in approach, consumers who do not opt in will be less likely to incur unanticipated overdraft fees.

Finally, the opt-in approach is consistent with consumer preference, as indicated by the Board's consumer testing. Continued consumer testing after the publication of the January 2009 proposal was consistent with prior testing efforts, with many participants stating that they would prefer to have ATM withdrawals and debit card transactions declined if they had insufficient funds, rather than incur an overdraft fee. Similarly, an overwhelming majority of consumer commenters also expressed their preference for an opt-in approach.

The Board recognizes that, for some consumers, coverage of occasional overdrafts and paying occasional overdraft fees may be preferable to having transactions declined. Such consumers could be precluded from completing important transactions when there are insufficient funds in the consumer's account if the consumer has not opted in and the consumer does not have another means of payment.

Some industry representatives commented that a majority of debit card transactions authorized into overdraft later settle into good funds. In advocating an opt-out approach, these commenters argued that a consumer's failure to opt in would result in declined transactions even when, a majority of the time, the consumer would not have been assessed overdraft fees on his or her account.

While an opt-in approach may result in the denial of some transactions which would otherwise have settled into good funds, the Board notes that the overall impact of the final rule on the number of declined transactions is difficult to quantify, as it depends on a number of factors. This includes an institution's processing procedures, such as whether credits are processed before debits, and funds availability policies. Because direct deposits pose little risk of failing to clear, as compared to a deposited check, institutions may also authorize transactions based on pending amounts. As more institutions shift towards real-time clearing, there will be less lag time between transaction authorization and clearing. For customer service reasons, financial institutions also have an incentive to minimize the circumstances under which transactions are declined. Moreover, the effect may be limited, as the consumer could choose to opt into overdraft coverage after the first declined transaction.

Industry commenters also argued that overdraft fees—which constitute a significant percentage of financial institutions' deposit service charges—subsidize other checking account features consumers enjoy, such as maintenance fee-free checking accounts, or free on-line bill payment. Because an opt-in requirement would likely result in reduced overdraft fee income, these commenters argued that an opt-in rule would result in either higher fees or a reduction in account features or bank services for all consumers.

To the extent institutions adjust their pricing policies to respond to the potential loss of income from overdraft fees, some consumers may experience increases in certain upfront costs as a result of the final opt-in rule. Nonetheless, the Board believes that giving consumers the choice to avoid the high cost of overdraft fees, and the increased transparency in overdraft pricing that would result from an opt-in rule, outweigh the potential increase in upfront costs. In addition, some consumers will continue to be able to avoid monthly maintenance or other account fees as a result of meeting minimum balance requirements or having other product relationships with the bank.

The Board also solicited comment on a hybrid approach consisting of an opt-out rule for existing accounts and an opt-in rule for new accounts. Under this approach, an institution could continue to pay overdrafts (and assess fees) for ATM withdrawals and one-time debit card transactions for existing account holders who have not opted out, but would be prohibited from assessing fees or charges for paying such overdrafts on new account holders who have not affirmatively consented to the institution's overdraft service. The final rule applies the opt-in approach to *all* consumers.

Industry commenters preferred the hybrid approach to an opt-in approach for existing accounts, stating that some consumers may overlook the opt-in notice, but nonetheless prefer to have their overdrafts covered. In such cases, these consumers may be confused or angry when a transaction they expect to go through is denied after the effective date. In contrast, consumer group commenters stated that existing account holders should receive the same opt-in protections as new customers, because customer turnover is very low from year to year.

The final rule provides an opt-in right for both new and existing accounts. The Board believes it is appropriate to apply the opt-in approach to existing accounts for several reasons. First, the annual consumer account attrition rate is low. One report estimates that only 14% of financial institution customers leave their institutions each year.[29] Thus, application of the opt-in rule only to new customers would mean that a significant number of consumers would not receive the protections provided by an opt-in. In addition, consumers who have an existing account, and then open a new account after the rule's mandatory compliance date, would receive inconsistent treatment with regard to their accounts, which could lead to consumer confusion. Further, a hybrid approach would require institutions to maintain two systems over time for new and existing accounts, which could be costly for some institutions. While some consumers with existing accounts may be surprised if, contrary to their expectations, their ATM and one-time debit card transactions are not paid into overdraft, these customers would subsequently be able to opt in. For those consumers who are unaware that they can overdraft at an ATM or at point-of-sale, however, an opt-in rule would have little impact on their expectations with respect to the coverage currently provided to them. Timing requirements for new and existing accounts are described in the discussion of § 205.17(c) below.

A. Definition—§ 205.17(a)

Proposed § 205.17(a) defined ''overdraft service'' to mean a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. The term was intended to cover circumstances when an institution assesses a fee for paying an overdraft pursuant to any automated program or service, whether promoted or not, or as a non-automated, ad hoc accommodation. The proposed definition excluded an institution's payment of overdrafts pursuant to a line of credit subject to the Board's Regulation Z, including transfers from a credit card account, a home equity line of credit, or an overdraft line of credit. The proposed definition also excluded overdrafts paid pursuant to a service

[29] Celent, ''Customer Attrition in Retail Banking: the US, Canada, the UK, and France,'' Press Release (Jan. 2, 2003) (available at: *http://reports.celent.com/PressReleases/20030102/CustomerAttrition.htm*).

that transfers funds from another account of the consumer (including any account that may be jointly held by the consumer and another person) held at the institution. These methods of covering overdrafts were excluded because they require the express agreement of the consumer. Commenters generally supported proposed § 205.17(a). Accordingly, the Board is adopting § 205.17(a) with one modification.

The final rule includes a new § 205.17(a)(3) to address a suggestion that the Board revise the definition of ''overdraft services'' to also exclude credit secured by margin securities in brokerage accounts extended by Securities and Exchange Commission-registered broker-dealers. Margin credit is exempt from the requirements of TILA and Regulation Z in recognition that similar substantive consumer protections already apply to such credit through federal securities law. *See* 15 U.S.C. 1603(2); 12 CFR 226.3(d). Also, margin credit is typically offered pursuant to a written agreement between a consumer and a broker. Accordingly, final § 205.17(a)(3) clarifies that the term ''overdraft services'' does not include a line of credit or other transaction exempt from Regulation Z pursuant to 12 CFR 226.3(d).

B. Opt-In Requirement—§ 205.17(b)

For the reasons discussed above, the Board is adopting an opt-in rule. The general rule is implemented in § 205.17(b).

17(b)(1) General Rule and Scope of Opt-In

Proposed § 205.17(b)(1) set forth the general rule prohibiting an account-holding institution from assessing a fee or charge on a consumer's account held at the institution for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service, unless the consumer is provided with a notice explaining the institution's overdraft service for such transactions and a reasonable opportunity to affirmatively consent, or opt in, to the service, and the consumer affirmatively consents, or opts in, to the service. If the consumer opts in, the institution would be required to provide written confirmation of the consumer's consent.

The proposed opt-in applied to any ATM withdrawal, including withdrawals made at proprietary or foreign ATMs. The proposed opt-in also applied to any one-time debit card transaction, regardless of whether the consumer uses a debit card at a point-of-sale (for example, at a merchant or a store), in an on-line transaction, or in a telephone transaction.[30]

In the final rule, the Board adopts the opt-in approach and scope generally as proposed, with modifications to enhance the consumer's right to revoke consent, and certain additional clarifications. The opt-in rule applies to all accounts covered by Regulation E, including payroll card accounts, to the extent overdraft fees may be imposed for ATM or one-time debit card transactions.

Several commenters requested that the Board clarify the kinds of ATM transactions that are subject to the rule. The Board understands that consumers use ATMs not only for withdrawing cash, but also for inter-account transfers, bill payments, and even postage stamp purchases. Therefore, the Board believes the opt-in rule should apply to all transactions originating at an ATM, and not just withdrawals. Accordingly, the final rule has been revised, as applicable, to apply to ''ATM transactions'' more generally, in addition to one-time debit card transactions as proposed.'' *See, e.g.,* § 205.17(b)(1).

The final rule does not apply to other types of transactions, including check transactions and recurring debits. As discussed above with respect to checks, the payment of overdrafts for these transactions may enable consumers to avoid other adverse consequences that could result if such items are returned unpaid, such as returned item fees charged by the merchant. Consumers may also be more likely to use checks, ACH and recurring debit card transactions to pay for significant household expenses, such as utilities and rent. In the Board's consumer testing, participants generally indicated that they were more likely to pay important bills using checks, ACH, and recurring debits, and to use debit cards on a one-time basis for their discretionary purchases.

The opt-in requirement also does not apply to ACH transactions. For example, if the consumer provides his or her checking account number to authorize an ACH transfer on-line or by telephone, the institution would be permitted to pay the item if it overdraws the consumer's account and to assess a fee for doing so, even if the consumer has not opted into the payment of overdrafts for ATM or one-time debit card transactions. Like checks and recurring debits, consumers may use ACH transactions to pay for significant household expenses. The Board notes that in many cases, ACH transactions serve as a replacement for check transactions, such as where a check is converted to a one-time ACH debit to the consumer's account. In addition, consumers could avoid merchant returned item fees if ACH transactions are paid into overdraft.

Several commenters requested that the Board explicitly exclude decoupled debit transactions from the scope of transactions covered by the final rule. Decoupled debit cards are debit cards offered by institutions other than the account-holding institution that consumers use as they would any other debit card. Transactions for these cards originate as debit card transactions paid by the card issuer, but are received and processed by the account-holding institution as ACH transactions. The final rule prohibits a financial institution that holds a consumer's account from assessing a fee for paying an ATM or one-time debit card transaction. Accordingly, overdraft fees charged by the account-holding financial institution for a decoupled debit transaction processed via ACH are not generally subject to the opt-in requirement of the final rule. For clarity, new comment 17(b)–1.i states that § 205.17(b)(1) applies to ATM and one-time debit card transactions made with a debit card issued by or on behalf of the account-holding institution.[31]

Industry commenters generally objected to the proposed rule's differentiation between one-time debit card transactions and recurring debit card transactions. These commenters stated that they currently do not have technology in place to distinguish between these types of transactions, and that such a change would be difficult and costly to implement. In addition, they stated that the proposed rule could lead to consumer confusion as to how transactions will be treated, because some consumers may pay their bills on a transaction-by-transaction basis using a debit card number each time a bill is due rather than establishing payment as a recurring debit.

The Board recognizes that applying the opt-in rule to one-time debit card transactions will result in some bill payments being declined if the consumer does not opt-in, to the extent consumers pay bills on a transaction-by-transaction basis using a debit card number. Nonetheless, the Board

[30] For clarity, this has been added as comment 17(b)–1.iii.

[31] The Board understands that currently, issuers of decoupled debit cards do not assess consumers overdraft fees because they do not seek authorization from the account-holding institution and do not know the consumer's balance before paying the transaction.

believes that the rule as adopted will address the majority of bill payments that consumers would prefer to have paid, because recurring debit card transactions are established primarily for bill payments, while one-time debit card transactions tend to be discretionary purchases. The Board also believes that this approach provides a bright-line approach that will facilitate compliance.

Industry commenters also argued that, even if their systems could differentiate between one-time and recurring transactions, such differentiation cannot be done reliably because merchants may not correctly code transactions as one-time or recurring. The Board recognizes that institutions cannot fully implement a consumer's choice without proper coding of the transaction by the merchant. Thus, the Board is adopting a safe harbor in new comment 17(b)–1.ii to explain that a financial institution complies with the rule if it adapts its systems to identify debit card transactions as either one-time or recurring. If it does so, the financial institution may rely on the transaction's coding by merchants, other institutions, and other third parties as a one-time or recurring debit card transaction.

Several industry commenters stated that the rule and model language should focus on the ''authorization'' of ATM and one-time debit card transactions, rather than ''payment'' of such transactions. The final rule generally retains the language regarding ''payment'' of ATM and one-time debit card transactions as proposed. While an institution decides whether or not to *authorize* an overdraft, fees are typically charged for the institution's *payment* of the transaction. Additionally, in some instances, transactions are not submitted for authorization before the transaction is presented for payment (for example, where a transaction is below the floor limits established by card network rules requiring authorization). As discussed below, the final rule does not provide an exception allowing overdraft fees to be charged for payment of a transaction that overdraws the consumer's account where authorization was not requested by the merchant or other party. Moreover, some transactions that are authorized into overdraft settle into good funds and do not result in overdraft fees.

However, the final rule and commentary include the word ''authorize'' where necessary for accuracy. For example, § 205.17(b)(4) provides an exception to financial institutions that have a policy and practice of declining to ''authorize and pay'' any ATM or one-time debit card transactions under certain conditions. In addition, as discussed below, the model form has been revised to include the term ''authorization'' in certain places.

Comment 17(b)–2, renumbered from proposed comment 17(b)–1, is adopted substantially as proposed to clarify that a financial institution may pay overdrafts for ATM and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the institution's overdraft service. However, if the consumer has not opted into the service, the financial institution is prohibited from assessing a fee or charge for paying the overdraft. The comment also clarifies that the rule does not limit the institution's ability to debit the consumer's account for the amount of the overdraft, provided that the institution is permitted to do so by applicable law.

Some industry commenters expressed concern that consumers will believe that an opt-in creates a contractual right to payment of overdrafts. The Board adopts comment 17(b)–3, renumbered from proposed comment 17(b)–2, substantially as proposed, to clarify that § 205.17 does not require an institution to authorize or pay any overdrafts on an ATM or one-time debit card transaction even if a consumer affirmatively consents to the institution's overdraft service for such transactions. Additionally, as discussed below, the model form adopted by the Board contains language describing the discretionary nature of an opt-in.

A few commenters recommended that the Board define ''overdraft fee'' to exclude fees assessed on accounts that maintain a negative balance for an extended period (often referred to as ''sustained'' overdraft fees). The Board believes, however, that any fee charged on an account for an overdraft should be subject to the rule, including but not limited to a per item, per occurrence, daily, sustained overdraft, or negative balance fee. A consumer who inadvertently overdraws his or her account may not learn about the overdraft until several days after the occurrence of the overdraft and so may unknowingly accrue additional fees. Therefore, the Board believes all overdraft fees should be within the scope of the rule.

A few commenters suggested the possibility that financial institutions may create new fees for declining ATM or one-time debit card transactions. While the final rule does not address declined transaction fees, the Board notes that such fees could raise significant fairness issues under the FTC Act, because the institution bears little, if any, risk or cost to decline authorization of an ATM or one-time debit card transaction.

17(b)(1)(i) Notice Requirements

Proposed § 205.17(b)(1)(i) stated the institution must provide a consumer a notice explaining the institution's overdraft service for ATM withdrawals and one-time debit card transactions that is segregated from all other information, including other account disclosures. Proposed § 205.17(b)(1)(i) also provided that the notice may not contain any information that is not specified or otherwise permitted by § 205.17(d). For clarity, the final rule moves this portion of the requirement to § 205.17(d).

Some industry commenters argued that the notice does not need to be segregated from other account-opening disclosures, and urged the Board to provide institutions with flexibility concerning placement of the notice. Consumer group commenters supported the segregation requirement, arguing that segregation of the notice is essential to providing consumers a meaningful way to consent and thus to providing meaningful choice.

To ensure that the consumer is able to make an informed choice when opting into overdraft services for ATM and one-time debit card transactions, and that the terms of the overdraft service are not obscured by other account information, the final rule retains a segregation requirement. In addition, as discussed below, the final rule requires that the method for providing consent, such as a signature line or check box, must be separate from other types of consents. These requirements are intended to ensure that opt-in information is not buried or obscured within other account documents and overlooked by the consumer. Otherwise, institutions could include information about the overdraft service in preprinted language in an account-opening disclosure, and a consumer might inadvertently consent to the institution's overdraft service by signing a signature card or other account-opening document on the cover page acknowledging acceptance of the account terms. The final rule also requires that notice be provided in writing, or if the consumer agrees, electronically.[32]

[32] Because the disclosures are not required to be in written form, electronic disclosures made under this section are not subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*), which only applies when information is required to be provided to a consumer in writing. The notice is,

Continued

Several consumer advocates argued that, even with an opt-in, the Board should require subsequent notice of the right to opt in, and to revoke the opt-in, on consumers' periodic statements, similar to the proposed subsequent notice requirements with respect to the opt-out. The final rule does not require subsequent notices, as the Board believes such a requirement is unnecessary when the consumer has affirmatively elected to enroll in the overdraft service and, as discussed below, receives a record of their right to revoke their opt-in.

17(b)(1)(ii) Reasonable Opportunity To Opt In

Proposed § 205.17(b)(1)(ii) stated that an institution must provide the consumer a reasonable opportunity to affirmatively consent to the institution's overdraft service for ATM withdrawals and one-time debit card transactions. Proposed comment 17(b)–3 contained three examples illustrating what constitutes a reasonable opportunity to affirmatively consent, including reasonable method(s) to provide affirmative consent. In addition, proposed comment 17(b)–4 provided guidance on obtaining a consumer's opt-in at account opening.

Some industry commenters urged the Board to provide flexibility in how an opt-in could be provided, while consumer advocates and an association of state banking supervisors argued that consumers should be permitted a variety of methods to revoke an opt-in. Several industry commenters suggested that the methods for making and revoking a choice should be consistent. The final rule adopts § 205.17(b)(1)(ii) substantially as proposed, but revises the related proposed commentary to provide further guidance on obtaining a consumer's affirmative consent. As discussed below, final § 205.17(f) has been revised to address a consumer's ability to revoke consent.

Final comment 17(b)–4, renumbered from 17(b)–3, has been revised to explain that a financial institution provides a consumer with a reasonable opportunity to provide affirmative consent when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. The comment provides four examples of such reasonable methods.

First, proposed comment 17(b)–3.i included providing a written form that the consumer can complete and mail. The comment, renumbered as comment 17(b)–4.i, is adopted as proposed.

Proposed comment 17(b)–3.ii provided that an institution could also provide a toll-free telephone number that the consumer may call to provide affirmative consent. On the analogous proposed opt-out provision, the Board requested comment on whether the Board should require institutions to provide a toll-free telephone number. For cost and other reasons, industry commenters generally urged the Board not to require a toll-free telephone number in the opt-out context, while consumer advocates generally argued that a toll-free telephone number should be required.

Throughout the Board's consumer testing, participants consistently stated they would prefer to make a telephone call to obtain information about their overdraft choices. Under an opt-out regime, requiring a toll-free number could help reduce barriers to consumers exercising their opt-out choice. Under an opt-in regime, however, institutions have an incentive to make it easy for consumers to opt in. Thus, the final commentary, renumbered as comment 17(b)–4.ii, provides offering a readily available telephone number as an example of a reasonable method for opting in, but does not require a toll-free telephone number.

The Board's final rule also revises the proposed commentary on opting in on-line. Proposed 17(b)–3.iii illustrated that an institution may provide an electronic means for the consumer to affirmatively consent, such as a form that can be accessed and processed at an Internet Web site, provided that the institution directs the consumer to the specific Web site address where the form is located, rather than solely referring to the institution's home page. The final comment, as revised, does not include a requirement that institutions direct consumers to a specific Web site address because institutions have an incentive to facilitate consumer opt-ins. Rather, the focus of the comment is on the appropriate means of obtaining affirmative consent on-line. Therefore, the final comment, renumbered as comment 17(b)–4.iii, provides, by way of example, that the institution could provide a form that can be accessed and processed at its Web site, where the consumer may click on a check box to provide consent and confirm that choice by clicking on a button affirming that consent.

Because consumers often open accounts in person, the final rule includes a new example in comment 17(b)–4.iv, which provides that the institution could provide a form that the consumer can fill out and present in person at a branch or office to provide affirmative consent. *See also* comment 17(b)–5, discussed below.

Proposed comment 17(b)–4 stated that an institution may provide an opt-in notice prior to or at account opening and require the consumer to decide whether to opt into the payment of ATM withdrawals or one-time debit card transactions pursuant to the institution's overdraft service as a necessary step to opening an account. As an example, the proposed comment stated that institution could require the consumer prior to or at account-opening to choose between an account that does not permit the payment of ATM withdrawals or one-time debit card transactions pursuant to the institution's overdraft service and an account that permits the payment of such overdrafts.

Industry commenters generally supported this proposed comment. Some consumer group commenters supported the proposed comment but expressed concern that institutions may attempt to steer consumers into the opt-in account. For operational reasons, an institution may not want to set up an account for the consumer with overdraft services, only to have to implement the consumer's opt-in a short time later (if the consumer does not opt in concurrent with account-opening but decides to opt in shortly thereafter). Therefore, the Board adopts this comment generally as proposed, renumbered as comment 17(b)–5, but with an additional example to clarify that an institution is not required to implement a consumer's opt-in choice by establishing a second account, but could instead implement the consent at the account level (for example, through coding that indicates whether or not the consumer opts in).

The institution could require the consumer, at account opening, to sign or check a box on a form (consistent with comment 17(b)–6, discussed below) indicating whether or not the consumer affirmatively consents at account opening. To facilitate consumer understanding, an institution may, but is not required, to provide a signature line or check box where the consumer can indicate that they decline to opt in. *See* Model Form A–9. Nonetheless, if the consumer does not check any box or provide a signature, the institution must assume that the consumer does not opt in. To address potential steering concerns, the Board has added guidance in the commentary, as discussed below.

17(b)(1)(iii) and (iv) Affirmative Consent; Written Confirmation

Proposed § 205.17(b)(1)(iii) stated that the financial institution must obtain the

however, subject to Regulation E's general requirement that disclosures be clear and readily understandable and in a form the consumer may keep. *See* 12 CFR § 205.4(a)(1).

consumer's affirmative consent to the institution's overdraft service, and must provide the consumer with written confirmation documenting the consumer's choice. For clarity, the final rule bifurcates these two requirements and incorporates the disclosure of the right to revoke consent into the written confirmation requirement. The final rule also adds commentary providing further guidance on obtaining affirmative consent and providing written confirmation.

Section § 205.17(b)(1)(iii) of the final rule requires the institution to obtain the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service. To address concerns that a consumer might inadvertently consent to an institution's overdraft service, new comment 17(b)–6 provides examples of ways in which a consumer's affirmative consent is or is not obtained. Specifically, comment 17(b)–6 clarifies that a financial institution does not obtain a consumer's affirmative consent by including preprinted language about the overdraft service in an account disclosure provided with a signature card or contract that the consumer must sign to open the account and that acknowledges the consumer's acceptance of the account terms. Nor does an institution obtain a consumer's affirmative consent by providing a signature card that contains a pre-selected check box indicating that the consumer is requesting the service. The Board is concerned that these methods of obtaining an opt-in may not reflect an informed, affirmative choice by the consumer. The institution could, however, provide a blank signature line or check box that the consumer could sign or select to indicate affirmative consent. Comment 17(b)–6 also states that such consents comply with the rule when they are obtained separately from other consents or acknowledgements; that is, the consent must be used solely to indicate the consumer's choice whether to opt into overdraft services, and not for other purposes such as to obtain consents for a financial institution's bill payment service.

The final rule also requires that the institution provide the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically. For clarity, the final rule includes this requirement as a new § 205.17(b)(1)(iv). Industry commenters opposed the requirement that consumers receive written confirmation of their opt-in choice, stating that other protective mechanisms are already in place in the rule, and questioning the benefit of the written confirmation compared to the cost of providing the confirmation. Consumer advocates supported the requirement, stating that written confirmation is essential to the rule's effectiveness.

The Board believes that written confirmation will help ensure that a consumer intended to opt into the overdraft service by providing the consumer with a written record of his or her choice. This is particularly important when a consumer opts in by telephone. New comment 17(b)(1)–7 permits an institution to comply with the requirement, for example, by providing a copy of a consumer's completed opt-in form or by sending a letter or other document to the consumer acknowledging that the consumer has elected to opt into the institution's service. The final rule permits the confirmation to be provided electronically, if the consumer agrees.

Section 205.17(b)(1)(iv) also requires the written confirmation to include a statement informing the consumer of the right to revoke consent. To the extent an institution complies with § 205.17(b)(1)(iv) by providing a copy of the opt-in notice to the consumer, the institution may include a statement about the right to revoke in the opt-in notice. *See also* § 205.17(d)(6).

17(b)(2) Conditioning Payment of Overdrafts on Consumer's Affirmative Consent

Proposed § 205.17(b)(2) contained two approaches to how an institution may offer the opt-in. Under one approach, an institution would be prohibited from conditioning the payment of any overdrafts for checks, ACH transactions, or other types of transactions on the consumer affirmatively consenting to the institution's payment of overdrafts for ATM withdrawals and one-time debit card transactions. The institution is also prohibited from declining to pay checks, ACH transactions, or other types of transactions because the consumer has not also affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions. Collectively, these practices are referred to as ''conditioning'' the consumer's opt-in.

In light of the operational issues associated with a bifurcated opt-in, the alternative proposed approach would have expressly permitted institutions to condition the consumer's opt-in. The Board also sought comment on other approaches that might be more effective, or that would sufficiently balance concerns about consumers being effectively compelled to opt in against the operational difficulties of implementing the proposed prohibition. In the final rule, the Board adopts the first approach prohibiting conditioning the opt-in. In light of consumer preference to have their checks paid, the prohibition on conditioning is intended to ensure consumers have a meaningful opt-in choice regarding overdraft services for ATM and one-time debit card transactions.

Consumer advocates and federal and state banking regulators supported a prohibition on conditioning the opt-in right, arguing that any kind of conditioning would compel consumers to opt in, because consumers prefer to have their check and ACH overdrafts paid.

Industry commenters supported the approach that permitted conditioning of the opt-in right, for several reasons. First, these commenters argued that permitting conditioning would be easier for compliance and for consumer understanding. In addition, many commenters stated that processors do not currently have the technology to distinguish between paying overdrafts for some, but not all, payment channels, and that permitting conditioning would significantly mitigate technology and implementation costs. Specifically, industry commenters stated that most systems today could either pay overdrafts for all transaction types or pay overdrafts for none, but were not set up to pay overdrafts for certain transaction types (*e.g.,* checks and ACH), but not others (*e.g.,* ATM and POS debit card transactions). Some industry commenters also asserted that most systems today are unable to readily differentiate between POS debit card transactions and other types of debit card transactions, such as preauthorized transfers. Some commenters argued that implementation costs would lead some institutions, particularly community banks, to stop offering overdraft services altogether. However, other industry commenters stated that they could develop the technology with sufficient lead-time for mandatory compliance with the rule, for example, by providing an implementation period of 12 to 24 months.

Although the Board acknowledges the operational concerns raised by industry commenters, the Board's consumer testing shows that many consumers would prefer that their account-holding financial institution cover overdrafts by check, ACH, or automatic bill pay. If conditioning were permitted, these consumers may feel compelled to opt into an institution's overdraft service for ATM and one-time debit card transactions in order to minimize the risk that checks and other important

bills would be returned unpaid. This could deprive consumers of a meaningful choice with respect to overdraft coverage for ATM and one-time debit card transactions. Thus, the final rule prohibits conditioning the opt-in right.[33]

Similarly, as discussed in the proposal, institutions could also use discretion regarding the payment of overdrafts in such a manner as to prevent consumers from exercising a meaningful choice regarding overdraft services. Thus, comment 17(b)(2)–1 clarifies that the final rule generally requires an institution to apply the same criteria for deciding when to pay overdrafts for checks, ACH transactions, and other types of transactions, whether or not the consumer has affirmatively consented to the institution's overdraft service with respect to ATM and one-time debit card overdrafts. For example, if an institution's internal criteria would lead the institution to pay a check overdraft if the consumer had affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions, it must also apply the same criteria in a consistent manner in determining whether to pay the check overdraft if the consumer has not opted in.

The Board recognizes that by prohibiting conditioning, many institutions will be required to reprogram systems to differentiate ATM and one-time debit card transactions from other transactions. Nonetheless, the Board believes that the consumer benefits provided by the prohibition on conditioning outweigh the associated costs. As discussed above, from a consumer's perspective, any benefits from overdrawing the consumer's account for ATM and one-time debit card transactions may be substantially outweighed by the costs associated with the overdraft.

A few industry commenters suggested that the Board may not have the authority under Regulation E to prohibit institutions from declining checks or other items not subject the EFTA because the consumer has not also affirmatively consented to the institution's overdraft service. The Board disagrees. Comment 17(b)(2)–2 clarifies that the prohibition on conditioning does not require the institution to pay overdrafts on checks, ACH transactions, or other types of transactions in all circumstances. *See also* comment 17(b)–3. Rather, the provision simply prohibits institutions from circumventing the opt-in requirement of the final rule by prohibiting institutions from considering the consumer's decision not to opt in when deciding whether to pay overdrafts for checks, ACH, or other types of transactions. The Board believes the prohibition adopted under the final rule is necessary to preserve consumer choice with respect to ATM and one-time debit card transactions, and to prevent circumvention or evasion of the final rule. Accordingly, the prohibition on conditioning falls within the scope of the Board's authority under Sections 904(a) and 904(c) of the EFTA, as discussed in Part V above.

17(b)(3) Same Account Terms, Conditions and Features

The Board proposed two alternatives under § 205.17(b)(3) to address how financial institutions would be permitted to implement the consumer's opt-in. Under the first alternative, an institution would be required to provide consumers who do not affirmatively consent to the institution's overdraft service for ATM withdrawals and one-time debit card transactions an account with the same terms, conditions, and features that it provides to consumers who affirmatively consent, except for the features that limit the institution's payment of such overdrafts. Under the second alternative, an institution would be permitted to vary the terms, conditions, or features of the ''no opt-in'' account only if the differences in the terms, conditions, or features are not so substantial as to effectively compel a reasonable consumer to affirmatively consent to the institution's payment of overdrafts on ATM withdrawals and one-time debit card transactions.

Consumer advocates and federal officials supported the alternative requiring identical account terms, conditions, and features regardless of the consumer's opt-in choice. In addition to providing a clear standard for institutions to follow, these commenters argued that, if variations were allowed, it could be difficult to prohibit institutions from creating terms and conditions that would effectively compel consumers to opt in.

Most industry commenters generally, but not uniformly, urged the Board to permit institutions to vary the terms, conditions, or features of the account, including pricing decisions. These commenters stated that institutions need flexibility in order to manage risk and to design products meeting the distinct needs of the customers who do not opt in. These commenters also maintained that pricing and features on an account are inextricably linked. Both consumer group commenters and industry commenters alike expressed concern that the ''reasonable consumer'' standard in the alternative permitting variations was too ambiguous.

In the final rule, the Board adopts the first alternative prohibiting institutions from varying account terms, conditions, and features for consumers who do not opt in, substantially as proposed, and adds commentary to provide further guidance. The rule has been revised to clarify that the account terms, conditions and features must be the same, except for the overdraft service for ATM and one-time debit card transactions.[34] The Board believes some institutions could otherwise effectively compel the consumer to provide affirmative consent to the institution's payment of overdrafts for ATM and one-time debit card transactions by providing consumers who do not opt in with less favorable terms, conditions, or features than consumers who do opt in. For example, an institution could provide an opt-in account with no monthly fee to consumers who opt in, but an account that assesses a monthly maintenance fee to consumers who do not opt in. Behavioral research suggests that consumers may choose the ''free'' opt-in account, even though the costs for overdrawing the account could end up being substantially higher than the monthly maintenance fee, because they may optimistically assume they will not overdraw the account and as a result, incur overdraft fees.[35] In addition, consumers may prefer the possibility of paying an overdraft to the certainty of paying a monthly maintenance fee, even if the overdraft fee costs are higher than the monthly fee costs.

The proposed rule included fees and interest rates as examples of terms that could not be varied. However, because the rule is intended to be a broad prohibition, not limited to price differences, the Board is adding new comment 17(b)(3)–1 to provide a non-exclusive list of examples of terms, conditions, or features that cannot be

[33] Currently, some institutions offer customers an account feature whereby an institution, for a single monthly fee, may pay the consumer's overdrafts (at its discretion) without imposing an overdraft fee on a per item or per occurrence basis. An account with such a feature would be still subject to the restrictions of § 205.17(b)(2) and thus must provide consumers the choice to opt into the institution's payment of ATM and debit card overdrafts. The account would also be subject to the restrictions on variations in terms under § 205.17(b)(3), discussed below.

[34] The heading has been revised to ''Same Account Terms, Conditions, and Features'' to more accurately describe the final rule.

[35] This behavior is commonly referred to as ''hyperbolic discounting.'' *See, e.g.* Shane Frederick, *et al., Time Discounting and Time Preference: A Critical Review,* 40 J. Econ. Literature 351, 366–67 (2002) (reviewing the literature on hyperbolic discounting).

varied. These examples include fees and interest rates, minimum balance requirements, account features, such as on-line bill payment services, and the type of ATM or debit card provided to the account holder.

Some industry commenters suggested that an appropriate variation in features might be to provide consumers who do not opt in with a card that has PIN-debit functionality but not signature-debit functionality.[36] Nonetheless, PIN debit is available at far fewer merchant locations than signature debit.[37] Consequently, if institutions were permitted to offer PIN-debit cards to consumers who do not opt in, consumers could feel compelled to choose the opt-in account in order to obtain a debit card with more functionality.

Section 205.17(b)(3) is not intended to interfere with state basic banking laws or other limited-feature bank accounts marketed to consumers who have historically had difficulty entering or remaining in the banking system. New comment 17(b)(3)–2 explains that § 205.17(b)(3) does not prohibit institutions from offering deposit account products with limited features, provided that the consumer is not required to open such an account because the consumer did not opt in. For example, institutions are not prohibited from offering a checking account designed to comply with state basic banking laws or designed for consumers who are not eligible for a full-service or other particular checking account because of their credit or other checking account history, which may include features limiting the payment of overdrafts. To the extent these more limited products permit the consumer to overdraft at ATMs or via a one-time debit card transaction, the consumer must be provided an opt-in under the final rule.[38]

Nonetheless, institutions may not steer consumers who do not opt into an account with fewer features than the account for which the consumer initially applied. Comment 17(b)(3)–2 explains that a consumer who applies, and is otherwise eligible, for a particular deposit account product may not be provided an account with more limited features because the consumer has declined to opt in.

As discussed in the proposal, some institutions may choose to implement a consumer's affirmative consent at the account level (for example, by setting up account coding that indicates whether or not the consumer has opted in). Other institutions, for operational reasons, may prefer to implement the consumer's choice via a back-room process by opening a different account for consumers who have not provided affirmative consent to the institution's overdraft service for ATM and one-time debit card transactions. The final rule permits both approaches.

17(b)(4) Exception to the Notice and Opt-In Requirements

Proposed § 205.17(b)(4) created an exception to the notice and opt-in requirement for institutions that have a policy and practice of declining to pay any ATM withdrawals or one-time debit card transactions for which authorization is requested, when the institution has a reasonable belief that the consumer's account does not have sufficient funds available to cover the transaction at the time of the authorization request. Both consumer group and industry commenters generally supported this proposed exception.

Section 205.17(b)(4) is modified from the proposal for clarity. The final rule provides that the requirements of § 205.17(b)(1) do not apply to institutions that have a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction.

A few industry commenters suggested that the Board clarify that the exception should be applied at the account level, rather than at the institution level, in the event that only some of the institution's products or business lines qualify for the exception. Section 205.17(b)(4) of the final rule provides that financial institutions may apply the exception on an account-by-account basis. New comment 17(b)(4)–1 explains that if a financial institution has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions with respect to one type of deposit account offered by the institution, when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction, that account is not subject to § 205.17(b)(1), even if other accounts that the institution offers are subject to the rule. For example, if the institution offers three types of checking accounts, and the institution has such a policy and practice with respect to only one of the three types of accounts, that one type of account is not subject to the notice requirement. However, the other two types of accounts offered by the institution remain subject to the notice requirement.

17(b)(5) Exceptions to the Fee Prohibition

In some circumstances, an institution may be unable to avoid paying a transaction that overdraws a consumer's account. This can occur, for example, when a debit card transaction is authorized, but intervening transactions reduce the funds in the checking account before the debit card transaction clears. Under network rules, the institution is required to pay the transaction.

The Board proposed two limited exceptions to the fee prohibition under § 205.17(b)(5) to allow institutions to assess a fee or charge for paying an ATM or debit card overdraft even if the consumer has not affirmatively consented to the overdraft service. Under the first exception, an institution would be permitted to assess an overdraft fee or charge, notwithstanding the absence of the consumer's affirmative consent, if the institution has a reasonable belief that there are sufficient funds available in the consumer's account at the time it authorizes an ATM or one-time debit card transaction. Under the second exception, an institution would be permitted to assess an overdraft fee or charge, notwithstanding the absence of the consumer's affirmative consent, where a merchant or payee presents a debit card transaction for payment by paper-based means, rather than electronically using a card terminal, and the institution has not previously authorized the transaction. Proposed comments 17(b)(5)–1 through –3 contained examples illustrating the proposed exceptions for the opt-in approach.

Consumer group commenters stated that the Board should not provide any exceptions to the prohibition on fees, even if overdrafts are inadvertently paid due to delays in transaction processing and settlement, notwithstanding the consumer's declining to opt in. They argued that consumers who do not opt

[36] With signature debit transactions, the merchant first obtains authorization, but may not submit the transaction for payment at a later time; thus, intervening transactions may cause the consumer to overdraw his or her account. PIN debit transactions are a part of a single message system with authorization and submission of the transaction occurring on a near-real-time basis, thus reducing the likelihood of overdrafts caused by intervening transactions.

[37] *See, e.g.,* Fumiko Hayashi, Richard J. Sullivan, and Stuart E. Weiner, *A Guide to the ATM and Debit Card Industry: 2006 Update,* Federal Reserve Bank of Kansas City (2006) at 11.

[38] If these products do not permit overdrafts, the products are excluded from the requirements of § 205.17(b)(1) by § 205.17(b)(4), discussed below.

in expect that they will not be charged overdraft fees for ATM or one-time debit card transactions. Instead, these commenters contended that institutions, card processors, and merchants should resolve operational issues among themselves. Industry commenters, on the contrary, supported the proposed exceptions. Many industry commenters urged the Board to provide additional exceptions for transactions not submitted for authorization at the time of the transaction, such as for transactions that are not submitted because they are below the floor limits established by card network rules requiring authorization. These commenters argued that systems currently do not identify whether authorization was previously sought for a particular transaction. Some of these commenters suggested that consumers could be adequately protected through disclosures at the merchant stating that transactions are not submitted for authorization below a particular dollar amount. Many industry commenters also urged the Board to broaden the rule to permit fees to be assessed if an overdraft was paid when the institution used a stand-in processor to authorize the transaction, because the card network was temporarily off-line.

The final rule does not adopt the proposed exceptions to the prohibition on fees. The Board believes that consumers who make the choice not to opt in may reasonably expect an ATM or one-time debit card transaction to be declined if there are insufficient funds in their account, and that they will not be charged overdraft fees. Adopting exceptions to the prohibition on fees would undermine the consumer's ability to understand the institution's overdraft practices and make an informed choice.

The Board recognizes that financial institutions and consumers have imperfect information as to the balance in the account at the time of the transaction. Financial institutions face operational limitations in processing transactions, and in tracking the consumer's actual balance, because transactions may not be processed in real-time. Similarly, even if a consumer checked his or her balance prior to a transaction, the balance may not be updated, so the consumer may inadvertently overdraw his or her account on the belief funds are available. On balance, the Board believes financial institutions are in a better position to mitigate the information gap by developing improved processing and updating systems, as they have in recent years, and as the Board expects they will continue to do over time.

The rule does not, however, prohibit financial institutions from paying overdrafts for ATM and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the institution's overdraft service, so long as a fee is not imposed. For example, under network rules, financial institutions must pay authorized debit card transactions, even if at settlement intervening transactions by the consumer have reduced the consumer's available balance below the authorized amount of the transaction. To address any safety and soundness concerns, and as discussed above, institutions may debit the consumer's account for the amount of the overdraft, provided that the institution is permitted to do so by applicable law. *See* comment 17(b)–2.

C. Timing—§ 205.17(c)

Proposed § 205.17(c) would generally require that a financial institution provide an opt-in notice to the consumer about the institution's overdraft service before the institution assessed any fee or charge on the consumer's account for paying an ATM withdrawal or one-time debit card transaction pursuant to the institution's overdraft service. However, once a consumer has opted in, financial institutions would not be required to provide a notice regarding the institution's overdraft service following the assessment of any overdraft fees or charges to the consumer's account. The proposed provision would apply differently depending on when the account is opened. For new accounts opened on or after the effective date of the final rule, the opt-in notice would have to be provided (and consent obtained) prior to the assessment of any fee or charge on the consumer's account for paying an ATM withdrawal or one-time debit card transaction pursuant to the institution's overdraft service. For existing accounts, the proposed rule would permit institutions to either provide an opt-in notice to all of its account holders on or with the first periodic statement sent after the effective date of the final rule, or following the first assessment of an overdraft fee or charge to the consumer's account on or after the effective date of the final rule. Further, under proposed § 205.17(g), if an existing account holder had not affirmatively consented to the service within 60 days after the institution sent the opt-in notice, the institution would have to cease assessing any fees or charges on the consumer's account for paying such overdrafts, unless permitted by one of the exceptions in proposed § 205.17(b)(5).

Most comments focused on whether existing account holders should be subject to the opt-in rule, or should be subject to a separate opt-out rule. These comments, and the Board's decision to provide an opt-in right, are discussed above.

The final rule provides an opt-in right for new and existing accounts, but modified from the proposal. As discussed below, the final rule sets an effective date of January 19, 2010, with a mandatory compliance date of July 1, 2010. The proposed timing provisions of the rule have been consolidated for clarity into final § 205.17(c)(1) with respect to existing account holders, and final § 205.17(c)(2) with respect to new account holders.

For accounts opened prior to July 1, 2010, final § 205.17(c)(1) states that the financial institution must not assess any fees or charges on a consumer's account on or after August 15, 2010 for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the institution has complied with § 205.17(b)(1) and obtained the consumer's affirmative consent. For accounts opened on or after July 1, 2010, § 205.17(c)(2) states that the financial institution must comply with § 205.17(b)(1) and obtain the consumer's affirmative consent before the institution assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service.

Consumer group commenters objected to the proposed rule permitting the opt-in notice for existing account holders following the first assessment of an overdraft fee on or after the effective date, because it would effectively allow institutions to collect one overdraft fee notwithstanding the consumer's preference. The final rule addresses this concern by providing a specific date after which overdraft fees may no longer be charged.

As revised, the final rule will result in consistent treatment of all existing account holders. Otherwise, some consumers might not receive an opt-in notice until a later date, and thus might not be provided an opportunity to make a choice regarding the institution's overdraft service, until some period of time after other consumers receive the notice. Including a specific date after which fees may no longer be charged provides a bright-line rule that is beneficial to consumers and facilitates ease of compliance by institutions, rather than requiring institutions to track when notices have been mailed or

delivered, and consents received, on a staggered basis.

The Board believes that establishing an August 15, 2010 date after which existing account holders may no longer be charged overdraft fees without consent is appropriate, as it provides those consumers adequate time to research available options, and, for example, apply for an overdraft line of credit or establish a savings account to which their checking account could be linked. Of course, if an existing account holder contacts his or her financial institution in response to the opt-in notice before August 15, 2010 to express a desire *not* to opt in, the Board expects that the institution would honor the consumer's choice at that time.

Industry commenters suggested that the proposed timing provisions be revised to permit financial institutions to obtain opt-ins prior to the effective date, and apart from (rather than on or with) the periodic statement. Comment 17(c)–1 explains that financial institutions may provide the notice and obtain the consumer's affirmative consent prior to the mandatory compliance date, provided that the financial institution complies with all of the requirements of this section, including the prohibitions on conditioning the opt-in and on varying account terms. However, notice for existing accounts is not required where, prior to the effective date, an institution had offered customers an opt-in, and a customer had *not* affirmatively consented to the service.

For either new or existing account holders, the final rules do not permit institutions to retroactively apply affirmative consents to overdrafts that are paid before the consent is provided. For example, if a consumer overdraws his or her account, the rule does not permit an institution to obtain the consumer's affirmative consent one week later and apply that consent to the prior overdraft. To clarify the application of the timing rules, new comment 17(c)–2 states that fees or charges for ATM and one-time debit card overdrafts may be assessed only for overdrafts paid by the institution on or after the date the financial institution receives the consumer's affirmative consent to the institution's overdraft service.

D. Content and Format—§ 205.17(d)

Proposed § 205.17(d) set forth content requirements for the notice that must be provided to the consumer before the consumer may affirmatively consent to the institution's overdraft service. In addition, proposed § 205.17(d) would require that the opt-in notice be in a form substantially similar to Model Form A–9 in Appendix A. The Board requested comment regarding whether the rule should permit or require any other information to be included in the opt-in notice.

Consumer advocates generally supported the proposed content and model opt-in form, but suggested the Board revise the form to include additional cost information. Industry commenters provided a variety of suggestions that, in their view, would clarify or improve the model disclosure. In particular, commenters suggested that the form be revised to be shorter and clearer. In other cases, however, commenters suggested various additions to the model form to provide more information regarding an institution's overdraft policies and practices, such as language regarding the exceptions permitting fees to be charged in some circumstances without a consumer's opt-in.

The Board is adopting § 205.17(d), but with modified content and format requirements based on the comments received, consumer testing, and the Board's further consideration. Under the final rule, the opt-in notice required by § 205.17(b)(1)(i) may not contain any information that is not specified or otherwise permitted by § 205.17(d) and must be in a form substantially similar to Model Form A–9.[39] The final rule also substantially revises Model Form A–9. Overall, the final model form was edited to make it shorter and clearer to consumers, including by emphasizing certain information critical to understanding the overdraft service.

Proposed § 205.17(d)(1) stated that the institution must provide a general description of the financial institution's overdraft services and the types of EFTs for which an overdraft fee may be imposed, including ATM withdrawals and one-time debit card transactions. Consumer testing participants generally were not aware that financial institutions provide overdraft services, and many did not understand that overdraft services could be provided automatically with an account. Others confused overdraft services with other overdraft alternatives provided by their institution, such as a link to a savings account or an overdraft line of credit. The Board tested a number of ways to address this misconception in the model form, and found that consumers best understood the concept of overdraft services as distinct from other forms of overdraft coverage when it was framed as an institution's ''standard overdraft practices.'' Testing also indicated that placing the discussion of applicable alternatives in the introductory paragraph helped improve participants' comprehension.

Proposed comment 17(d)–2 permitted a financial institution to include language describing other types of transactions not subject to the opt-in right, or subject to a separate opt-out right. In the final rule, the Board is revising § 205.17(d)(1) to require a brief description of the institution's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed. The language in proposed comment 17(d)–2 has been revised and adopted in comment 17(d)–1 as an illustration of the application of § 205.17(d)(1).

Because the final rule prohibits conditioning pursuant to § 205.17(b)(2), the Board believes that consumers should be informed that different transaction types will be treated differently so they can make an informed choice about whether or not to opt into an institution's overdraft service for ATM and one-time debit card transactions. Consumer testing showed consumers need to understand how checks and other transactions will be treated to make such a choice.

Proposed comment 17(d)–2 also permitted an institution to indicate that it pays overdrafts at its discretion, and to briefly describe the benefits of the institution's payment of overdrafts on ATM or one-time debit card transactions. Some commenters suggested that the Board provide model language to describe the consequences of declining to opt in. Similarly, some commenters expressed concern that the form as proposed implied that by consenting to the institution's overdraft service, the consumer's overdrafts would be covered in all cases. Upon further consideration, the Board believes that these elements of an institution's policy are already encompassed by the requirement in § 205.17(d)(1) to disclose a general description of the institution's overdraft services. Thus, as described above, final comment 17(d)–1 illustrates the application of § 205.17(d)(1). Additional optional language that may be included in the model form has been adopted in new § 205.17(d)(6).

Industry commenters also contended that the form should contain language stating that overdrafts may be paid regardless of the consumer's opt-in decision, due to technical requirements and under the exceptions proposed under § 205.17(b)(5). Commenters provided various suggestions for how to

[39] Institutions may provide other information about their overdraft services and other overdraft protection plans in a separate document.

convey information about the exceptions to consumers. Because the final rule does not adopt the proposed exceptions, adding this language is not necessary.

Proposed § 205.17(d)(2) stated that the initial notice must include information about the dollar amount of any fees or charges assessed on the consumer's account for paying an ATM withdrawal or a one-time debit card transaction pursuant to the institution's overdraft service. Some institutions may vary the fee amount that may be imposed based upon the number of times the consumer has overdrawn his or her account, the amount of the overdraft, or other factors. Under these circumstances, the proposed rule would have required the institution to disclose the maximum fee that may be imposed or a range of fees. The Board is adopting § 205.17(d)(2) generally as proposed, but is removing the reference to the range of fees. Institutions that waive the first fee could include a range from $0 to their maximum fee, which could lead consumers to believe that they may overdraw their account free of charge more than once. To address tiered overdraft fees, comment 17(d)–2, as adopted, provides that the institution may indicate that the consumer may be assessed a fee ''up to'' the maximum fee. In addition, to ensure that consumers understand the full array of fees that may be charged, the comment explains that the financial institution must also disclose all applicable overdraft fees, including but not limited to per item or per transaction fees, daily fees, sustained overdraft, and negative balance fees. Comment 17(d)–2.ii provides an example illustrating a sustained overdraft fee. The comment is intended to illustrate that *all* types of fees for paying an overdraft must be disclosed, regardless of how the fee is labeled by the institution.

Some consumer group commenters recommended that the fees section be moved up on the notice. However, participants in consumer testing generally identified the dollar amount of fees, even when located near the bottom of the notice. To ensure that consumers view the fees attributable to use of the overdraft service, regardless of the placement of that section in the notice, final Model Form A–9 displays the dollar amount of the fees in bold font.

Proposed § 205.17(d)(3) stated that institutions must disclose any daily limits on the amount of overdraft fees or charges that may be assessed. If the institution does not limit the amount of fees that can be imposed, it would have to disclose this fact. The Board adopts the rule, as modified, to require disclosure of any daily limits on the *number* of overdraft fees or charges (or, that there are no limits). Because some overdraft charges may be assessed as a percentage, the total dollar limit may be difficult to calculate with any certainty. The Board believes the same purpose is achieved by specifying the number limits.

Some consumer group commenters suggested requiring the disclosure of minimum overdraft amounts that could trigger fees to alert consumers that they will be charged overdraft fees even on small dollar transactions. However, consumer testing demonstrated that consumers understood this concept without a specific statement to this effect. Therefore, this additional language is not required or included in Model Form A–9.

Section 205.17(d)(4), which is adopted generally as proposed, requires institutions to inform consumers of the right to affirmatively consent to the institution's payment of overdrafts for ATM and one-time debit card transactions, including the method(s) that the consumer may use to consent to the service.

Proposed § 205.17(d)(5) provided that institutions must state whether they offer any alternatives for the payment of overdrafts. Specifically, if an institution offered an overdraft line of credit or a service that transfers funds from another account of the consumer held at the institution to cover the overdraft (including an account held jointly with another consumer), the institution would have to state that fact, and how to obtain more information. Under the proposal, institutions were permitted, but not required, to list any additional alternatives they may offer to overdraft services. This provision incorporated a recommendation from the February 2005 Joint Guidance that institutions should inform consumers generally of other overdraft services and credit products, if any, that are available when describing their overdraft service.[40] The Board adopts § 205.17(d)(5) substantially as proposed.

Participants in consumer testing generally understood that they would have to qualify for an overdraft line of credit, without a reference in the notice to any qualification requirements as urged by some industry commenters. In addition, participants generally understood that they could contact the bank through the methods listed at the bottom of the model form without any reference to how to obtain more information beyond a statement at the top of the form that the consumer should ask about the alternatives. Thus, in an effort to eliminate unnecessary language in the model form, final § 205.17(d)(5) and Model Form A–9 delete the proposed language in the notice requiring the bank to specify how consumers can obtain more information about any alternatives to overdraft services.

Some consumer group commenters argued that the Board should revise Model Form A–9 to state that these alternatives ''are less costly'' than an overdraft service. Depending on the financial institution's current and future practices, the amount of time a consumer is overdrawn, and other factors, however, it may not be accurate to say that these alternatives are less expensive than overdraft coverage in all cases. Thus, the final model form includes a statement that overdraft alternatives ''may be less expensive'' than an institution's standard overdraft practices.

Consumer group commenters also suggested amending the model form to include additional information about the costs of alternatives to the overdraft service, including a chart containing costs and sample effective APRs associated with charges, based on the average amount overdrawn and different payoff times. Including such a chart in the opt-in form would make the form lengthy, could confuse consumers, and could undermine the purpose of the form, which is to provide consumers with a choice about opting into the institution's overdraft service in a clear and readily understandable way. While some participants in consumer testing stated that having more information in the form about the alternatives would be helpful, others stated they would prefer to call for more information. The Board also believes that requiring disclosure of costs expressed in dollars is a more effective means of alerting consumers to the costs of the overdraft service. Consumer testing in the credit card context demonstrated that costs expressed in dollars were better understood and more meaningful than costs expressed as an effective APR.

New § 205.17(d)(6) provides that a financial institution may include language in the notice describing other types of transactions that are not subject to the opt-in right, or are subject to a separate opt-in or opt-out right. For example, the institution may indicate that the consumer has the right to opt out of payment of overdrafts for check transactions, ACH transactions, or automatic bill payments, and if so, may disclose the returned item fee and that additional merchant fees may apply. The notice may provide a means for the

[40] *See* 70 FR at 9131.

consumer to exercise this choice. An institution may also disclose the consumer's right to revoke consent. The rule also clarifies that for existing accounts, the institution may revise the statement describing the institution's overdraft service with respect to ATM and one-time debit card transactions to state that ''After August 15, 2010, we *will not* authorize and pay overdrafts for the following types of transactions unless you ask us to (see below).'' However, the rule states that the additional content may not be more prominent than any required language under § 205.17(d)(1). Consumer testing indicated that emphasizing certain language as shown in Model Form A–9 substantially enhanced consumer understanding, and the Board is concerned that any additional information provided not diminish that understanding.

E. Additional Provisions Addressing Consumer Opt-In Right—§ 205.17(e)–(g)

Joint accounts. Proposed § 205.17(e) provided that a financial institution must treat affirmative consent provided by any joint consumer of an account as affirmative consent for the account from all of the joint consumers. Commenters generally supported the proposal. The Board is adopting § 205.17(e) substantially as proposed, with an additional clarification that the financial institution must also treat a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account.

The final rule is adopted in recognition that it may not be operationally feasible for an institution to determine which account holder is responsible for a particular transaction and then make an authorization decision based on whether the consumer has affirmatively consented to the institution's overdraft service. Thus, for practical reasons, if one joint consumer opts in to the institution's overdraft service, the institution must treat the consent as applying to all overdrafts involving an ATM or debit card transaction for that account. Likewise, the Board believes the same principles should apply to revocation of the consent and revises § 205.17(e) accordingly.

Continuing right to opt-in or to revoke the opt-in. Proposed § 205.17(f) provided that a consumer may affirmatively consent to a financial institution's overdraft service at any time in the manner described in the opt-in notice. This provision would allow consumers to decide later in the account relationship that they wish to have overdrafts paid for ATM withdrawals and one-time debit card transactions.

Section 205.17(f) is adopted generally as proposed, but with certain additions to address the consumer's right to revoke his or her consent. Just as a consumer must be provided a reasonable opportunity to opt in, the consumer should be provided the same reasonable opportunity to revoke the opt-in. Thus, the final rule requires financial institutions to permit the consumer to revoke his or her consent at any time in the manner made available to consumers for providing consent. The final rule also states that the financial institution must implement the consumer's revocation of consent as soon as reasonably practicable after receiving the request.

The Board is not prescribing a specific period of time within which the creditor must honor the consumer's revocation request because the appropriate time period may depend on a number of variables, including the method used by the consumer to communicate the revocation request (for example, in writing or orally) and the channel by which the request is received (for example, if a consumer sends a written request to an address specifically designated to receive consumer opt-in and revocation requests).

The final rule also adds a new comment 17(f)–1 to clarify that revocation does not require the financial institution to waive or reverse any overdraft fees assessed on the consumer's account prior to the institution's implementation of the consumer's revocation request.

Duration and revocation of opt-in. Proposed § 205.17(h) provided that a consumer's affirmative consent to the institution's overdraft service is generally effective until revoked by the consumer. The rule also provided that an institution may also terminate the consumer's access to the overdraft service for any reason, for example, if the institution determines that there is excessive usage of the service by the consumer. Final § 205.17(g), renumbered from the proposal, is adopted as proposed.

Real-time opt-in. Although not addressed in the Board's proposal, some industry commenters urged the Board to allow institutions to offer the consumer the ability to opt into the institution's overdraft service on a transaction-by-transaction basis, if a transaction-level opt-in becomes technologically feasible (a ''real-time'' opt-in). Consumer group commenters urged the Board to require institutions to provide real-time disclosure and opt-in for ATM and debit card transactions.

Real-time opt-ins offer potential benefits and drawbacks to consumers. A real-time opt-in may provide relief to consumers who may need access to funds in an emergency when they have no alternative forms of payments available and where technology makes a real-time opt-in feasible. However, consumers who make decisions in real-time may not be provided all essential information necessary to make informed decisions about whether to incur a fee by proceeding with a transaction that overdraws their accounts.

The Board does not believe that it is technologically feasible to provide real-time opt-ins at many locations at this time, particularly at non-proprietary ATMs and merchant POS terminals. Thus, the Board is not addressing real-time notices in the final rule. The Board will continue to monitor developments in real-time notice capability and assess whether such notice would enhance consumer protection.

Section 205.19 Debit Holds

Debit Holds

The Board proposed to prohibit institutions from assessing an overdraft fee where the overdraft would not have occurred but for a debit hold placed on funds in an amount that exceeds the actual transaction amount and where the merchant could determine the actual transaction amount within a short period of time after authorization of the transaction (for example, fuel purchases at a gas station). The prohibition would not have applied if the institution adopted procedures designed to release the hold within a reasonable period of time.

Consumer group commenters supported the Board's proposal to address debit holds, although some consumer group commenters objected to the proposed safe harbor as inappropriately permitting overdraft fees to be charged. Industry commenters raised a number of concerns about the operational feasibility of implementing the revised proposal. In addition, industry commenters stated that the revised rule would be unworkable unless the Board addressed how merchants and payment processors submit and process payments. While these commenters supported a safe harbor, they argued that the proposed safe harbor was too vague and that smaller institutions, which are more likely to batch-process transactions outside the safe harbor window, would be disproportionately impacted.

The Board is persuaded that addressing overdrafts caused by debit holds raises significant operational

issues and that a solution may require the participation of various parties, including merchants, payment processors, and card networks, as well as financial institutions. The final rule does not include the provision on debit holds. The Board will continue to monitor developments with respect to debit holds and assess whether to take further action.

Other Consumer Protections for Overdraft Services

Some consumer advocates raised additional concerns related to overdrafts not addressed in the Board's proposal. The Board recognizes that additional consumer protections may be appropriate with respect to overdraft services, for example, rules to address transaction posting order. Therefore, the Board is continuing to assess whether additional regulatory action relating to overdraft services is needed.

Effective Date

The Board solicited comment on an appropriate implementation period for the proposed rule. Consumer group commenters, members of Congress, an association of state banking regulators urged the Board to adopt an implementation period ranging from 60 days to 12 months, in light of the harms posed to consumers by overdraft fees. Industry commenters, citing required technology upgrades and personnel training, as well as the burdens of implementing other recent and ongoing regulatory requirements, urged the Board to provide an implementation period of 12 to 24 months.

The final rule sets an effective date of January 19, 2010, with a mandatory compliance date of July 1, 2010. As noted above, for accounts opened prior to July 1, 2010, the financial institution may not assess any fees or charges on a consumer's account on or after August 15, 2010 for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the institution has complied with § 205.17(b)(1) and obtains the consumer's affirmative consent. For accounts opened on or after July 1, 2010, the financial institution must comply with § 205.17(b)(1) and obtain the consumer's affirmative consent before the institution assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service. The Board believes that this time frame best balances the significant consumer protection interests addressed by this rule against industry's need to make systems changes to comply with the final rule. Smaller institutions in particular need time to come into compliance because they have fewer resources to devote to the substantial systems changes required by the final rule. Without sufficient time to implement the substantive requirements of the final rule, institutions may cease offering overdraft services for all transaction types, including the check transactions that consumers have indicated they would prefer to be paid.

VII. Final Regulatory Flexibility Analysis

In accordance with Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Board is publishing a final regulatory flexibility analysis for the final amendments to Regulation E. The RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities. An entity is considered ''small'' if it has $175 million or less in assets for banks and other depository institutions.[41]

The Board stated in the January 2009 proposal its belief that the proposal was likely to have a significant economic impact on a substantial number of small entities. Based on comments received, the Board's own analysis, and for the reasons stated below, the Board believes that the final rule will have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the proposed rule.* The Board is adopting revisions to Regulation E to prohibit financial institutions that hold a consumer's account from assessing a fee or charge for paying ATM and one-time debit card transactions pursuant to the institution's overdraft service, unless the consumer affirmatively consents to the service for such transactions. The reasoning for the rule is set forth in the **SUPPLEMENTARY INFORMATION** above.

The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C. 1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The Act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the Act], to prevent circumvention or evasion [of the Act], or to facilitate compliance [with the Act].'' 15 U.S.C. 1693b(c).

The Board believes that the revisions to Regulation E discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute. These revisions facilitate a consumer's ability to avoid overdrawing his or her account in connection with an electronic fund transfer requested by the consumer.

2. *Summary of issues raised by comments in response to the initial regulatory flexibility analysis.* The Board reviewed comments submitted by various entities in order to ascertain the economic impact of the proposals on small entities. Many industry commenters expressed general concern about the compliance burden of the proposed amendments on institutions offering overdraft services, including small entities. They expressed concern that the proposals, if adopted, would be costly to implement, would not provide institutions sufficient flexibility, and could result in higher prices for consumers. Many of the issues raised by commenters do not apply uniquely to small entities and are addressed in Part VI. Section-by-Section Analysis regarding specific provisions. One commenter representing community banks stated that the rule could be sufficiently burdensome on small institutions that they may cease to offer overdraft services entirely, which could impact their competitiveness with respect to larger institutions that may be able to implement the rule more quickly.

3. *Description of small entities affected by the final rule.* As of June 30, 2009, there were 11,598 depository institutions with assets of $175 million or less. The final rule would affect those institutions that permit overdrafts at an ATM or via a one-time debit card transaction. According to the FDIC Study, approximately 30% of institutions surveyed with assets of $250 million or less operate automated overdraft programs. Using this figure as a proxy for small institutions, approximately 3,479 small entities would be affected by the final rule.

Under the final rule, account-holding institutions are required to obtain the consumer's affirmative consent to the institution's overdraft service before assessing overdraft fees for ATM and one-time debit card transactions. According to the FDIC Study, 75.1

[41] U.S. Small Business Association, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes,* available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

percent of banks with an automated overdraft program currently provide some form of an opt-out right to consumers, and 11.1 percent provide an opt-in right.[42] Nonetheless, even institutions that already have an opt-out or an opt-in process in place will have to reprogram their systems to provide the notices required by the final rule.

4. *Reporting, recordkeeping and compliance requirements.* The compliance requirements of this final rule are described above in Part VI. Section-by-Section Analysis. The precise effect of the revisions to Regulation E on small entities is unknown. The final rule prohibits institutions from conditioning the consumer's affirmative consent to the payment of checks, ACH and other transactions on the consumer also opting into the payment of ATM and one-time debit card transactions. Thus, institutions will also have to reprogram their systems to differentiate between overdrafts for different transaction types. As some industry commenters noted, many systems are not currently set up to pay overdrafts for certain transaction types (*e.g.,* checks, ACH and recurring debit card transactions), but not others (*e.g.,* ATM and one-time debit card transactions).

The Board is aware that some small institutions do not pay overdrafts at ATMs or for one-time debit card transactions.[43] Some institutions are already providing customers a method to opt into their overdraft service. These institutions will need to conform their opt-in procedures to the final rule. Also, those institutions that currently provide a form of opt-out or opt-in notice will need to review and revise this disclosure to conform to the final rule's requirements. The Board sought to reduce the burden on small entities, where possible, by adopting a model form that can be used to ease compliance with the final rule.

5. *Steps taken to minimize the economic impact on small entities.* As previously noted, the final rule implements the Board's mandate to prescribe regulations that carry out the purposes of the EFTA. The Board seeks in this final rule to balance the benefits to consumers of an opt-in approach against the additional burdens on account-holding institutions subject to Regulation E. To that end, and as discussed above in Part VI. Section-by-Section Analysis, consumer testing was conducted in order to assess the effectiveness of the proposed revisions to Regulation E. In this manner, the Board has sought to avoid imposing additional regulatory requirements unless these proposed revisions would be beneficial to consumer understanding of overdraft services. The factual, policy, and legal reasons for selecting the alternatives adopted and why each one of the other significant alternatives was not accepted, are described above in Part VI. Section-by-Section Analysis.

The Board has sought to reduce the burden on small entities, where possible, by adopting a model form that can be used to ease compliance with the final rule, which has been revised and simplified from the proposed model form. The Board has also sought to reduce the burden on small entities, where possible, by providing a safe harbor to institutions permitting them to rely upon a merchant, other institution, or other third party's coding of a transaction as a one-time debit card transaction or a recurring debit card transaction, to the extent that the institution complies with the rule by maintaining reasonable procedures to identify transactions as either one-time or recurring debit card transactions. The Board believes that these modifications from the proposal minimize the significant economic impact on small entities while still meeting the stated objectives of Regulation E.

6. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the revisions to Regulation E.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is subject to the PRA by this final rule is found in 12 CFR part 205. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1693 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months, but this regulation does not specify types of records that must be retained.

The EFTA and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services debiting or crediting a consumer's account. The disclosures required by the EFTA and Regulation E are triggered by certain specified events. The disclosures inform consumers about the terms of the electronic fund transfer service, activity on the account, potential liability for unauthorized transfers, and the process for resolving errors. To ease institutions' burden and cost of complying with the disclosure requirements of Regulation E (particularly for small entities), the Board publishes model forms and disclosure clauses.

Regulation E applies to all financial institutions, not just state member banks. In addition, certain provisions in Regulation E apply to entities that are not financial institutions, including those that act as service providers or ATM operators, as well as merchants and other payees that engage in electronic check conversion transactions, the electronic collection of returned item fees, or preauthorized transfers. The Federal Reserve accounts for the paperwork burden associated with Regulation E only for the financial institutions it supervises[44] and that meet the criteria set forth in the regulation. Other federal agencies account for the paperwork burden imposed on the entities for which they have regulatory enforcement authority.

As mentioned in the **SUPPLEMENTARY INFORMATION** above, the final rule (§ 205.17) would prohibit account-holding financial institutions from assessing a fee or charge for paying ATM and one-time debit card transactions pursuant to the institution's overdraft service, unless the consumer is given the right to affirmatively consent, or opt in to the service, and the consumer opts in.

The Federal Reserve estimates that, to comply with the opt-in notice requirement, 1,205 respondents regulated by the Federal Reserve would take, on average, 16 hours (two business days) to revise and update initial disclosures (§ 205.7(b)) for new customers. The Federal Reserve

[42] *See FDIC Study* at 27.

[43] *Id.* at 10 (reporting that 81 percent of institutions surveyed that operate automated programs provide overdraft services for ATM and POS/debit card transactions).

[44] State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations, organizations operating under section 25 or 25(a) of the Federal Reserve Act.

estimates that 1,205 respondents regulated by the Federal Reserve would take, on average, 16 hours (two business days) to prepare and send new opt-in notices to existing customers.

The Federal Reserve estimates the total annual one-time burden for respondents to be 38,560 hours and believes that, on a continuing basis, there would be no additional increase in burden as the disclosure would be sufficiently accounted for once incorporated into the current initial account disclosure (§ 205.7(b)). This would increase the total annual burden to 98,462 hours for Federal Reserve-regulated financial institutions that are required to comply with Regulation E. To ease the burden of compliance a model form that institutions may use is available in Appendix A (*See* Model Form A–9).

The Federal Reserve estimates that on average 5,136,693 consumers would spend as much as 5 minutes reviewing and responding to an opt-in notice. This would increase the total annual burden for this information collection by 428,058 hours.

Overall, the estimated annual burden for Regulation E would increase by 466,618 hours, from 59,902 hours to 526,520 hours.

The other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total estimated annual burden for all financial institutions subject to Regulation E, including Federal Reserve-supervised institutions, would be approximately 853,059 hours.[45] The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, including depository institutions (of which there are approximately 17,200), potentially are affected by this collection of information, and thus are respondents for purposes of the PRA. The final rule will impose a one-time increase in the estimated annual burden for such institutions by 550,400 hours to 1,403,459 hours.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503.

[45] This estimate does not include consumer burden.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 205 as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

■ 2. Section 205.12 is amended by revising paragraph (a) to read as follows:

§ 205.12 Relation to other laws.

(a) *Relation to Truth in Lending.* (1) The Electronic Fund Transfer Act and this part govern—

(i) The addition to an accepted credit card as defined in Regulation Z (12 CFR 226.12, comment 12–2), of the capability to initiate electronic fund transfers;

(ii) The issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 205.17(a);

(iii) The addition of an overdraft service, as defined in § 205.17(a), to an accepted access device; and

(iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in § 205.17(a).

(2) The Truth in Lending Act and Regulation Z (12 CFR part 226), which prohibit the unsolicited issuance of credit cards, govern—

(i) The addition of a credit feature to an accepted access device; and

(ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device.

* * * * *

■ 3. Section 205.17 is added to read as follows:

§ 205.17 Requirements for overdraft services.

(a) *Definition.* For purposes of this section, the term ''overdraft service'' means a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. The term ''overdraft service'' does not include any payment of overdrafts pursuant to—

(1) A line of credit subject to the Federal Reserve Board's Regulation Z (12 CFR part 226), including transfers from a credit card account, home equity line of credit, or overdraft line of credit;

(2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account; or

(3) A line of credit or other transaction exempt from the Federal Reserve Board's Regulation Z (12 CFR part 226) pursuant to 12 CFR 226.3(d).

(b) *Opt-in requirement.* (1) *General.* Except as provided under paragraphs (b)(4) and (c) of this section, a financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, unless the institution:

(i) Provides the consumer with a notice in writing, or if the consumer agrees, electronically, segregated from all other information, describing the institution's overdraft service;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions;

(iii) Obtains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions; and

(iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.

(2) *Conditioning payment of other overdrafts on consumer's affirmative consent.* A financial institution shall not:

(i) Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the

consumer affirmatively consenting to the institution's payment of ATM and one-time debit card transactions pursuant to the institution's overdraft service; or

(ii) Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account because the consumer has not affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions.

(3) *Same account terms, conditions, and features.* A financial institution shall provide to consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions.

(4) *Exception to the notice and opt-in requirements.* The requirements of § 205.17(b)(1) do not apply to an institution that has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. Financial institutions may apply this exception on an account-by-account basis.

(c) *Timing.* (1) *Existing account holders.* For accounts opened prior to July 1, 2010, the financial institution must not assess any fees or charges on a consumer's account on or after August 15, 2010 for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the institution has complied with § 205.17(b)(1) and obtained the consumer's affirmative consent.

(2) *New account holders.* For accounts opened on or after July 1, 2010, the financial institution must comply with § 205.17(b)(1) and obtain the consumer's affirmative consent before the institution assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service.

(d) *Content and format.* The notice required by paragraph (b)(1)(i) of this section shall be substantially similar to Model Form A–9 set forth in Appendix A of this part, include all applicable items in this paragraph, and may not contain any information not specified in or otherwise permitted by this paragraph.

(1) *Overdraft service.* A brief description of the financial institution's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions.

(2) *Fees imposed.* The dollar amount of any fees or charges assessed by the financial institution for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, including any daily or other overdraft fees. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed.

(3) *Limits on fees charged.* The maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit.

(4) *Disclosure of opt-in right.* An explanation of the consumer's right to affirmatively consent to the financial institution's payment of overdrafts for ATM and one-time debit card transactions pursuant to the institution's overdraft service, including the methods by which the consumer may consent to the service; and

(5) *Alternative plans for covering overdrafts.* If the institution offers a line of credit subject to the Board's Regulation Z (12 CFR part 226) or a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state that fact. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.

(6) *Permitted modifications and additional content.* If applicable, the institution may modify the content required by § 205.17(d) to indicate that the consumer has the right to opt into, or opt out of, the payment of overdrafts under the institution's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply. The institution may also disclose the consumer's right to revoke consent. For notices provided to consumers who have opened accounts prior to July 1, 2010, the financial institution may describe the institution's overdraft service with respect to ATM and one-time debit card transactions with a statement such as ''After August 15, 2010, we will not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below).''

(e) *Joint relationships.* If two or more consumers jointly hold an account, the financial institution shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the financial institution shall treat a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account.

(f) *Continuing right to opt in or to revoke the opt-in.* A consumer may affirmatively consent to the financial institution's overdraft service at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section. A consumer may also revoke consent at any time in the manner made available to the consumer for providing consent. A financial institution must implement a consumer's revocation of consent as soon as reasonably practicable.

(g) *Duration and revocation of opt-in.* A consumer's affirmative consent to the institution's overdraft service is effective until revoked by the consumer, or unless the financial institution terminates the service.

■ 5. In Appendix A to Part 205, an entry for A–9 is added to the Table of Contents, and Appendix A–9 Model Consent Form for Overdraft Services (§ 205.17) is added to read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

Table of Contents

* * * * *

A–9 Model Consent Form for Overdraft Services (§ 205.17)

* * * * *

BILLING CODE 6210–01–P

A-9 Model Consent Form for Overdraft Services (§ 205.17)

What You Need to Know about Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

➢ What are the standard overdraft practices that come with my account?

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

➢ What fees will I be charged if [Institution Name] pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of up to **$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional $5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

➢ What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

- -

___ I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

___ I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: ____________________

Date: ____________________

[Account Number]: ____________________]

BILLING CODE 6210–01–C

■ 6. In Supplement I to part 205,
■ a. Under Section 205.12 Relation to Other Laws, under *12(a) Relation to truth in lending,* paragraph 2. is revised, and paragraph 3. is added.
■ b. Section 205.17—Requirements for Overdraft Services is added.

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.12—Relation to Other Laws

12(a) Relation to Truth in Lending

* * * * *

2. *Issuance rules.* For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in § 205.17(a). Regulation Z (12 CFR part 226) rules apply if there is another type of credit feature; for example, one permitting direct extensions of credit that do not involve the asset account.

3. *Overdraft service.* The addition of an overdraft service, as that term is defined in § 205.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (§ 205.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft may be assessed on the account (§ 205.17).

* * * * *

Section 205.17—Requirements for Overdraft Services

17(a) Definition

1. *Exempt securities- and commodities-related lines of credit.* Section 205.17(a)(3) does not apply to transactions in a securities or commodities account pursuant to which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

17(b) Opt-In Requirement

1. *Scope.*

i. *Account-holding institutions.* Section 205.17(b) applies to ATM and one-time debit card transactions made with a debit card issued by or on behalf of the account-holding institution. Section 205.17(b) does not apply to ATM and one-time debit card transactions made with a debit card issued by or through a third party unless the debit card is issued on behalf of the account-holding institution.

ii. *Coding of transactions.* A financial institution complies with the rule if it adapts its systems to identify debit card transactions as either one-time or recurring. If it does so, the financial institution may rely on the transaction's coding by merchants, other institutions, and other third parties as a one-time or a preauthorized or recurring debit card transaction.

iii. *One-time debit card transactions.* The opt-in applies to any one-time debit card transaction, whether the card is used, for example, at a point-of-sale, in an on-line transaction, or in a telephone transaction.

2. *No affirmative consent.* A financial institution may pay overdrafts for ATM and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the institution's overdraft service. If the institution pays such an overdraft without the consumer's affirmative consent, however, it may not impose a fee or charge for doing so. These provisions do not limit the institution's ability to debit the consumer's account for the amount overdrawn if the institution is permitted to do so under applicable law.

3. *Overdraft transactions not required to be authorized or paid.* Section 205.17 does not require a financial institution to authorize or pay an overdraft on an ATM or one-time debit card transaction even if the consumer has affirmatively consented to an institution's overdraft service for such transactions.

4. *Reasonable opportunity to provide affirmative consent.* A financial institution provides a consumer with a reasonable opportunity to provide affirmative consent when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. A financial institution provides such reasonable methods, if—

i. *By mail.* The institution provides a form for the consumer to fill out and mail to affirmatively consent to the service.

ii. *By telephone.* The institution provides a readily-available telephone line that consumers may call to provide affirmative consent.

iii. *By electronic means.* The institution provides an electronic means for the consumer to affirmatively consent. For example, the institution could provide a form that can be accessed and processed at its Web site, where the consumer may click on a check box to provide consent and confirm that choice by clicking on a button that affirms the consumer's consent.

iv. *In person.* The institution provides a form for the consumer to complete and present at a branch or office to affirmatively consent to the service.

5. *Implementing opt-in at account-opening.* A financial institution may provide notice regarding the institution's overdraft service prior to or at account-opening. A financial institution may require a consumer, as a necessary step to opening an account, to choose whether or not to opt into the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service. For example, the institution could require the consumer, at account opening, to sign a signature line or check a box on a form (consistent with comment 17(b)–6) indicating whether or not the consumer affirmatively consents at account opening. If the consumer does not check any box or provide a signature, the institution must assume that the consumer does not opt in. Or, the institution could require the consumer to choose between an account that does not permit the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service and an account that permits the payment of such overdrafts, provided that the accounts comply with § 205.17(b)(2) and § 205.17(b)(3).

6. *Affirmative consent required.* A consumer's affirmative consent, or opt-in, to a financial institution's overdraft service must be obtained separately from other consents or acknowledgements obtained by the institution, including a consent to receive disclosures electronically. An institution may obtain a consumer's affirmative consent by providing a blank signature line or check box that the consumer could sign or select to affirmatively consent, provided that the signature line or check box is used solely for purposes of evidencing the consumer's choice whether or not to opt into the overdraft service and not for other purposes. An institution does not obtain a consumer's affirmative consent by including preprinted language about the overdraft service in an account disclosure provided with a signature card or contract that the consumer must sign to open the account and that acknowledges the consumer's acceptance of the account terms. Nor does an institution obtain a consumer's affirmative consent by providing a signature card that contains a pre-selected check box indicating that the consumer is requesting the service.

7. *Written confirmation.* A financial institution may comply with the requirement in § 205.17(b)(1)(iv) by providing to the consumer a copy of the consumer's completed opt-in form or by sending a letter or notice to the consumer acknowledging that the consumer has elected to opt into the institution's service. The written confirmation notice must include a statement informing the consumer of his or her right to revoke the opt-in at any time. To the extent the institution complies with the written confirmation requirement by providing a copy of the completed opt-in form, the institution may include the statement about revocation on the initial opt-in notice.

Paragraph 17(b)(2)—Conditioning Payment of Other Overdrafts on Consumer's Affirmative Consent

1. *Application of the same criteria.* The prohibitions on conditioning in § 205.17(b)(2) generally require an institution to apply the same criteria for deciding when to pay overdrafts for checks, ACH transactions, and other types of transactions, whether or not the consumer has affirmatively consented to the institution's overdraft service with respect to ATM and one-time debit card overdrafts. For example, if an institution's internal criteria would lead the institution to pay a check overdraft if the consumer had affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions, it must also apply the same criteria in a consistent manner in determining whether to pay the check overdraft if the consumer has not opted in.

2. *No requirement to pay overdrafts on checks, ACH transactions, or other types of transactions.* The prohibition on conditioning in § 205.17(b)(2) does not require an institution to pay overdrafts on checks, ACH transactions, or other types of transactions in all circumstances. Rather, the rule simply prohibits institutions from considering the consumer's decision not to

opt in when deciding whether to pay overdrafts for checks, ACH transactions, or other types of transactions.

Paragraph 17(b)(3)—Same Account Terms, Conditions, and Features

1. *Variations in terms, conditions, or features.* A financial institution may not vary the terms, conditions, or features of an account provided to a consumer who does not affirmatively consent to the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service. This includes, but is not limited to:

i. Interest rates paid and fees assessed;

ii. The type of ATM or debit card provided to the consumer. For instance, an institution may not provide consumers who do not opt in a PIN-only card while providing a debit card with both PIN and signature-debit functionality to consumers who opt in;

iii. Minimum balance requirements; or

iv. Account features such as on-line bill payment services.

2. *Limited-feature bank accounts.* Section 205.17(b)(3) does not prohibit institutions from offering deposit account products with limited features, provided that a consumer is not required to open such an account because the consumer did not opt in (see comment 17(b)(3)–2). For example, § 205.17(b)(3) does not prohibit an institution from offering a checking account designed to comply with state basic banking laws, or designed for consumers who are not eligible for a checking account because of their credit or checking account history, which may include features limiting the payment of overdrafts. However, a consumer who applies, and is otherwise eligible, for a full-service or other particular deposit account product may not be provided instead with the account with more limited features because the consumer has declined to opt in.

Paragraph 17(b)(4)—Exception to the Notice and Opt-In Requirement

1. *Account-by-account exception.* If a financial institution has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions with respect to one type of deposit account offered by the institution, when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction, that account is not subject to § 205.17(b)(1), even if other accounts that the institution offers are subject to the rule. For example, if the institution offers three types of checking accounts, and the institution has such a policy and practice with respect to only one of the three types of accounts, that one type of account is not subject to the notice requirement. However, the other two types of accounts offered by the institution remain subject to the notice requirement.

17(c) Timing

1. *Early compliance.* A financial institution may provide the notice required by § 205(b)(1)(i) and obtain the consumer's affirmative consent to the financial institution's overdraft service for ATM and one-time debit card transactions prior to July 1, 2010, provided that the financial institution complies with all of the requirements of this section.

2. *Permitted fees or charges.* Fees or charges for ATM and one-time debit card overdrafts may be assessed only for overdrafts paid by the institution on or after the date the financial institution receives the consumer's affirmative consent to the institution's overdraft service.

17(d) Content and Format

1. *Overdraft service.* The description of the institution's overdraft service should indicate that the consumer has the right to affirmatively consent, or opt into payment of overdrafts for ATM and one-time debit card transactions. The description should also disclose the institution's policies regarding the payment of overdrafts for other transactions, including checks, ACH transactions, and automatic bill payments, provided that this content is not more prominent than the description of the consumer's right to opt into payment of overdrafts for ATM and one-time debit card transactions. As applicable, the institution also should indicate that it pays overdrafts at its discretion, and should briefly explain that if the institution does not authorize and pay an overdraft, it may decline the transaction.

2. *Maximum fee.* If the amount of a fee may vary from transaction to transaction, the financial institution may indicate that the consumer may be assessed a fee ''up to'' the maximum fee. The financial institution must disclose all applicable overdraft fees, including but not limited to:

i. Per item or per transaction fees;

ii. Daily overdraft fees;

iii. Sustained overdraft fees, where fees are assessed when the consumer has not repaid the amount of the overdraft after some period of time (for example, if an account remains overdrawn for five or more business days); or

iv. Negative balance fees.

17(f) Continuing Right To Opt-In or To Revoke the Opt-In

1. *Fees or charges for overdrafts incurred prior to revocation.* Section 205.17(f)(1) provides that a consumer may revoke his or her prior consent at any time. If a consumer does so, this provision does not require the financial institution to waive or reverse any overdraft fees assessed on the consumer's account prior to the institution's implementation of the consumer's revocation request.

17(g) Duration of Opt-In.

1. *Termination of overdraft service.* A financial institution may, for example, terminate the overdraft service when the consumer makes excessive use of the service.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 10, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–27474 Filed 11–16–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD51

Prepaid Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations requiring insured institutions to prepay their estimated quarterly risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012. The prepaid assessment for these periods will be collected on December 30, 2009, along with each institution's regular quarterly risk-based deposit insurance assessment for the third quarter of 2009. For purposes of estimating an institution's assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012, and calculating the amount that an institution will prepay on December 30, 2009, the institution's assessment rate will be its total base assessment rate in effect on September 30, 2009.[1] On September 29, 2009, the FDIC increased annual assessment rates uniformly by 3 basis points beginning in 2011.[2] As a result, an institution's total base assessment rate for purposes of estimating an institution's assessment for 2011 and 2012 will be increased by an annualized 3 basis points beginning in 2011. Again for purposes of calculating the amount that an institution will prepay on December 30, 2009, an institution's third quarter 2009 assessment base will be increased quarterly at a 5 percent annual growth rate through the end of 2012. The FDIC will begin to draw down an institution's prepaid assessments on March 30, 2010, representing payment for the regular quarterly risk-based assessment for the fourth quarter of 2009.

DATES: *Effective Date:* November 17, 2009.

FOR FURTHER INFORMATION CONTACT: Robert C. Oshinsky, Senior Financial Economist, Division of Insurance and Research, (202) 898–3813; Donna Saulnier, Manager, Assessment Policy Section, Division of Finance (703) 562–

[1] An institution's risk-based assessment rate may change during a quarter when a new CAMELS rating is transmitted, or a new long-term debt-issuer rating is assigned. 12 CFR 327.4(f). For purposes of calculating an institution's prepaid assessment, the FDIC will use the institution's CAMELS ratings and, where applicable, long-term debt-issuer ratings, and the resulting assessment rate in effect on September 30, 2009.

[2] 74 FR 51063 (Oct. 2, 2009).

6167; Scott Patterson, Senior Review Examiner, Division of Supervision and Consumer Protection, (202) 898–6953; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801; Sheikha Kapoor, Senior Attorney, Legal Division, (202) 898–3960.

SUPPLEMENTARY INFORMATION:

I. Background

On September 29, 2009, the FDIC adopted an Amended Restoration Plan to allow the Deposit Insurance Fund (Fund or DIF) to return to a reserve ratio of 1.15 percent within eight years, as mandated by statute. At the same time, the FDIC adopted higher annual risk-based assessment rates effective January 1, 2011.[3]

Liquidity Needs Projections

While the Amended Restoration Plan and higher assessment rates address the need to return the DIF reserve ratio to 1.15 percent, the FDIC must also consider its need for cash to pay for projected failures. In June 2008, before the number of bank and thrift failures began to rise significantly and the crisis worsened, total assets held by the DIF were approximately $55 billion and consisted almost entirely of cash and marketable securities (i.e., liquid assets). As the crisis has unfolded, liquid assets of the DIF have been used to protect depositors of failed institutions and have been exchanged for less liquid claims against the assets of failed institutions. As of September 30, 2009, although total assets had increased to almost $63 billion, cash and marketable securities had fallen to approximately $23 billion. The pace of resolutions continues to put downward pressure on cash balances. While most of the less liquid assets in the DIF have value that will eventually be converted to cash when sold, the FDIC's immediate need is for more liquid assets to fund near-term failures.

The FDIC's projections of the Fund's liquidity include assumptions concerning failed-institution resolution strategies, such as the increasing use of loss sharing—especially for larger institutions—which reduce the FDIC's immediate cash outlays, as well as the anticipated pace at which assets obtained from failed institutions can be sold. If the FDIC took no action under its existing authority to increase its liquidity, the FDIC's projected liquidity needs would exceed its liquid assets on hand beginning in the first quarter of 2010. Through 2010 and 2011, liquidity needs could significantly exceed liquid assets on hand.

[3] 74 FR 51063 (Oct. 2, 2009).

II. The Proposed Rule

On September 29, 2009, the FDIC, using its statutory authority under sections 7(b) and 7(c) of the FDI Act (12 U.S.C. 1817(b)–(c)), adopted a notice of proposed rulemaking with request for comment to amend its assessment regulations to require all institutions to prepay, on December 30, 2009, their estimated risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012, at the same time that institutions pay their regular quarterly deposit insurance assessments for the third quarter of 2009 (the proposed rule or NPR).[4] [5] Under the NPR, an institution would initially account for the prepaid assessment as a prepaid expense (an asset). The Fund would initially account for the amount collected as both an asset (cash) and an offsetting liability (deferred revenue). An institution's quarterly risk-based deposit insurance assessments thereafter would be paid from the amount the institution had prepaid until that amount was exhausted or until December 30, 2014, when any amount remaining would be returned to the institution.

Under the proposed rule, the FDIC would exercise its supervisory discretion to exempt an institution from the prepayment requirement if the FDIC determined that the prepayment would adversely affect an institution's safety and soundness. In addition, an institution could apply to the FDIC for an exemption from the prepayment requirement if the institution could demonstrate that the prepayment would significantly impair the institution's liquidity, or otherwise create significant hardship.

III. Comments Received

The FDIC sought comments on every aspect of the proposed rule, with six particular issues posed. The FDIC received more than 800 comments on the proposed rule, of which approximately 680 were form letters. The comments are discussed in section V below.

IV. Final Rule

In this rulemaking, the FDIC seeks to address its upcoming liquidity needs by amending its assessment regulations to require insured institutions to prepay, on December 30, 2009, their estimated quarterly regular risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012.

Legal Authority

The FDIC's assessment authorities are set forth in section 7 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1817(b) and (c).[6] Generally, the FDIC Board of Directors must establish, by regulation, a risk-based assessment system for insured depository institutions. 12 U.S.C. 1817(b)(1)(A).[7] Each insured depository institution is required to pay its risk-based assessment to the Corporation in such manner and at such time or times as the Board of Directors prescribes by regulation. 12 U.S.C. 1817(c)(2)(B).

In addition, section 7(b)(5) of the FDI Act, governing special assessments, empowers the Corporation to impose one or more special assessments on insured depository institutions in an amount determined by the Corporation for any purpose that the Corporation may deem necessary. 12 U.S.C. 1817(b)(5). The FDIC exercised this authority earlier this year when it promulgated a regulation imposing a special assessment on June 30, 2009, of 5 basis points of an institution's total assets minus its Tier 1 capital as of that date, not to exceed 10 basis points of the institution's risk-based assessment base as of that date.[8] Pursuant to that rulemaking, the FDIC's Board of Directors may impose up to two additional special assessments, each at up to the same rate, at the end of the third and fourth quarters of 2009, without the need for additional notice-and-comment rulemaking.

Instead of imposing any additional special assessments while the industry is in a weakened condition, the FDIC is relying on its section 7 authorities to require insured institutions to prepay their estimated regular quarterly risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012 (the ''prepayment period'').

Calculation of Estimated Prepaid Assessment Amount

For purposes of estimating an institution's assessments for the prepayment period and calculating the

[4] Section 7(b)(3)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(E)); Section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)).

[5] 74 FR 51063 (Oct. 2, 2009).

[6] The requirement for imposing systemic risk assessments is set forth at Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)).

[7] The regulations governing the FDIC's risk-based assessment system are set out at 12 CFR Part 327. Those regulations give the FDIC the authority to raise assessment rates by 3 basis points without additional rulemaking. 12 CFR 327.10(c). On September 29, 2009, the FDIC Board voted to use this authority and adopted higher assessment rates effective January 1, 2011.

[8] 74 FR 25639 (May 29, 2009).

amount that an institution will prepay on December 30, 2009 (''prepaid amount''), the institution's assessment rate will be its total base assessment rate in effect on September 30, 2009.[9] Since the FDIC has already increased annual assessment rates uniformly by 3 basis points beginning in 2011, an institution's total base assessment rate for purposes of estimating its assessments for 2011 and 2012 will be increased by an annualized 3 basis points beginning in 2011.[10] Again for purposes of calculating the prepaid amount, an institution's third quarter 2009 assessment base will be increased quarterly at a 5 percent annual growth rate through the end of 2012. Changes to data underlying an institution's September 30, 2009, assessment rate or assessment base received by the FDIC after December 24, 2009, will not affect an institution's prepaid amount.[11] [12] The FDIC will collect the prepaid assessments for the prepayment period on December 30, 2009, along with the institution's regular quarterly deposit insurance assessments for the third quarter of 2009.[13]

An institution's prepaid assessment will be set as described in the previous paragraph and will be applied to the institution's risk-based assessments beginning with the fourth quarter of 2009. Events during the prepayment period, such as slower deposit growth or changes in CAMELS ratings, may cause an institution's actual assessments to differ from the pre-paid amount. Assessment billing will account for events that occur during the prepayment period and may result in an institution either paying assessments in cash before the prepayment period has concluded or ultimately receiving a rebate of unused amounts. An institution's quarterly certified statement invoice will include (1) the regular quarterly risk-based assessment due for the corresponding quarter based on the assessment base and assessment rate applicable to that quarter, (2) the amount of the prepayment that will be applied toward the risk-based assessment for that quarter, and (3) the amount (if any) of any remaining prepaid amount. An insured depository institution may continue to request review or revision (as appropriate) of its regular risk-based assessment each quarter under sections 327.4(c) and 327.3(f) of the FDIC regulations.

Requiring prepaid assessments does not preclude the FDIC from changing assessment rates or from further revising the risk-based assessment system during 2009, 2010, 2011, 2012, or thereafter, pursuant to notice-and-comment rulemaking under 12 U.S.C. 1817(b)(1). Prepaid assessments made by insured depository institutions will continue to be applied against quarterly assessments as they may be so revised until the prepaid assessment is exhausted or the prepayment is returned, whichever comes first.

Implementing Prepaid Assessments

The FDIC will begin to offset prepaid assessments on March 30, 2010, representing payment of the regular quarterly risk-based deposit insurance assessment for the fourth quarter of 2009. Any prepaid assessment not exhausted after collection of the amount due on June 30, 2013, will be returned to the institution (rather than December 30, 2014, as provided in the proposed rule). If the FDIC determines its liquidity needs allow, it may return any remaining prepaid assessment to the institution sooner.

Accounting and Risk-Weight for Prepaid Assessments

1. Accounting for Prepaid Assessments

Each institution should record the entire amount of its prepaid assessment as a prepaid expense (asset) as of December 30, 2009. Notwithstanding the prepaid assessment, each institution should record the estimated expense for its regular risk-based assessment each calendar quarter. However, the offsetting entry to the expense for a particular quarter will depend on the method of payment for that quarter's expense. As of September 30, 2009, each institution should have accrued an expense (a charge to earnings) for its estimated regular quarterly risk-based assessment for the third quarter of 2009, which is a quarter for which assessments would not have been prepaid, and a corresponding accrued expense payable (a liability). On December 30, 2009, each institution will pay both its assessment for the third quarter of 2009, thereby eliminating the related accrued expense payable, and the entire amount of its prepaid assessments, which it should record as a prepaid expense (asset).

As of December 31, 2009, each institution should record (1) an expense (a charge to earnings) for its estimated regular quarterly risk-based assessment for the fourth quarter of 2009, and (2) an offsetting credit to the prepaid assessment asset because the fourth quarter assessment of 2009 will have been prepaid.[14]

Each quarter thereafter, an institution should record an expense (a charge to earnings) for its regular quarterly risk-based assessment for that quarter and an offsetting credit to the prepaid assessment asset until this asset is exhausted. Once the asset is exhausted, the institution should record an expense and an accrued expense payable each quarter for its regular assessment payment, which will be paid, in cash, in arrears at the end of the following quarter.

2. Risk Weighting of Prepaid Assessments

The federal banking agencies' risk-based capital rules permit an institution to apply a zero percent risk weight to claims on U.S. Government agencies.[15] The FDIC believes the prepaid assessment imposed under this rule qualifies for a zero percent risk weight.

For the same reasons, the FDIC believes that Temporary Liquidity Guarantee Program (TLGP) nondeposit debt obligations should receive a zero percent risk weight consistent with the risk weight proposed for prepaid assessments. When the FDIC

[9] An institution's risk-based assessment rate may change during a quarter when a new CAMELS rating is transmitted, or a new long-term debt-issuer rating is assigned. 12 CFR 327.4(f). For purposes of calculating an institution's prepaid assessment, the FDIC will use the institution's CAMELS ratings and, where applicable, long-term debt-issuer ratings, and the resulting assessment rate in effect on September 30, 2009.

[10] 74 FR 51063 (Oct. 2, 2009).

[11] Thus, for purposes of calculating the prepaid assessment, the FDIC will take into account mergers and consolidations that are recorded in the FDIC's computer systems as of December 24, 2009. If a merger is recorded by this date, the assessment for the acquired institution will be paid by the acquirer at the acquirer's rate.

[12] An institution's failure to file its third quarter of 2009 report of condition will not exempt it from the requirement to prepay under this rulemaking.

[13] The amount and calculation of each insured depository institution's prepaid assessment will be included on its quarterly certified statement invoice for the third quarter of 2009, which will be available on FDICconnect no later than 15 days prior to the December 30, 2009, payment date.

[14] Some institutions record the estimated expense and an accrued expense payable for their regular risk-based assessments monthly during each calendar quarter rather than quarterly as of quarter-end. On December 30, 2009, when such an institution pays both its assessment for the third quarter of 2009 and the entire amount of its prepaid assessments, it should eliminate the accrued expense payable recorded for the third quarter 2009 assessment as well as the accrued expense payable recorded for the first two months of its estimated fourth quarter 2009 assessment and it should record the remaining amount of its prepaid assessments (i.e., the entire amount of the prepaid assessments less the accrued expense payable for the first two months of the fourth quarter 2009 assessment) as a prepaid expense (asset). As of December 31, 2009, this institution should record (1) an expense (a charge to earnings) for the third month of its estimated fourth quarter 2009 assessment and (2) an offsetting credit to the prepaid assessment asset.

[15] 12 CFR Part 3, Appendix A (OCC); 12 CFR Parts 208 and 225, Appendix A (Federal Reserve Board); 12 CFR Part 325, Appendix A (FDIC); and 12 CFR Part 567, Appendix C (OTS).

determined that a depository institution could apply a 20 percent risk weight to debt covered by the TLGP, the determination referenced the 20 percent risk weight that has traditionally been applied to assets covered by the FDIC's deposit insurance. Because insured deposits are fully backed by the full faith and credit of the United States government and no insured depositor has ever or will ever take a loss, the FDIC will review reducing the risk weight on insured deposits to zero percent consistent with the treatment of other government-backed obligations.

Restrictions on Use of Prepaid Assessments

Under the final rule, prepaid assessments may only be used to offset regular quarterly risk-based deposit insurance assessments. Prepaid assessments may not be used, for example, for the following:

- To offset FICO assessments (which are governed by section 21(f) of the Federal Home Loan Bank Act, 12 U.S.C. 1441(f));
- To offset any future special assessments under FDI Act section 7(b)(5);
- To offset any future systemic risk assessments under FDI Act section 13(c)(4)(G)(ii);
- To offset Temporary Liquidity Guarantee Program assessments under 12 CFR 370;
- To pay assessments for quarters prior to the fourth quarter of 2009;
- To pay civil money penalties; or
- To offset interest owed to the FDIC for underpayment of assessments for assessment periods prior to the fourth quarter of 2009.

The FDIC will apply an institution's remaining one-time assessment credits under Part 327 subpart B before applying its prepaid assessment to its regular quarterly risk-based deposit insurance assessments.[16]

Exemptions for Certain Insured Depository Institutions

The final rule makes a few modifications to the exemption process proposed in the NPR that are intended to benefit institutions. These modifications impose stricter deadlines on the FDIC (in order to provide institutions with earlier notice and greater opportunity to plan), allow the FDIC to postpone determination of exemption applications if necessary (on condition of postponing the due date for the prepaid assessment), and give exempted institutions an opportunity to request that the FDIC withdraw an exemption.

Under the final rule, the FDIC may exercise its discretion as supervisor and insurer to exempt an institution from the prepayment requirement if the FDIC determines that the prepayment would adversely affect the safety and soundness of the institution. The FDIC will consult with the institution's primary federal regulator in making this determination, but will retain the ultimate authority to exercise such discretion. The FDIC will notify any exempted institution of its determination to exempt the institution as soon as possible, but in no event later than November 23, 2009. A separate set of deadlines applies to institutions that file applications for exemption and is described in the following paragraphs. The FDIC does not believe that the exemptions that will be granted will prevent it from meeting its current liquidity needs.

In addition, an insured depository institution may apply to the FDIC for an exemption from the prepayment requirement if the prepayment would significantly impair the institution's liquidity, or would otherwise create extraordinary hardship.[17] The FDIC will consider exemption requests on a case-by-case basis and expects that only a few institutions will find an exemption necessary.

Written applications for exemption from the prepayment obligation should be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by electronic mail or fax.[18] In order for an application to be accepted and considered by the FDIC, the application must contain a full explanation of the need for the exemption with supporting documentation, to include current financial statements, cash flow projections, and any other relevant information that the FDIC deems appropriate.

Any application for exemption will be deemed to be denied unless the FDIC notifies the applying institution by December 15, 2009, that either: (1) the institution is exempt from the prepaid assessment or (2) the FDIC has postponed determination of the application for exemption until no later than January 14, 2010. The FDIC expects that it will postpone few, if any, determinations of applications for exemption. In the event, however, that the FDIC postpones such determinations, the institution will not have to pay its prepaid assessment on December 30, 2009. If the FDIC ultimately denies the institution's request for exemption, the FDIC will notify the institution of the denial and of the date by which the institution must pay the prepaid assessment. That date will be no less than 15 days after the date of the notice of denial.

Under the final rule, an institution that the FDIC has exempted from prepayment on the grounds that prepayment would adversely affect the safety and soundness of the institution may request that the FDIC allow the institution to nevertheless pay the prepaid amount. If the FDIC, after consulting with the institution's primary federal regulator, determines that exemption is not necessary, it will notify the institution that the exemption has been withdrawn. Again, the FDIC retains the ultimate authority to make this determination.

Written applications requesting that the FDIC withdraw an exemption should be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by electronic mail or fax.[19] To be accepted and considered by the FDIC, an application requesting that the FDIC withdraw an exemption must contain a full explanation of the reasons the exemption is not needed with supporting documentation, to include current financial statements, cash flow projections, and other relevant information that the FDIC deems appropriate. Any application requesting that the FDIC withdraw an exemption will be deemed denied unless the FDIC notifies the applying institution by December 15, 2009 that the exemption has been withdrawn.

Other than through an application requesting that the FDIC withdraw an exemption, determinations of eligibility

[16] One-time assessment credits will not reduce an institution's prepaid assessment.

[17] The NPR stated that ''an insured depository institution could apply to the FDIC for an exemption from all or part of the prepayment requirement if the prepayment would significantly impair the institution's liquidity, or would otherwise create significant hardship. The FDIC would consider exemption requests on a case-by-case basis and expects that only a few would be necessary.'' 74 FR 51,063, 51,065 (Oct. 2, 2009). The final rule uses the phrase ''extraordinary hardship'' rather than ''significant hardship'' to clarify that the FDIC expects that few exemptions will be necessary other than for those institutions exempted through the FDIC's own initiative. The final rule also eliminates the option of a partial prepayment exemption since the FDIC determined that it would be infeasible to determine partial payments.

[18] Applications for exemption should be submitted by either electronic mail (*prepaidassessment@fdic.gov*) or fax (202–898–6676).

[19] Applications requesting that the FDIC withdraw an exemption should be submitted by either electronic mail (*prepaidassessment@fdic.gov*) or fax (202–898–6676).

for exemption made by the FDIC are final and are not subject to further agency review. Decisions by the FDIC on applications requesting that the FDIC withdraw an exemption are also final and are not subject to further agency review.

Any exempted institution and any institution where the FDIC has postponed determination of its request for exemption must still pay its third quarter 2009 risk-based assessment on December 30, 2009.

Transfer of Prepaid Assessments

An insured depository institution will be permitted to transfer any portion of its prepaid assessment to another insured depository institution, provided that the institutions involved notify the FDIC's Division of Finance and submit a written agreement signed by the legal representatives of the institutions. In their submission to the FDIC, the institutions must include documentation that each representative has the legal authority to bind the institution. Adjustments to the institutions' prepaid assessments will be made by the FDIC on the next assessment invoice that will be available via FDIC*connect* at least 10 days after the FDIC receives the written agreement. This aspect of the final rule is similar to the procedural requirements associated with the transfer of the one-time assessment credit provided by the Federal Deposit Insurance Reform Act of 2005, Public Law No. 109–171, 120 Stat. 9, and implemented by regulation. See 12 CFR 327.34(c).

Prepaid assessments cannot be transferred to any entity that is not an insured depository institution. Prepaid assessments cannot be pledged to any insured depository institution or any entity that is not an insured depository institution.

In the event that an insured depository institution merges with, or is consolidated into, another insured depository institution, the surviving or resulting institution will be entitled to use any unused portion of the disappearing institution's prepaid assessment not otherwise transferred.[20]

Disposition in the Event of Failure or Termination of Insured Status

In the event that an insured depository institution's insured status terminates, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy its assessment obligations not yet offset against the prepaid amount) will be refunded to the institution.[21] In the event of failure of an insured depository institution, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy its assessment obligations not yet offset against the prepaid amount) will be refunded to the institution's receiver.

V. Summary of Comments

The FDIC received more than 800 comments, of which approximately 680 were form letters. The vast majority of the commenters supported the FDIC meeting its upcoming liquidity needs by requiring prepaid risk-based assessments.

Alternatives

The majority of commenters, including the major trade groups, supported the prepaid assessment funding option over one or more special assessments, borrowing from Treasury Department (''Treasury''), and borrowing from the industry as a means of providing immediate liquidity to the DIF. Those that supported the prepaid assessment option stated that it was the most palatable and least costly of the alternatives, particularly another special assessment. The commenters supported the prepaid assessment option specifically because the prepayment would initially be accounted for as a prepaid expense, which is an asset, and would not affect earnings. Furthermore, since it is not a borrowing, the DIF would not incur any interest costs. An overwhelming majority of commenters opposed more special assessments. The commenters stated that special assessments are too unpredictable and they preferred options that did not result in decreased earnings.

Some commenters opposed the prepaid assessment because they said that the prepayment would cause financial strain on the industry. They disputed the FDIC's assertion that banks have excess liquidity and claimed that the prepayment would cause banks to decrease lending or make up for the loss of liquidity by borrowing. A few commenters also stated that banks are holding excess liquidity to prepare for better economic times when deposits may decrease and loan demand may increase. Other commenters noted that since the prepayment is actually an interest-free loan from the industry, the FDIC is underestimating the full opportunity cost of the prepaid asset.

Most commenters indicated support for the FDIC's belief that the industry could pay the prepaid assessment without a strain on liquidity. The FDIC understands that the prepayment may affect the safety and soundness of some institutions and cause liquidity concerns for others. As a result, the final rule allows the FDIC to exempt from prepayment any institution if the FDIC, in consultation with the institution's primary federal regulator, determines that the prepayment would adversely affect the safety and soundness of the institution. Additionally, an insured institution may apply to the FDIC for an exemption from the prepayment requirement if the prepayment would significantly impair the institution's liquidity, or otherwise create extraordinary hardship. In addition, institutions may sell remaining prepayment amounts to other institutions if needed to bolster liquidity.

A number of commenters supported the idea of the FDIC borrowing from the Treasury. Some of these commenters preferred borrowing from Treasury over the prepayment option, while others stated that the FDIC should reserve the borrowing option in case of worsening economic conditions next year. However, if the prepayment turns out to be insufficient to meet the liquidity needs of the DIF, these commenters favored borrowing from Treasury over imposing another prepayment or special assessment.

Those that supported borrowing from Treasury over the current prepayment stated that banks have already been tainted as being bailed out so there is minimal danger that Treasury borrowing would further stigmatize the industry. They stressed that Treasury borrowing is not the same as taxpayer funds. These commenters further stated that borrowing from Treasury provides necessary funding without putting an additional burden on banks in the near term when economic conditions remain challenging. They stated that the current environment is an emergency situation, the type for which the FDIC has reserved Treasury borrowing.

A few commenters suggested a hybrid approach that would entail either a mandatory one year prepayment or a voluntary three-year prepayment with the remaining funding needs being met with borrowing from Treasury. In the latter case, only those institutions that did not prepay would be responsible for the interest payments on Treasury borrowing.

A few commenters opposed borrowing from Treasury or said that it should only be used as a last resort. Some commenters feared that Treasury might impose a repayment structure that would require the FDIC to issue special assessments or that Treasury could

[20] As noted above, the parties to a transfer agreement must provide notice to the FDIC.

[21] See 12 CFR 327.6 (2009).

impose restrictions on the entire industry similar to those imposed under the Troubled Asset Relief Program (TARP) if the FDIC were to draw on its line of credit. Others feared additional congressional oversight. A few commenters noted the negative public perception of FDIC borrowing from Treasury could result in decreased depositor confidence.

The FDIC agrees that prepayment is preferable to borrowing from Treasury. Borrowing from Treasury would increase the explicit cost to the industry, as the interest would be paid to Treasury, and could decrease the FDIC's flexibility in managing assessment rates during the repayment period. Prepayment of assessments is consistent with maintaining an industry-funded deposit insurance system. In addition, borrowing from Treasury could risk diminishing public confidence in the FDIC and in insured depository institutions.

A few commenters supported the option of borrowing from the industry. One commenter stated that borrowing from the industry would be preferable because banks are having a hard time finding acceptable investments. However, those that supported this option also stated that their support was dependent on the borrowing being backed by the full faith and credit of the federal government, providing a minimum return, and having zero percent risk weight.

If the FDIC borrowed from the industry, the FDIC would still need to raise the same total amount of funds. However, by statute, any borrowing from the industry, or the Federal Home Loan Banks, authorized under Section 14(e) of the FDI Act, would be voluntary. Consequently, the FDIC could not ensure that the borrowing would raise the necessary funds. In addition, while the FDIC appreciates the opportunity cost associated with prepaying assessments, any borrowing would have an explicit interest cost, which would also be borne by the industry. Interest on borrowing from the Federal Home Loan Banks would result in a transfer of funds (in the form of interest) from the banking industry to the Federal Home Loan Banks.

An overwhelming majority of the commenters stated that prepaid assessments should be mandatory. The FDIC agrees. Non-mandatory prepayments would be functionally equivalent to borrowing from the banking industry and would entail the same drawbacks.

Many commenters requested a ''FICO-like'' bond issuance. Issuing bonds to the public, however, would require congressional action and, thus, in the FDIC's view, is not a practical solution to its immediate liquidity needs.

A few commenters suggested that the fees that the FDIC has collected from the TLGP be transferred to the DIF. While the amount of TLGP fees currently collected exceeds losses thus far, it is prudent to maintain separate TLGP reserves because of continued exposure from outstanding debt issued under the program and from guarantee coverage of transaction accounts upon failure of an insured institution. In addition, the current liquidity needs of the FDIC significantly exceed TLGP reserves.

Balancing the options, the FDIC agrees with the majority of commenters that prepaying assessments represents the best alternative for meeting the immediate liquidity needs of the FDIC.

Assessment Base

The FDIC received many comment letters arguing that the prepayment assumption of 5 percent annual growth rate in deposits for 2009, 2010, 2011, and 2012 is too high and that the FDIC should use a lower annual growth rate for those institutions that historically have experienced slower growth. One commenter argued that growth assumptions should be lowered or eliminated because changes in economic conditions make it unlikely that historic growth rates over the last several years will continue in the near term.

The FDIC developed the 5 percent deposit growth assumption from historical data that showed industry domestic deposits increased by more than 5 percent during each of the most recent 1 year, 3 year, and 5 year time horizons. The FDIC believes that deposit growth is an important factor that needs to be included in any estimate of future assessments. For purposes of simplicity and fairness, the FDIC also believes that a single growth rate assumption should be used for all insured institutions since actual future growth for individual institutions is unknown. In addition, growth rate assumptions are only used to estimate the prepayment amount and will not affect the actual amount of insurance assessments that each institution will be charged for the fourth quarter of 2009 or for 2010, 2011, or 2012.

The FDIC received several hundred comment letters arguing that, to be fair to small institutions, the assessment base used for the prepayment calculation should be changed to Total Assets less Tier 1 capital, so that larger institutions would pay a portion of the prepayment proportional to their size rather than to their share of deposits. Most of these comments were form letters. Several commenters argued that the amount of assets that an institution holds is a more accurate gauge of its risk to the DIF than the amount of deposits it holds, since troubled assets, not deposits, cause institution failures, and all forms of liabilities, not just deposits, fund institution assets. The FDIC also received several comments, including comments from several trade groups, maintaining that the prepaid assessment should be calculated based on an institution's total domestic deposit base. One of these commenters wrote that deposits represent the actual dollar amount being insured and that there is no proven correlation between total assets and insured deposits for all institutions.

The prepaid assessment amount is based upon an institution's estimated assessments during the prepayment period. At present, the assessment base for quarterly risk-based assessments is approximately equal to total domestic deposits; it is not based upon assets. Any change to the assessment base for quarterly risk-based assessments would require either legislation or additional rulemaking; changing the existing assessment base from domestic deposits to some other measure is outside the scope of the prepaid assessment proposal. In the FDIC's view, the estimate of assessments for prepayment purposes should be based upon the existing assessment base.

Rate Assumptions

The FDIC received several comments requesting that the assumption of a 3 basis point rise in assessment rates beginning in 2011 be eliminated from the prepayment calculation. One commenter argued that the need to increase the assessment rate in the future is not certain and that the decision to make an assessment rate increase should be deferred until it can be determined one is necessary. Another commenter wrote that it may be premature to levy a 3 basis point increase in the assessment rate for 2011 and 2012 given the fact that once the industry begins to stabilize this increase may prove unnecessary.

The FDIC has already increased annual assessment rates uniformly by 3 basis points beginning in 2011, based on the FDIC's long term projections for the DIF and liquidity needs and to ensure that the fund reserve ratio returns to 1.15 percent within the statutorily mandated eight years. In the FDIC's view, since the 3 basis point increase has already been adopted, the estimated future assessments on which the

prepayment amount is based should take the increase into account.

Prepayment Period

Slightly less than half of the respondents expressed general agreement with the proposed period (the fourth quarter of 2009, and all of 2010, 2011, and 2012) that the prepayment would cover. Many wished to decrease the three-year prepayment period to a shorter period: two-years or on an annual basis were typical suggestions. The FDIC considered a shortened timeframe. However, the FDIC has concluded that the liquidity needs of the DIF require the substantial cash inflow that the three-year period would bring.

Many commenters requested that they receive interest or a discount on their prepayments (or that those who are exempted from prepayment be required to pay a premium). The final rule, like the proposed rule, contains no provision for interest or discount. A discount or payment of interest would mean that the FDIC is in substance borrowing from the industry. In addition, the costs associated with paying interest or funding a discount would be borne by the industry in the same proportion as their assessments. As previously mentioned, any borrowing from the industry would have to be voluntary and would not provide assurance that the FDIC would be able to raise the necessary funds.

All respondents who wrote on the issue considered the timing of the refunds too far in the future. The FDIC agrees. Under the final rule, any prepayment amounts not exhausted after collection of the amount due on June 30, 2013, will be refunded to the institution (rather than on December 30, 2014, as provided in the final rule). If the FDIC determines its liquidity needs allow, it may return any remaining prepaid assessment to the institution sooner; however, the FDIC considers an earlier refund unlikely given its current projections.

Exemptions

A few commenters expressed general support for the FDIC's decision to grant exemptions when prepayment would significantly affect the safety and soundness of the institution. One commenter advocated that the FDIC grant no exemptions.

Many commenters suggested various groups that should receive a blanket exemption. One commenter requested that banks that make loans in their communities, rather than those benefiting from TARP funding, should be exempted. Other commenters advocated that banks with fewer than one billion dollars in assets be exempted from prepaying assessments. Another commenter suggested that new banks were natural candidates for exemption, in part, because the FDIC required them to produce strict business plans that did not anticipate prepaid assessments. Yet another commenter expressed concern that the FDIC would be so preoccupied with exemption requests from larger regional banks that it might not have time to address those from smaller community banks.

Some commenters requested that the FDIC provide more clarity regarding its criteria, process, and timing for exemption determinations. One banking association suggested that the FDIC provide notice to banks of its exemption decisions no fewer than 30 days from the effective date of the final rule.

The final rule closely follows the NPR with some revisions to the exemption process that are intended to benefit insured institutions. Upon approval of the final rule by the Board, the FDIC will, on its own initiative and as soon as possible, notify institutions that meet the criteria for exemption based on safety and soundness concerns. The FDIC will notify any institution that the FDIC exempts on its own initiative no later than November 23, 2009. In addition, an insured institution may apply before December 1, 2009, to the FDIC for an exemption from the prepayment requirement if the prepayment would significantly impair the institution's liquidity, or otherwise create extraordinary hardship. Similarly, the FDIC will endeavor to maintain communication with banks as to the status of their application.

Tax/Accounting Issues

Many commenters have suggested that the FDIC structure the invoicing and collection of prepaid assessments to maximize the tax benefits to insured depository institutions. This would include working with the IRS to adjust certain tax rules.[22] Suggested structures included: allowing institutions to deduct all prepaid assessments in 2009 for income tax purposes and invoicing, and collecting prepaid assessments two or three times (in 2009, 2010, and/or 2011) to allow institutions to deduct prepaid amounts earlier. Subchapter S institutions are particularly concerned with this issue.

Under the final rule, institutions will continue to be able to deduct quarterly assessments at least as quickly as they have in the past. The FDIC structured the prepaid assessment requirement for DIF liquidity needs and believes that using prepaid assessments will not result in any worse tax treatment than banks would have absent prepayment.

Effect on Capital and Liquidity

A number of commenters expressed the opinion that requiring prepaid assessments at this time would have a negative effect on monetary supply and would hamper community banks' liquidity. As noted above, the FDIC will exempt institutions whose prepayment of assessments would adversely affect their safety and soundness. The FDIC's determination on an application for exemption will include an evaluation of the institution's cash on hand, capital reserves, and lending activities. Based on data available to the FDIC, the FDIC believes that most of the prepaid assessment will be drawn from available liquidity, which should not significantly affect depository institutions' current lending activities.

Amended Restoration Plan

A few commenters agreed with the FDIC's Amended Restoration Plan allowing the DIF up to eight years to restore the reserve ratio up to 1.15 percent. A number of commenters did not want the FDIC to impose a special assessment or a higher assessment on a temporary basis to restore the reserve ratio in a shorter period of time. One bank recommended that the FDIC reevaluate whether the reserve ratio of 1.15 percent would be sufficient to handle future downturns. The FDIC will take such comments into consideration in its implementation of the Amended Restoration Plan and in any possible future amendments to the plan.

Termination of Insured Status

One commenter, who represented a bank that is voluntarily liquidating, suggested that the regulatory text include a subsection outlining what happens to the prepaid assessment if there is any remaining at the time of liquidation. Since the preamble of the NPR contained language outlining the disposition of any remaining prepaid assessment in the event of termination of insured status, as well as a failure, the FDIC generally agrees with the comment and has added words to this effect in the final rule.

[22] Under Section 1.263(a)–4(d)(3)(i) of the Treasury's regulations, in general, a taxpayer must capitalize prepaid expenses, regardless of whether the taxpayer is a cash or accrual basis taxpayer and regardless of whether the taxpayer is a C Corporation or an S Corporation. The regulations also specify certain exceptions to this general rule.

One-Time Assessment Credits

One industry trade group argued that banks with residual one-time assessment credits should be allowed to reduce the prepaid assessment by the remaining amount of their one-time credits. The FDIC does not believe that this is necessary. At the end of the second quarter of 2009, only about 200 banks had any remaining unused one-time assessment credits. FDIC regulations allow institutions with remaining credits to transfer these credits to other insured institutions. Thus, whether an institution currently has credits remaining does not necessarily determine whether it will have credits to apply during the prepayment period. For the sake of simplicity and uniformity, the FDIC continues to believe that residual one-time credits should not reduce an institution's prepaid assessment amount.

VI. Regulatory Analysis and Procedure

A. Administrative Procedure Act

This final rule will become effective immediately upon publication. In this regard, the FDIC invokes the good cause exception to the requirements in the Administrative Procedure Act that, once finalized, a rulemaking must have a delayed effective date of thirty days from the publication date.[23] The FDIC finds that good cause exists to waive the customary 30-day delayed effective date.

The FDIC's finding is based upon its upcoming liquidity needs to fund future resolutions. The pace of resolutions of failed institutions continues to put downward pressure on cash balances of the DIF. The FDIC projects that its liquidity needs could exceed its liquid assets on hand beginning in the first quarter of 2010, and that its liquidity needs could significantly exceed its liquid assets on hand through 2011. To address its upcoming liquidity needs, the FDIC is adopting a final rule which requires institutions to prepay, on December 30, 2009, their estimated quarterly risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012. In order for the FDIC to collect these prepaid assessments on December 30, 2009, certain provisions in the final rule must go into effect immediately. In particular, the final rule provides that the FDIC make determinations regarding exempting institutions from the prepayment requirement. These determinations must be made well in advance of the December 30, 2009 collection. An immediate effective date will enable the FDIC to implement these provisions without delay, and without threatening the FDIC's ability to meet its liquidity needs and to resolve failed institutions. For these reasons, the FDIC finds that good cause exists to justify an immediate effective date.

B. Riegle Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act provides that any new regulations and amendments to regulations prescribed by a federal banking agency that imposes additional reporting, disclosures, or other new requirements on insured depository institutions take effect on the first calendar quarter which begins on or after the day the regulations are published in final form, unless the agency determines, for good cause published with the regulation, that the regulation should become effective before such time. 12 U.S.C. 4802(b)(1)(A). For the same reasons discussed in paragraph A above, the FDIC finds that good cause exists for an immediate effective date for the final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a final rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment.[24] Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA.[25] The final rule relates directly to the rates imposed on insured depository institutions for deposit insurance, and by providing for the determination of assessment bases to which the rates will apply. Nonetheless, the FDIC is voluntarily undertaking a regulatory flexibility analysis of the final rule.

As of June 30, 2009, of the 8,195 insured commercial banks and savings institutions, there were 4,597 small insured depository institutions as that term is defined for purposes of the RFA (i.e., those with $175 million or less in assets).[26]

For purposes of this analysis, whether the FDIC were to collect needed assessments under the existing rule or under the final rule, the total amount of assessments would be the same. The FDIC's total assessment needs are driven by the statutory mandate that the FDIC adopt a restoration plan and by the FDIC's aggregate insurance losses, expenses, investment income, and insured deposit growth, among other factors. Given the FDIC's total assessment needs, the final rule would alter the payment schedule of assessments. Using the data as of December 31, 2008, the FDIC calculated the total assessments that would be collected under the final rule.

The final rule has no significant effect on capital and earnings, although there could be a small loss of interest earned by some small institutions. Given current low interest rates, the FDIC estimates that all institutions, including those with $175 million or less in assets, will only lose between 0.03 percent and 0.04 percent of total interest over the prepayment period. In addition, the final rule could affect the liquidity of insured depository institutions, including small institutions. However, for 95.8 percent of small institutions, the prepayment would be less than 25 percent of their cash and cash equivalent assets. Moreover, the final rule includes a mechanism by which the FDIC will exempt those institutions (including small institutions) that cannot prepay their assessments without leading to safety and soundness concerns. In addition, institutions not so exempted may request an exemption. Finally, the effect on liquidity for all institutions (including small institutions) is further mitigated by the institutions' ability to transfer their prepaid assessments.

Comments were sought on the initial regulatory flexibility analysis in the proposed rule. No comments were received.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in this final rule has been submitted to OMB under emergency processing procedures in OMB regulations, 5 CFR 1320.13. The FDIC is requesting approval by November 10, 2009. These request requirements are needed immediately to enable the FDIC to meet its upcoming liquidity needs

[23] 5 U.S.C. 553(d)(3).

[24] See 5 U.S.C. 603, 604 and 605.

[25] 5 U.S.C. 601.

[26] Throughout this section (unlike the rest of the notice of proposed rulemaking), a ''small institution'' refers to an institution with assets of $175 million or less.

and to pay for projected insured institution failures. To address the FDIC's liquidity needs, the final rule requires institutions to pay, on December 30, 2009, their estimated risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012. In order to collect prepaid assessments by December 30, 2009, the FDIC must determine whether to exempt certain institutions from the prepayment requirement well in advance of the December 30, 2009 collection date. The FDIC will first, in its discretion as supervisor and insurer, review all institutions and determine which institutions to exempt. The FDIC will also make exemption determinations based upon application from institutions that the FDIC did not exempt in its initial review. In addition, the FDIC will consider applications from institutions exempted by the FDIC that nevertheless wish to pay the prepaid assessment. All of these applications must be submitted to the FDIC by December 1, 2009. The use of emergency processing will enable the FDIC to collect the information necessary to implement these provisions without delay, and without threatening the FDIC's ability to meet its liquidity needs and resolve failed institutions. The use of normal procedures is reasonably likely to prevent or disrupt the collection of information necessary for the FDIC to implement the final rule, and could adversely affect current economic conditions.

The initial burden estimates have been modified to reflect an additional information collection through which exempted institutions may request withdrawal of the exemption from the prepayment requirement. The FDIC, in its supplemental initial Paperwork Reduction Act notice (74 F.R. 52697 (Oct. 14, 2009), requested comment on the estimated paperwork burden. No comments were received.

1. Application for Exemption

Need and Use of the Information: Exemption requests will supplement the FDIC's exercise of its discretion as supervisor and insurer to exempt an institution from the prepayment requirement if the FDIC determines that the prepayment will adversely affect the safety and soundness of that institution.

Respondents: Insured depository institutions.

Number of responses: 30–200 by the December 1, 2009 deadline.

Frequency of response: Once.

Average number of hours to prepare a response: 8 hours.

Total annual burden: 240–1600 hours for one-time exemption request.

2. Application for Withdrawal of Exemption

Need and Use of the Information: Under the final rule, an institution that the FDIC has exempted from prepayment may request that the FDIC allow the institution to nevertheless pay the prepaid amount.

Respondents: Insured depository institutions.

Number of responses: 0–20 by the December 1, 2009 deadline.

Frequency of response: Once.

Average number of hours to prepare a response: 8 hours.

Total annual burden: 0–160 hours for one-time application for withdrawal of exemption.

3. Transfer of Prepaid Assessments

Need and use of the information: Institutions will be required to notify the FDIC of the transfer of prepaid assessments so that the FDIC can accurately track these transfers, and apply available prepaid assessments appropriately against institutions' deposit insurance assessments. The need for credit transfer information will expire when the prepaid assessments have been exhausted or when remaining prepaid assessments are returned to the institution after June 30, 2013.

Respondents: Insured depository institutions.

Number of responses: 75 during the first year; 25 the second year and 10 in the final year.

Frequency of response: Occasional.

Average number of hours to prepare a response: 2 hours.

Total annual burden: 150 hours the first year; 50 hours the second year; and 20 hours in the third year.

The FDIC plans to follow this emergency request with a request for the standard three-year approval. Although most of the burden on participating entities will largely end by early 2010, a few elements will be ongoing until 2013. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To facilitate processing of the emergency and normal clearance submissions to OMB, the FDIC invites the general public to comment on: (1) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (5) estimates of capital or start up costs and the costs of operation, maintenance, and purchase of services to provide the information.

Interested parties are invited to submit written comments to the FDIC concerning the Paperwork Reduction Act implications of this final rule. Such comments should refer to ''Exemption Request, Withdrawal of Exemption Request, and Transfer Notification, 3064–AD49''. Comments may be submitted by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include ''Exemption Request, Withdrawal of Exemption Request, and Transfer Notification, 3064–AD49'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: PRA Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

E. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invited comments on how to make this proposal easier to understand. No comments addressing this issue were received.

F. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small

Business Regulatory Enforcement Act of 1996 (SBREFA) Public Law 110–28 (1996). As required by law, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

G. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–1819, 1821; Sec. 2101–2109, Public Law 109–171, 120 Stat. 9–21, and Sec. 3, Public Law 109–173, 119 Stat. 3605.

■ 2. In part 327, add new § 327.12 to subpart A to read as follows:

§ 327.12 Prepayment of quarterly risk-based assessments.

(a) *Requirement to prepay assessment.* On December 30, 2009, each insured depository institution shall pay to the FDIC a prepaid assessment, which shall equal its estimated quarterly risk-based assessments aggregated for the fourth quarter of 2009, and all of 2010, 2011, and 2012 (the ''prepayment period'').

(b) *Calculation of prepaid assessment.* (1) *Prepaid assessment.* (i) *Fourth quarter 2009 and all of 2010.* An institution's prepaid assessment for the fourth quarter of 2009 and for all of 2010 shall be determined by multiplying its prepaid assessment rate as defined in paragraph (b)(2) of this section times the corresponding prepaid assessment base for each quarter as determined pursuant to paragraph (b)(3) of this section.

(ii) *All of 2011 and 2012.* An institution's prepaid assessment for each quarter of 2011 and 2012 shall be determined by multiplying the sum of its prepaid assessment rate as defined in paragraph (b)(2) of this section, plus .75 basis points (which implements the 3 basis point increase in annual assessment rates adopted by the Board on September 29, 2009), times the corresponding prepaid assessment base for each quarter determined pursuant to paragraph (b)(3) of this section.

(2) *Prepaid assessment rate.* For each quarter of the prepayment period, an institution's prepaid assessment rate shall equal the total base assessment rate that the institution would have paid for the third quarter of 2009 had the institution's CAMELS ratings in effect on September 30, 2009, and, where applicable, long-term debt issuer ratings in effect on September 30, 2009, been in effect for the entire third quarter of 2009.

(3) *Prepaid assessment base.* For each quarter of the prepayment period, an institution's prepaid assessment base shall be calculated by increasing its third quarter 2009 assessment base at an annual rate of 5 percent.

(4) *Finality of prepaid assessment.* The prepaid assessment rate and prepaid assessment base defined in paragraphs (b)(2) and (3) of this section shall be determined based upon data in the FDIC's computer systems as of December 24, 2009. Changes to data underlying an institution's adjusted total base assessment rate or assessment base, whether by amendment to a report of condition or otherwise, received by the FDIC after December 24, 2009, shall not affect an institution's prepaid assessment.

(5) *Prepaid assessment rates for mergers and consolidations.* For mergers and consolidations recorded in the FDIC's computer systems no later than December 24, 2009, the acquired institution's prepaid assessment rate under paragraph (b)(2) of this section shall be the prepaid assessment rate of the acquiring institution.

(c) *Invoicing of prepaid assessment.* The FDIC shall advise each insured depository institution of the amount and calculation of its prepaid assessment at the same time the FDIC provides the institution's quarterly certified statement invoice for the third quarter of 2009. The FDIC will re-invoice through FDICconnect based upon any data changes as provided in paragraph (b)(4) of this section.

(d) *Payment of prepaid assessment.* Each insured depository institution shall pay to the Corporation the amount of its prepaid assessment as required under paragraph (a) of this section in compliance with and subject to the provisions of §§ 327.3 and 327.7 of subpart A.

(1) *Exception to ACH payment.* If an institution's prepaid assessment is greater than $99 million, the institution shall make payment by wire transfer to the FDIC, rather than by funding its designated deposit account for payment via ACH as provided in § 327.3 of subpart A.

(2) *One-time assessment credits.* The FDIC will not apply an institution's one-time assessment credit under subpart B of this part 327 to reduce an institution's prepaid assessment. The FDIC will apply an institution's remaining one-time assessment credits under Part 327 subpart B to its quarterly deposit insurance assessments before applying its prepaid assessments.

(e) *Use of prepaid assessments.* Prepaid assessments shall only be used to offset regular quarterly risk-based deposit insurance assessments payable under this subpart A. The FDIC will begin offsetting regular quarterly risk-based deposit insurance assessments against prepaid assessments on March 30, 2010. The FDIC will continue to make such offsets until the earlier of the exhaustion of the institution's prepaid assessment or June 30, 2013. Any prepaid assessment remaining after collection of the amount due on June 30, 2013, shall be returned to the institution. If the FDIC, in its discretion, determines that its liquidity needs allow, it may return any remaining prepaid assessment to the institution prior to June 30, 2013.

(f) *Transfers.* An insured depository institution may enter into an agreement to transfer, but not pledge, any portion of that institution's prepaid assessment to another insured depository institution, provided that the parties to the agreement notify the FDIC's Division of Finance and submit a written agreement, signed by legal representatives of both institutions. The parties must include documentation stating that each representative has the legal authority to bind the institution. The institution transferring its prepaid assessment shall submit the required notice and documentation through FDIC*connect.* That information will be presented by the FDIC through FDIC*connect* to the institution acquiring the prepaid assessments for its acceptance. The adjustment to the amount of the prepaid assessment for each institution involved in the transfer will be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of acceptance by the institution acquiring the prepaid assessments.

(g) *Prepaid assessments following a merger.* In the event that an insured depository institution merges with, or consolidates into, another insured depository institution, the surviving or resulting institution will be entitled to use any unused portion of the acquired institution's prepaid assessment not

otherwise transferred pursuant to paragraph (f) of this section.

(h) *Disposition in the event of failure or termination of insured status.* In the event of failure of an insured depository institution, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy its assessment obligations not yet offset against the prepaid amount) will be refunded to the institution's receiver. In the event that an insured depository institution's insured status terminates, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy its assessment obligations not yet offset against the prepaid amount) will be refunded to the institution, subject to the provisions of § 327.6 of subpart A.

(i) *Exemptions.* (1) *Exemption without application.* The FDIC, after consultation with an institution's primary federal regulator, will exercise its discretion as supervisor and insurer to exempt an institution from the prepayment requirement under paragraph (a) of this section if the FDIC determines that the prepayment would adversely affect the safety and soundness of that institution. No application is required for this review and the FDIC will notify any affected institution of its exemption by November 23, 2009.

(2) *Application for exemption.* An institution may also apply to the FDIC for an exemption from the prepayment requirement under paragraph (a) of this section if the prepayment would significantly impair the institution's liquidity, or would otherwise create extraordinary hardship. Written applications for exemption from the prepayment obligation must be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by electronic mail (*prepaidassessment@fdic.gov*) or fax (202–898–6676). The application must contain a full explanation of the need for the exemption and provide supporting documentation, including current financial statements, cash flow projections, and any other relevant information, including any information the FDIC may request. The FDIC will exercise its discretion in deciding whether to exempt an institution that files an application for exemption. An application shall be deemed denied unless the FDIC notifies an applying institution by December 15, 2009, either that the institution is exempt from the prepaid assessment or the FDIC has postponed determination under paragraph (i)(4) of this section. The FDIC's denial of applications for exemption will be final and not subject to further agency review.

(3) *Application for Withdrawal of Exemption.* An institution that has received an exemption under paragraph (i)(1) of this section may request that the FDIC withdraw the exemption. Written applications for withdrawal of exemption must be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by electronic mail (*prepaidassessment@fdic.gov*) or fax (202–898–6676). The application must contain a full explanation of the reasons the exemption is not needed and provide supporting documentation, including current financial statements, cash flow projections, and any other relevant information, including any information the FDIC may request. The FDIC, after consultation with the institution's primary Federal regulator, will exercise its discretion in deciding whether to withdraw the exemption. The FDIC will notify an institution of its decision to withdraw the exemption by December 15, 2009; that determination will be final and not subject to further agency review. An application shall be deemed denied unless the FDIC notifies an applying institution by December 15, 2009, that the exemption is withdrawn.

(4) *Postponement of determination.* The FDIC may postpone making a determination on any application for exemption filed under paragraph (i)(2) of this section until no later than January 14, 2010. An institution notified by the FDIC of such postponement will not have to pay the prepaid assessment calculated under paragraph (b) of this section on December 30, 2009. If the FDIC denies the application for exemption, the FDIC will notify the institution of the denial and of the date by which the institution must pay the prepaid assessment. The due date for payment of the prepaid assessment after such a denial will be no less than 15 days after the date of the notice of denial.

(5) *Obligation to pay third quarter 2009 assessment.* Any institution exempted from the prepayment requirement or any institution whose application for exemption has been postponed under this section shall pay to the Corporation on December 30, 2009, any amount due for the third quarter of 2009 as shown on the certified statement invoice for that quarter.

By Order of the Board of Directors.

Dated at Washington DC, this 12th day of November 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–27594 Filed 11–16–09; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AD53

Defining Safe Harbor Protection for Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation

AGENCY: Federal Deposit Insurance Corporation (FDIC)

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is amending its regulations defining safe harbor protection for treatment by the Federal Deposit Insurance Corporation as conservator or receiver of financial assets transferred in connection with a securitization or participation. The amendment continues for a limited time the safe harbor provision for participations or securitizations that would be affected by recent changes to generally accepted accounting principles. In effect, the Interim Rule ''grandfathers'' all participations and securitizations for which financial assets were transferred or, for revolving securitization trusts, for which securities were issued prior to March 31, 2010 so long as those participations or securitizations complied with the preexisting provision under generally accepted accounting principles in effect prior to November 15, 2009. The transitional safe harbor will apply irrespective of whether or not the participation or securitization satisfies all of the conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009. The FDIC is intending to publish in December 2009, a Notice of Proposed Rulemaking to amend its regulations further regarding the treatment of participations and securitizations issued after March 31, 2010.

DATES: The Interim Rule is effective November 17, 2009, following its adoption by the Board of Directors of the FDIC on November 12, 2009. Comments on the Interim Rule must be received by January 4, 2010.

ADDRESSES: You may submit comments on the Interim Rule, by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include RIN #3064–AD53 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Michael Krimminger, Office of the Chairman, 202–898–8950; George Alexander, Division of Resolutions and Receiverships, 202 898–3718; or R. Penfield Starke, Legal Division, 703–562–2422, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

In 2000, the FDIC clarified the scope of its statutory authority as conservator or receiver to disaffirm or repudiate contracts of an insured depository institution (''IDI'') with respect to transfers of financial assets by an IDI in connection with a securitization or participation when it adopted a regulation codified at 12 CFR 360.6 (''the Securitization Rule''). This rule provides that the FDIC as conservator or receiver will not use its statutory authority to disaffirm or repudiate contracts to reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an IDI in connection with a securitization or participation or in the form of a participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles (''GAAP''). The rule was a clarification, rather than a limitation, of the repudiation power because such power authorizes the conservator or receiver to breach a contract or lease entered into by an IDI and be legally excused from further performance but it is not an avoiding power enabling the conservator or receiver to recover assets that were previously transferred by the IDI in connection with the contract. The Securitization Rule provided a ''safe harbor'' to permit transfers of financial assets by IDIs to an issuing entity in connection with a securitization or in the form of a participation to satisfy the ''legal isolation'' condition of GAAP as it applies to institutions for which the FDIC may be appointed as conservator or receiver. To satisfy the legal isolation condition, the transferred financial asset must have been presumptively placed beyond the reach of the transferor, its creditors, a bankruptcy trustee, or in the case of an IDI, the FDIC as conservator or receiver. Since its adoption, the Securitization Rule has been relied on by securitization participants, including rating agencies, as assurance that investors could look to securitized financial assets for payment without concern that the financial assets would be interfered with by the FDIC as conservator or receiver.

Recently, the implementation of new accounting rules has created uncertainty for securitization participants. On June 12, 2009, the Financial Accounting Standards Board (''FASB'') finalized modifications to GAAP through Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140* (''FAS 166'') and Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (''FAS 167'') (the ''2009 GAAP Modifications''). The 2009 GAAP Modifications are effective for annual financial statement reporting periods that begin after November 15, 2009. For most IDIs, the 2009 GAAP Modifications will be effective for reporting periods beginning after January 1, 2010. The 2009 GAAP Modifications made changes that affect whether a special purpose entity (''SPE'') must be consolidated for financial reporting purposes, thereby subjecting many SPEs to GAAP consolidation requirements. These accounting changes will require some IDIs to consolidate an issuing entity to which financial assets have been transferred for securitization on to their balance sheets for financial reporting purposes. Given the likely accounting treatment, securitizations could be considered to be an alternative form of secured borrowing. As a result, the safe harbor provision of the Securitization Rule may not apply to the transfer.

FAS 166 also affects the treatment of participations issued by an IDI, in that it defines a participating interest essentially as a pari-passu pro-rata interest in a financial asset and subjects the sale of a participation interest to the same conditions that are imposed on the sale of a financial asset. FAS 166 provides that a transfer of a participation interest that does not qualify for sale treatment will be viewed as a secured borrowing. While the GAAP modifications have some effect on participations, most participations are likely to continue to meet the conditions for sale accounting treatment under GAAP.

The 2009 GAAP Modifications affect the way securitizations are viewed by the rating agencies and whether they can achieve ratings that are based solely on the credit quality of the financial assets, independent from the rating of the IDI. Rating agencies are concerned with several issues, including the ability of a securitization transaction to pay timely principal and interest in the event the FDIC is appointed receiver or conservator of the IDI. Moody's, Standard & Poor's, and Fitch have expressed the view that because of the 2009 GAAP modifications and the extent of the FDIC's rights and powers as conservator or receiver, bank securitization transactions are unlikely to receive AAA ratings and would have to be linked to the rating of the IDI. Securitization practitioners have asked the FDIC to provide assurances regarding the position of the conservator or receiver as to the treatment of both existing and future securitization transactions to enable securitizations to be structured in a manner that enables them to achieve de-linked ratings. This Interim Rule addresses securitizations and participations issued before March 31, 2010.

II. The Interim Rule

The Interim Rule amends the Securitization Rule by renumbering existing paragraph (b) as clause (b)(1) of paragraph (b). The Interim Rule inserts a new clause (b)(2) of the Securitization Rule that addresses any participation or securitization (i) for which transfers of financial assets were made or (ii), for revolving securitization trusts, for which beneficial interests were issued on or before March 31, 2010. The rule provides that, for these participations or securitizations, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets notwithstanding that such transfer does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as

effective for reporting periods after November 15, 2009, if such transfer satisfied the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods before November 15, 2009, except for the ''legal isolation'' condition that is addressed by the rule.

III. Solicitation of Comments

The FDIC is soliciting comments on all aspects of the Interim Final Rule. The FDIC specifically requests comments responding to the following:

1. Do the changes to the accounting rules affect the application of the Securitization Rule to participations? If so, are there changes to the Interim Rule that are needed to protect different types of participations issued by IDIs more broadly?

2. Does the Interim Rule adequately encompass all transactions that should be included within its transitional safe harbor?

3. Is the transition period to March 31, 2010 sufficient to structure transactions to comply with the new generally accepted accounting principles?

IV. Regulatory Procedure

A. Administrative Procedure Act

The Administrative Procedure Act (''APA'') provides that general notice of a proposed rulemaking shall be published and that interested persons shall have an opportunity to participate in the rulemaking by submitting written data, views, or arguments, except where the agency finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The FDIC for good cause finds that notice and public procedure with respect to this Interim Rule would be impracticable, unnecessary, or contrary to the public interest because the 2009 GAAP Modifications become effective as of the financial reporting period starting on or after November 15, 2009 and retroactively apply to existing securitizations. The FDIC believes that it is in the best interest of the U.S. banking industry and economic for the FDIC to provide assurances with respect to the treatment of existing securitizations that will be affected by the 2009 GAAP Modifications.

The APA also provides that publication of a substantive rule shall be made not less than 30 days before its effective date except as otherwise provided by the agency for good cause found and published with the rule. Because of the retroactive application of the 2009 GAAP Modifications and the immediate need for assurances for securitization participants and the banking industry with respect to existing securitizations and participations, the FDIC invokes this good cause exception to make this Interim Rule effective as of November 12, 2009. Nevertheless, the FDIC desires to have the benefit of public comment before adopting a final rule and thus invites interested parties to submit comments during a 45-day comment period. The FDIC will revise the Interim Rule as appropriate after consideration of the comments received.

B. Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act (CDRIA) requires that any new rule prescribed by a Federal banking agency that imposes additional reporting, disclosures, or other new requirements on insured depository institutions take effect on the first day of a calendar quarter. 12 U.S.C. section 4802. This requirement does not apply because the Interim Rule does not impose additional reporting, disclosures, or other new requirements on insured depository institution.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. section 601 *et seq.*), it is certified that the Interim Rule will not have a significant economic impact on a substantial number of small business entities. The Interim Rule merely extends the safe harbor of section 360.6(b) to securitizations issued before March 31, 2010 and does not represent a change in the law.

D. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined the Interim Final Rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*).

E. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. section 3501 *et seq.*) is contained in the final rule. Consequently, no information was submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and recordkeeping requirements, Savings associations, Securitizations.

■ For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends title 12 of the Code of Federal Regulations by amending part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

■ 1. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub.L. 101–73, 103 Stat. 357.

■ 2. In § 360.6, redesignate paragraph (b) as paragraph (b)(1) and add a new paragraph (b)(2) to read s follows:

§ 360.6 Treatment by the Federal Deposit Insurance Corporation as conservator or receiver of financial assets transferred in connection with a securitization or participation.

* * * * *

(b) * * *

(2) With respect to any participation or securitization for which transfers of financial assets were made or, for revolving securitization trusts, for which beneficial interests were issued on or before March 31, 2010, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets notwithstanding that such transfer does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009, provided that such transfer satisfied the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods before November 15, 2009, except for the ''legal isolation'' condition that is addressed by this rule.

By Order of the Board of Directors.

Dated at Washington DC, this 12th day of November 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–27592 Filed 11–16–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB55

Temporary Agricultural Employment of H–2A Aliens in the United States

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Interim final rule; request for further comments.

SUMMARY: The Department of Labor (Department or DOL) is further amending its regulations to extend the transition period of the application filing procedures currently in effect for all H–2A employers with a date of need before January 1, 2010, as established in the H–2A Interim Final Rule (IFR) published on April 16, 2009. The transition period is hereby extended to include all employers with a date of need before June 1, 2010.

DATES: This IFR is effective on November 17, 2009. The grounds for making the rule effective upon publication in the **Federal Register** are set forth in the **SUPPLEMENTARY INFORMATION** section below. Interested persons are invited to submit written comments on the IFR on or before December 17, 2009.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB55, by any one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov: Follow the Web site instructions for submitting comments.

Mail: Please submit all written comments (including disk and CD–ROM submissions) to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Hand Delivery/Courier: Please submit all comments to Thomas Dowd, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. Comments that are received by the Department through means beyond those listed in this IFR or that are received after the comment period has closed will not be reviewed in consideration of the Final Rule. The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-Rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment. Postal delivery in Washington, DC, may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments via the Web site indicated above.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking portal at *http://www.regulations.gov.* The Department will also make all the comments it receives available for public inspection during normal business hours at the Employment and Training Administration (ETA) Office of Policy Development and Research at the above address. If you need assistance to review the comments, the Department will provide you with appropriate aids such as readers or print magnifiers. The Department will make copies of the rule available, upon request, in large print and as an electronic file on a computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

FOR FURTHER INFORMATION CONTACT: William L. Carlson, PhD, Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The H–2A temporary labor certification program has been operating for over two decades, first under the Department's regulations promulgated in the wake of Immigration Reform and Control Act of 1986 (IRCA), primarily published at 52 FR 20507, Jun. 1, 1987 (''the 1987 Rule''), and now under new H–2A regulations published on December 18, 2008, 73 FR 77110 (the ''2008 Final Rule''). The 2008 Final Rule reflected several significant policy shifts. Among other things, the 2008 Final Rule provided for a transition period to enable employers to gradually change their process from recruitment and solicitation of workers, both foreign and domestic, and to become accustomed to the filing procedures delineated in the new regulations.

After the 2008 Final Rule was promulgated, a group of plaintiffs comprised primarily of workers' rights organizations filed suit in the United States (U.S.) District Court for the District of Columbia challenging the 2008 Final Rule. *United Farm Workers, et al.* v. *Chao, et al.,* Civil No. 09–00062 RMU (D.DC). The plaintiffs requested that the court issue a temporary restraining order and preliminary injunction, along with a permanent injunction to prohibit the Department from implementing the 2008 Final Rule. The plaintiffs' requests for a temporary restraining order and preliminary injunction were denied and the 2008 Final Rule went into effect as scheduled on January 17, 2009.

As the Department began accepting applications under the transition period procedures of the 2008 Final Rule, it became evident that the Department and the State Workforce Agencies (SWAs) found it challenging to effectively and efficiently implement the new regulations, resulting in processing delays and confusion among staff and user communities. Consequently, the new Administration undertook review of the prior Administration's policy decisions on which the 2008 Final Rule was based and in support of this review proposed to suspend the 2008 Final Rule in a Notice of Proposed Suspension on March 17, 2009 at 74 FR 11408 for a period of 9 months during which it could fully reconsider the 2008 Final Rule. In order to ensure a continuing and stable regulatory process for workers, employers and other affected stakeholders, the Department

published an IFR on April 16, 2009 to extend the 2008 Final Rule transition period until January 1, 2010. 74 FR 17597, Apr. 16, 2009. On May 29, 2009, the Department proceeded with the suspension and issued a final rule to suspend the 2008 Final Rule and to reinstate the former regulations for a 9-month period, after which time it would revert to the 2008 Final Rule, unless a new rulemaking was in place. *See,* 74 FR 25972, May 29, 2009.

After the publication of the Final Suspension and Notice, the North Carolina Growers Association and others (''NCGA'') filed a complaint in the U.S. District Court for the Middle District of North Carolina. NCGA requested the court to enjoin the Department from suspending the 2008 Final Rule. *North Carolina Growers' Association* v. *Solis,* 1:09-cv-00411 (June 9, 2009). On June 29, the court granted NCGA's motion for a preliminary injunction (*North Carolina Growers' Association* v. *Solis,* 1:09-cv-00411 (June 29, 2009)) thereby preventing implementation of the Suspension. Therefore, the Final 2008 Rule remains in effect at this time.

During this period, the Department undertook its review of the 2008 Final Rule and determined that a number of elements of that rule are not in keeping with the philosophy of the new Administration, particularly with respect to avoiding adverse effect on the wages of domestic workers. For those reasons, the Department determined that a new rulemaking effort was required in the H–2A program, and on September 4, 2009 published new proposed regulations revising title 20 of the Code of Federal Regulations (20 CFR), part 655, and title 29 of the Code of Federal Regulations (29 CFR), part 501 (2009 H–2A NPRM). 74 FR 45906, Sept. 4, 2009.

II. The Need for Extending H–2A Transition Procedures

While the Department undertakes a full review of the comments it receives in response to the publication of the 2009 H–2A NPRM, it has concluded that it is necessary to again extend the transition procedures of the 2008 Final Rule.

Fully implementing the 2008 Final Rule for dates of need on or after January 1, 2010 would create significant confusion among program users and create potentially serious operational challenges for both the Department and the SWA staff, likely resulting in processing delays. Under the 2008 Final Rule's current transition procedures at 20 CFR 655.100(b), employers who are filing applications for H–2A workers with a date of need prior to January 1, 2010 are required to engage in recruitment after filing the labor certification application. By contrast, for applications with a date of need on or after January 1, 2010, the current 2008 Final Rule requires employers to commence recruitment before the application is filed and no earlier than 75 days prior to that date of need. Under the current 2008 Final Rule, the earliest such date on which employers with a date of need on or after January 1, 2010 could have begun their pre-filing recruitment was October 18, 2009.

It is inevitable that there will eventually be a switch from the transition procedure to either the fully implemented 2008 Final Rule or a Final Rule arising from the 2009 H–2A NPRM. Unless the transition provision is extended, there is a significant possibility that the SWAs and the Department could be forced to operate simultaneously under three different case processing regimes. Extending the transition procedures to June 1 makes it more likely that there will be only one switch rather than two. Furthermore, undertaking the full implementation of the 2008 Final Rule would divert limited Department resources and staff away from the imperative of processing applications and providing employers with needed guidance.

For these reasons, it is necessary to again extend the transition period procedures in 20 CFR 655.100(b)(2) for all employers with a date of need prior to June 1, 2010. The Department expects to have either issued a Final Rule arising from the 2009 H–2A NPRM or to have decided not to engage in further rulemaking on the H–2A program by early 2010. By extending the transition procedures, employers will be clearly informed about which recruitment procedures they must use, either the full final regulatory procedures of the 2008 Final Rule or the procedures from a Final Rule arising from the 2009 H–2A NPRM.

III. Discussion of Comments Received in Connection With the April 16, 2009 Interim Final Rule Extending the Transition Period

After publishing an IFR on April 16, 2009, the Department received five comments in response to the extension of the transition period. Some of the comments in whole or in part addressed issues unrelated to the extension of the transition period and/or related generally to the then-proposed Suspension of the 2008 Final Rule or the substance of the 2008 Final Rule. The Department has classified one comment and portions of other comments as outside the scope and did not consider them for the purpose of the discussion below.

The Department received four comments expressing support for the prior extension of the transition period. One commenter, a law firm representing H–2A employers, expressed support for the decision to continue the transition period procedures until ''at least January 1, 2010'' and longer. This commenter also addressed substantive aspects of the 2008 Final Rule which the Department has determined to be out of scope of this IFR. In addition, the commenter provided specific suggestions for a deliberative process, beyond the notice and comment rulemaking in which the Department is required to engage, which it urged the Department to undertake before undertaking further changes to the H–2A program. Although the Department appreciates the suggestions, this discussion was also determined to be out of scope for the purpose of the decision to extend the transition period.

Another commenter, representing an association of individual ranchers engaged in the range production of livestock and sheepshearing contractors, expressed support for the transition with one caveat; it strongly opposed the requirement of multi-state advertising being applied to its clients during the extended transition period.

There is no basis for exempting one group of employers from any of the substantive requirements of the 2008 Final Rule. The INA specifically requires the Department to protect the employment opportunities of U.S. workers across the occupations encompassed by the H–2A labor certification program, in particular by ensuring that the employer makes positive recruitment efforts in a multi-state region in accordance with the INA. The Department finds it necessary and appropriate to extend the transition period procedures in their entirety so that it may provide for a timely and orderly certification process of H–2A applications during the period when it is considering comments on the 2009 H–2A NPRM. Exempting a single subgroup from the regulatory implementation of a statutory requirement would produce substantial legal and operational difficulties. Therefore, the Department has determined that it must maintain all the requirements of the 2008 Final Rule as put into operation through the transition procedures. The Department intends to continue the current practice discussed in the 2008 Final Rule of having the Chicago National Processing Center (NPC) advise employers of their

recruitment obligations and provide each with states of traditional or expected labor supply for purposes of advertising. 73 FR 77113, Dec. 18, 2008.

Another commenter responding to the extension of transition period procedures was a SWA. The SWA expressed guarded support for the Department's action, and indicated that ''although extending the transition period minimizes uncertainty in the near future, it does not alleviate our concerns [with respect to the 2008 Final Rule].''

The Department, although concerned about creating interim stability for program users and workers, is also concerned with alleviating long-term issues in the H–2A program and has thus begun a new rulemaking by promulgating an NPRM. The Department expects that this SWA and other interested entities will express their concerns by providing the Department with substantive comments on the proposed changes to the H–2A program.

The Department also received a comment from a national advocacy organization for migrant and seasonal farmworkers. This commenter implied support for the extension of the transition period to ''prevent administrative confusion and disruption'' but noted concerns about the effect on the then-proposed Suspension as well as the process for the designation of the labor supply States during the recruitment period. The commenter urged DOL to ensure these designations take place in a transparent and collaborative manner to notify U.S. workers of potential work opportunities. In addition, the commenter urged DOL to work with farmworker unions, community-based organizations and other farmworker advocacy organizations to increase the likelihood that U.S. workers will learn of H–2A job opportunities.

As part of the rulemaking process, the Department has given serious thought to the effect the timing of the new rulemaking will have both on employers using the H–2A program and on U.S. workers being recruited in connection with H–2A applications. The Department has concluded that keeping the transition provision in place will cause the least disruption to program users as well as U.S. and H–2A workers. With respect to the commenter's concern about the transparency of the labor state designation process, the Department believes that the current process followed by the NPC provides both transparency and adequate notice to apprise U.S. workers of job opportunities so that it ought to continue during the additional extension of the transition period.

Under the transition provisions of the 2008 Final Rule, the NPC has a regulatory mandate to designate labor supply States on a case-by-case basis during the transition period. 20 CFR 655.100(b)(2)(iv). To implement this mandate the NPC has sought information from the SWAs or other sources, including, if available, the success of recent efforts by out-of-State employers to recruit in that State. In accordance with its mandate, the NPC developed a matrix of traditional labor supply States in consultation with several SWAs and based on traditional patterns of labor supply from previous experience of the SWAs and the NPC. In developing the matrix, the NPC took into account traditional factors affecting the flow of agricultural labor supply, such as weather patterns, crop distribution, and availability of transportation. To ensure fairness and consistency in adjudication, the matrix will continue to be applied to all H–2A applications through instructions to employers upon the acceptance of the application and the initiation of recruitment.

In terms of the commenter's suggestion that the Department engage with various farmworker advocacy organizations to maximize the flow of information to U.S. workers regarding H–2A job opportunities, the Department recognizes the importance of keeping U.S. workers informed about H–2A job opportunities during the recruitment period. The Department may not impose new or additional requirements on employers recruiting U.S. workers under the transition period procedures. However, the Department expects that this farmworker advocate organization provided comments based on its longstanding experience in the context of the new H–2A rulemaking process.

The Department received no comments opposing the extension of the transition period.

IV. Administrative Information

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order (E.O.) 12866, the Department must determine whether a regulatory action is significant and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). Section 3(f) of the E.O. defines a significant regulatory action as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. The Department has determined that this IFR is not an economically significant regulatory action under sec. 3(f)(1) of E.O.12866. The procedures for extending the time during which employers seeking H–2A workers will file under the transition procedures will not have an economic impact of $100 million or more. The regulation will not adversely affect the economy or any sector thereof, productivity, competition, jobs, the environment, nor public health or safety in a material way. The Department has also determined that this IFR is not a significant regulatory action under sec. 3(f)(4) of the E.O.

Summary of Impacts

The change in this IFR is expected to have little net direct cost impact on employers above and beyond the baseline of the current costs required by the program as it is currently implemented. Employer costs for newspaper advertising for the conduct of positive recruitment in traditional or expected labor supply States will not increase as a result of this IFR.

B. Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires that a regulatory flexibility analysis be prepared and made available for public comment. The RFA must describe the impact of the rule on small entities. *See* 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have significant economic impact on a substantial number of small entities. The Deputy Assistant Secretary of ETA has notified the Chief Counsel for Advocacy, Small Business Administration (SBA), and certifies under the RFA at 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not substantively change existing obligations for employers who choose to participate in the H–2A

temporary agricultural worker program. The factual basis for such a certification is that even though this rule can and does affect small entities, there are not a substantial number of small entities that will be affected, nor is there a significant economic impact upon those small entities that are affected. Of the total 2,204,792 farms in the U.S., 98 percent have sales of less than $750,000 per year and fall within SBA's definition of small entities. In Fiscal Year (FY) 2008, the last year for which official numbers are available, only 8,096 employers filed requests for only 86,113 workers. That represents less than 1 percent of all farms in the U.S. Even if all of the 8,096 employers who filed applications under H–2A in FY 2008 were small entities, that is still a relatively small number of employers affected, and this rule is expected to have little net direct cost impact on employers, above and beyond the baseline of the current costs required by the program as it is currently implemented.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1501 *et seq.*) directs agencies to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector to determine whether the regulatory action imposes a Federal mandate. A Federal mandate is defined in the Act at 2 U.S.C. 658(5)–(7) to include any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector which is not voluntary. Further, each agency is required to provide a process where State, local, and tribal governments may comment on the regulation as it develops, which further promotes coordination between the Federal and the State, local, and tribal governments. This IFR imposes no enforceable duty upon State, local or tribal governments, nor does it impose a duty upon the private sector that is not voluntary. In fact, the IFR imposes no duties whatsoever upon State, local or tribal governments. The duties imposed are completely upon the Federal government—the Chicago NPC of the Office of Foreign Labor Certification in the Department that has and will continue to instruct employers on a case by case basis of their obligations to seek and hire U.S. workers and, failing the availability of U.S. workers, H–2A workers.

D. Executive Order 13132—Federalism

Executive Order 13132 addresses the Federalism impact of an agency's regulations on the States' authority. Under E.O. 13132, Federal agencies are required to consult with States prior to and during the implementation of national policies that have a direct effect on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Further, an agency is permitted to limit a State's discretion when it has statutory authority and the regulation is a national activity that addresses a problem of national significance. This IFR has no direct effect on the States, the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The continuation of a procedure by which employers comply with a statutory recruitment requirement imposes no additional duties on the States.

E. Executive Order 13175—Indian Tribal Governments

Executive Order 13175 requires Federal agencies to develop policies in consultation with tribal officials when those policies have tribal implications. This IFR regulates the H–2A visa program and does not have tribal implications. Therefore, the Department has determined that this E.O. does not apply to this rulemaking.

F. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Federal regulations and policies on families. The assessment must address whether the regulation strengthens or erodes the stability, integrity, autonomy, or safety of the family. This IFR does not have an impact on the autonomy or integrity of the family as an institution, as it is described under this provision. The Department has determined that there are no costs associated with the IFR; even if there were, however, they are not of a magnitude to adversely affect family well-being.

G. Executive Order 12630—Protected Property Rights

Executive Order 12630, Governmental Actions and the Interference with Constitutionally Protected Property Rights, prevents the Federal government from taking private property for public use without compensation. It further institutes an affirmative obligation that agencies evaluate all policies and regulations to ensure there is no impact on constitutionally protected property rights. Such policies include rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. The Department has determined this rule does not have takings implications.

H. Executive Order 12988—Civil Justice Reform

Section 3 of E.O. 12988, Civil Justice Reform, requires Federal agencies to draft regulations in a manner that will reduce needless litigation and will not unduly burden the Federal court system. Therefore, agencies are required to review regulations for drafting errors and ambiguity; to minimize litigation; ensure that it provides a clear legal standard for affected conduct rather than a general standard; and promote simplification and burden reduction. This IFR has been drafted in clear language and with detailed provisions that aim to minimize litigation. The purpose of this rule is to continue the transition procedures to enable employers to continue to comply with their statutory recruitment requirements. Therefore, the Department has determined that the regulation meets the applicable standards set forth in sec. 3 of E.O. 12988.

I. Plain Language

Every Federal agency is required to draft regulations that are written in plain language to better inform the public about policies. The Department has assessed this IFR under the plain language requirements and determined that it follows the government's standards requiring documents to be accessible and understandable to the public.

J. Executive Order 13211—Energy Supply

This IFR is not subject to E.O. 13211, which assesses whether a regulation is likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, the Department has determined that this rule does not represent a significant energy action and does not warrant a Statement of Energy Effects.

K. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part 1320) requires that the OMB approve all collections of information by a Federal

agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Information collections in this IFR have been previously approved under OMB No. 1205–0466. No change in that collection is proposed by this IFR.

L. Good Cause Exception

The Department finds good cause to adopt this IFR, effective immediately, and without prior notice and comment. *See* 5 U.S.C. 553(b)(3) and 553(d)(3). The reasons for extending the transition period, discussed above, lead the Department to believe that action must be taken quickly to ensure that the Department and employers are able to meet their statutory obligations and to prevent confusion, ensure program integrity, and maximize the availability of job opportunities for the U.S. workforce during a time of economic crisis. Absent this extension, on approximately October 18, 2009, employers will be forced to comply with all elements of the 2008 Final Rule. In order to avoid the confusion and disruption that this will cause, it is essential that extension of the transition period be effective before that date. This circumstance precludes the receipt and consideration of comments before this rule becomes effective. In addition, as discussed above, the Department has considered the comments received after the promulgation of the April 16 Rule extending the transition period to January 1, 2010. There was no significant opposition to the extension and the current rule presents no new issues.

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Foreign workers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Health professions, Immigration, Labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

■ For the reasons stated in the preamble, the Department amends 20 CFR part 655 as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h)(4)(i). Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184(c), and 1188; and 8 CFR 214.2(h). Subparts A and C issued under 8 CFR 214.2(h). Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h). Subparts D and E authority repealed. Subparts F and G issued under 8 U.S.C. 1288(c) and (d); and sec. 323(c), Pub. L. 103–206, 107 Stat. 2428. Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Public Law 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; and 8 CFR 214.2(h). Subparts J and K authority repealed. Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 2. Amend § 655.100 by revising paragraph (b)(1) and the introductory text of paragraph (b)(2) to read as follows:

§ 655.100 Overview of subpart B and definition of terms.

* * * * *

(b) * * *

(1) *Compliance with these regulations.* Employers with a date of need for H–2A workers for temporary or seasonal agricultural services on or after June 1, 2010 must comply with all of the obligations and assurances required in this subpart.

(2) *Transition from former regulations.* Employers with a date of need for H–2A workers for temporary or seasonal agricultural services prior to June 1, 2010 will file applications in the following manner:

* * * * *

Signed in Washington, DC, this 10th day of November 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–27496 Filed 11–16–09; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

[Docket No. FDA–2009–N–0665]

Certain Other Dosage Form New Animal Drugs; Progesterone Intravaginal Inserts

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an original new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Division of Pfizer, Inc. The NADA provides for use of a progesterone intravaginal insert for induction of estrus in ewes during seasonal anestrus.

DATES: This rule is effective November 17, 2009.

FOR FURTHER INFORMATION CONTACT: Suzanne J. Sechen, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8105, e-mail: *suzanne.sechen@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, has filed NADA 141–302 for over-the-counter use of EAZI–BREED CIDR (progesterone) Sheep Inserts for induction of estrus in ewes during seasonal anestrus. The NADA is approved as of October 1, 2009, and the regulations are amended in 21 CFR 529.1940 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 573(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360ccc–2), this supplemental approval qualifies for 7 years of exclusive marketing rights beginning on the date of approval because the new animal drug has been declared a designated new animal drug by FDA under section 573(a) of the act.

The agency has determined under 21 CFR 25.33 that this action is of a type

that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 529

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 529.1940 is revised to read as follows:

§ 529.1940 Progesterone intravaginal inserts.

(a) *Specifications.* Each insert contains:

(1) 1.38 grams (g) progesterone in molded silicone over a nylon spine.

(2) 0.3 g progesterone in molded silicone over a flexible nylon spine.

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter for use of the product described in paragraph (a)(1) of this section as in paragraph (e)(1) of this section; and the product described in paragraph (a)(2) of this section as in paragraph (e)(2) of this section.

(c) *Related tolerances.* See § 556.540(a) of this chapter.

(d) *Special considerations*—(1) *Cows and ewes.* Product labeling shall bear the following warnings: ''Avoid contact with skin by wearing protective gloves when handling inserts. Store removed inserts in a sealable container until they can be disposed of in accordance with applicable local, state, and Federal regulations.''

(2) *Cows.* This product is approved with the concurrent use of dinoprost solution on day 6 of the 7-day administration period when used for indications listed in paragraph (e)(1)(ii)(A) of this section. See § 522.690(c) of this chapter.

(e) *Conditions of use*—(1) *Cows*—(i) *Amount.* Administer one intravaginal insert per animal for 7 days. When used for indications listed in paragraph (e)(1)(ii)(A) of this section, administer 25 milligrams (mg) dinoprost (5 milliliters (mL) of 5 mg/mL solution as in § 522.690(a) of this chapter) as a single intramuscular injection one day prior to insert removal.

(ii) *Indications for use*—(A) For synchronization of estrus in suckled beef cows and replacement beef and dairy heifers, for advancement of first postpartum estrus in suckled beef cows, and for advancement of first pubertal estrus in replacement beef heifers.

(B) For synchronization of the return to estrus in lactating dairy cows inseminated at the immediately preceding estrus.

(iii) *Limitations.* Do not use in animals with abnormal, immature, or infected genital tracts; or in beef cows that are fewer than 20 days postpartum; or in beef or dairy heifers of insufficient size or age for breeding. Do not use an insert more than once. To prevent the potential transmission of venereal and bloodborne diseases, the inserts should be disposed after a single use. Administration of vaginal inserts for periods greater than 7 days may result in reduced fertility. Dinoprost solution provided by No. 000009 in § 510.600(c) of this chapter.

(2) *Ewes*—(i) *Amount.* Administer one intravaginal insert per animal for 5 days.

(ii) *Indications for use.* For induction of estrus in ewes (sheep) during seasonal anestrus.

(iii) *Limitations.* Do not use in animals with abnormal, immature, or infected genital tracts; or in ewes that have never lambed. Do not use an insert more than once. To prevent the potential transmission of venereal and bloodborne diseases, the inserts should be disposed after a single use. A pre-slaughter withdrawal period is not required when this product is used according to directions.

Dated: November 3, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–27497 Filed 11–16–09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9471]

RIN 1545–BH68

Employee Stock Purchase Plans Under Internal Revenue Code Section 423

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to options granted under an employee stock purchase plan as defined in section 423 of the Internal Revenue Code (Code). These final regulations affect certain taxpayers who participate in the transfer of stock pursuant to the exercise of options granted under an employee stock purchase plan. These final regulations provide guidance to assist taxpayers in complying with section 423 in addition to clarifying certain rules regarding options granted under an employee stock purchase plan. This document also contains final regulations under sections 421, 422 and 424 of the Code.

DATES: *Effective Date:* These regulations are effective on November 17, 2009.

Applicability Date: These regulations apply as of January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Scholz or Ilya Enkishev at (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final amendments to the Income Tax Regulations (26 CFR part 1) under sections 421, 422, 423 and 424 of the Code.

Section 423 was added to the Code by section 221(a) of the Revenue Act of 1964, Public Law 88–272 (78 Stat. 63 (1964)). Changes to the applicable law concerning section 423 were made by sections 1402(b)(1)(C) and 1402(b)(2) of the Tax Reform Act of 1976, Public Law 94–455 (90 Stat. 1731 and 1732–1733 (1976)); section 1001(b)(5) of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 1011 (1984)); section 1114 of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2451 (1986)); and sections 11801(c)(9)(D)(i), (ii) and 11801(c)(9)(E) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (104 Stat. 1388–525 (1990)).

Regulations under section 423 were published in the **Federal Register** on June 23, 1966 (TD 6887). These

regulations were amended on September 27, 1979 (TD 7645), October 31, 1980 (TD 7728), and December 1, 1988 (TD 8235). In Notice 2004–55 (2004–34 IRB 319 (August 23, 2004)) (see § 601.601(d)(2)(ii)(*b*)), the IRS and the Treasury Department requested comments concerning whether the existing regulations under section 423 should be amended, and if so, what issues should be addressed.

On July 29, 2008, the Treasury Department published a notice of proposed rulemaking (REG–106251–08) in the **Federal Register** (73 FR 43875) under section 423. A public hearing on the proposed regulations was held on January 15, 2009. Written and electronic comments responding to the notice of proposed rulemaking were received. After consideration of these comments, the Treasury Department adopts the proposed regulations as final regulations, with the modifications set forth in this Treasury decision. The significant revisions are discussed in this preamble.

In general, the income tax treatment of the grant of an option to purchase stock in connection with the performance of services and of the transfer of stock pursuant to the exercise of the option is determined under section 83 and the regulations thereunder. However, section 421 provides special rules for determining the income tax treatment of the transfer of shares of stock pursuant to the exercise of an option if the requirements of sections 422(a) or 423(a), as applicable, are met. Section 422 applies to incentive stock options and section 423 applies to options granted under an employee stock purchase plan (collectively, statutory options).

Under section 421, if a share of stock is transferred to an individual pursuant to the exercise of a statutory option, there is no income at the time of exercise of the option with respect to the transfer and no deduction under section 162 is allowed to the employer corporation with respect to the transfer.

Section 423(a) provides that section 421 applies to the transfer of stock to an individual pursuant to the exercise of an option granted under an employee stock purchase plan if: (i) No disposition of the stock is made within two years from the date of grant of the option or within one year from the date of transfer of the share, and (ii) at all times during the period beginning on the date of grant and ending on the day three months before the exercise of the option, the individual is an employee of either the corporation granting the option or a parent or subsidiary of such corporation, or a corporation (or a parent or subsidiary of such corporation) issuing or assuming a stock option in a transaction to which section 424(a) applies. Section 423(b) sets forth several requirements that must be met for a plan to qualify as an employee stock purchase plan. Section 423(c) provides a special rule that is applicable where the option exercise price is between 85 and 100 percent of the fair market value of the stock at the time the option was granted.

Explanation of Provisions

These final regulations provide a comprehensive set of rules governing stock options issued under an employee stock purchase plan and incorporate substantially all of the rules contained in the existing regulations under section 423. These final regulations are comprised of two sections: Section 1.423–1, applicability of section 421(a); and § 1.423–2, employee stock purchase plan defined. The modifications to the proposed regulations that are included in these final regulations reflect consideration of the comments submitted by taxpayers.

1. General Requirements

The proposed regulations provide that an employee stock purchase plan must meet the requirements of paragraphs (i) through (ix) of § 1.423–2(a)(2) to qualify as an employee stock purchase plan under section 423(b). The proposed regulations also provide that the requirements of paragraphs (iii) through (ix) of § 1.423–2(a)(2) may be satisfied by the terms of the plan or an offering made under the plan. The final regulations adopt these requirements of the proposed regulations, although the numerical designation of the requirements is modified. To emphasize that the requirements of paragraphs (iii) through (ix) of § 1.423–2(a)(2) of the proposed regulations may be satisfied by the terms of the plan or an offering made under the plan, these final regulations separately list these requirements in § 1.423–2(a)(3).

Commenters requested clarification of whether options with terms that are inconsistent with the terms of the plan will be eligible for the special tax treatment of section 421. As provided in § 1.423–2(a)(3) of the proposed regulations, § 1.423–2(a)(4) of these final regulations provides that, if the terms of an option are inconsistent with the terms of the employee stock purchase plan or an offering under the plan, then the option will not be treated as granted under an employee stock purchase plan. However, an option may still qualify for the special tax treatment of section 421, even if the terms of the plan are inconsistent with any of the requirements in § 1.423–2(a)(3) of these final regulations, if the option is granted under an offering with terms that comply with the requirements of § 1.423–2(a)(3). *Example 2* of § 1.423–2(e)(6) of these final regulations illustrates this principle.

2. Offerings Under an Employee Stock Purchase Plan

These final regulations provide further guidance for employee stock purchase plans under which more than one offering is made. As set forth in § 1.423–2(a)(1) of these final regulations, one or more offerings may be made under a plan and the offerings may be consecutive or overlapping. Further, pursuant to section 423(b) and its flush language, the terms of each offering need not be identical. Although the terms of each offering need not be identical, the terms of the plan and each offering together must satisfy the requirements of § 1.423–2(a)(2) and (3) of these final regulations. For example, if overlapping offerings are made under an employee stock purchase plan, then each offering may contain different terms, provided that the terms of each offering (together with the plan) satisfy the requirements of § 1.423–2(a)(3) of these final regulations. Furthermore, when a parent corporation adopts an employee stock purchase plan, it may establish separate offerings with different terms under the plan and designate which subsidiary corporations of the parent corporation may participate in a particular offering, provided that the terms of each offering (together with the plan) satisfy the requirements of § 1.423–2(a)(3). The terms ''parent corporation'' and ''subsidiary corporation'' are defined in § 1.424–1(f) of the regulations.

a. Employees Covered by the Plan

Paragraphs (i) through (iv) of § 1.423–2(e)(1) of the proposed regulations and these final regulations set forth the categories of employees that may be excluded from coverage under an employee stock purchase plan or an offering under the plan. The proposed regulations provide that the exclusions for various categories of employees must be applied in an identical manner to all employees of every corporation whose employees are granted options under the plan. Commenters noted that the requirement of identical exclusions for all offerings under a plan constrains the ability to make future and overlapping offerings that are more (or less) inclusive than prior offerings under the plan. Commenters suggested that the final regulations should permit multiple

offerings under a plan with different exclusions applicable to the one or more corporations whose employees participate in the particular offering under the plan.

These final regulations generally adopt the approach suggested by the commenters. Pursuant to these final regulations, whether the terms of a plan and offering satisfy the requirements of § 1.423–2(e) is made on an offering-by-offering basis. The terms of each offering under a plan may be different, provided the plan and offering together satisfy the requirements of § 1.423–2(a)(2) and (3) of these final regulations. With respect to satisfying the requirements of § 1.423–2(e), the terms of each offering may provide different exclusions of employees, as permitted and within the limitations described in § 1.423–2(e)(1), (2) and (3) of these final regulations. The exclusions established with respect to a particular offering must be applied in an identical manner to all employees of every corporation whose employees are granted options under that particular offering. *Examples 7* and *8* of § 1.423–2(e)(6) of these final regulations illustrate these principles.

Some commenters suggested that the final regulations permit employers to exclude from plan participation employees who are nonresident aliens and who receive no earned income that constitutes income from sources within the United States. Other commenters suggested that the final regulations permit employers to exclude from plan participation employees under a specified age. The IRS and the Treasury Department are aware of the complexities often associated with participation in an employee stock purchase plan by nonresident aliens and employees under a specified age, such as the age of majority. However, section 423 does not provide exclusions for nonresident aliens or employees under a specified age. Accordingly, the IRS and the Treasury Department are constrained by statutory authority from providing a general exclusion from plan participation for employees who are nonresident aliens or employees under a specified age.

One commenter suggested that the final regulations provide additional flexibility by permitting employers to exclude from plan participation highly compensated employees (HCEs) (within the meaning of section 414(q)) on any basis. Section 1.423–2(e)(2)(ii) of the proposed regulations provides that the terms of an employee stock purchase plan may exclude HCEs: (a) with compensation above a certain level, or (b) who are officers or subject to the disclosure requirements of section 16(a) of the Securities Exchange Act of 1934, provided the exclusion is applied in an identical manner to all HCEs of every corporation whose employees are granted options under the plan. These final regulations do not adopt the suggestion that HCEs may be excluded from participation in an employee stock purchase plan on any basis. Instead, these final regulations offer some additional flexibility by providing that, with respect to the exclusion of HCEs, the terms of each offering made under a plan need not be identical with respect to the HCEs, provided the HCEs are excluded as permitted and within the limitations described in § 1.423–2(e)(2)(ii) of these final regulations.

b. Equal Rights and Privileges

Commenters further suggested that the final regulations provide flexibility by permitting employers to make multiple offerings with different rights and privileges applicable to the participants of each offering under a plan. These final regulations generally adopt the approach suggested by the commenters. Pursuant to these final regulations, the determination of whether the terms of an offering satisfy the requirements of § 1.423–2(f) is made on an offering-by-offering basis. The terms of each offering under a plan may be different, provided the plan and offering together satisfy the requirements of § 1.423–2(a)(2) and (3) of these final regulations. However, the rights and privileges established with respect to a particular offering must be applied in an identical manner to all employees of every corporation whose employees are granted options under that particular offering. *Examples 4* and *5* of § 1.423–2(f)(7) of these final regulations illustrate these principles.

3. Maximum Number of Shares That May Be Purchased By an Employee

Commenters asked whether the designation of a maximum number of shares that may be purchased by an employee during the offering is necessary in order for the first day of the offering period to be the date of grant. Consistent with the proposed regulations, § 1.423–2(h)(3) of these final regulations provides that the date of grant will be the first day of an offering period if the terms of an employee stock purchase plan or offering designate a maximum number of shares that may be purchased by each employee during the offering. Similarly, the date of grant will be the first day of an offering if the terms of the plan or offering require the application of a formula to establish, on the first day of the offering, the maximum number of shares that may be purchased by each employee during the offering.

However, § 1.423–2(h)(3) of these final regulations does not require that an employee stock purchase plan or offering designate a maximum number of shares that may be purchased by each employee during the offering or incorporate a formula to establish a maximum number of shares that may be purchased by each employee during the offering. If the maximum number of shares that can be purchased under an option is not fixed or determinable until the date the option is exercised, then the date of exercise will be the date of grant of the option. As discussed in the preamble to the proposed regulations, the $25,000 limit under section 423(b)(8) and the limit on the aggregate number of shares that may be issued under an employee stock purchase plan are not sufficient to establish the maximum number of shares that can be purchased by an employee under an option so that the date of grant will be the first day of the offering. *Examples 1, 2, 3* and *4* in § 1.423–2(h)(4) of these final regulations illustrate these principles.

Commenters also asked whether any particular number of shares is necessary to satisfy the requirement to designate a maximum number of shares that may be purchased during the offering in order for the first day of the offering period to be the date of grant. No particular number of shares is necessary to satisfy this requirement and establish the first day of the offering period as the date of grant for the option. These final regulations adopt § 1.423–2(h)(3) of the proposed regulations to provide that the designation of any maximum number of shares is sufficient to establish the first day of the offering period as the date of grant for the option.

4. Annual $25,000 Limitation

Section 423(b)(8) provides that an employee stock purchase plan must, by its terms, provide that no employee may be permitted to accrue the right to purchase stock under all the employee stock purchase plans of his or her employer corporation and its related corporations at a rate which exceeds $25,000 in fair market value of the stock (determined on the date of grant) for each calendar year in which an option granted to the employee is outstanding. Section 423(b)(8)(A) provides that the right to purchase stock under an option accrues when the option first becomes exercisable.

In drafting the proposed regulations, the Treasury Department and the IRS were aware that taxpayers were interpreting the $25,000 limitation

inconsistently. Certain taxpayers interpreted section 423(b)(8) to mean that the limit increases by $25,000 for each calendar year during which the option is outstanding and exercisable; other taxpayers interpreted the sections to mean that such limit increases for each calendar year during which the option is simply outstanding. Consistent with comments received by the Treasury Department and the IRS in response to Notice 2004–55 (2004–34 IRB 319 (August 23, 2004)), (see § 601.601(d)(2)(ii)(*b*)), the proposed regulations adopted an approach that was generally consistent with the $100,000 limitation for incentive stock options and interpreted section 423(b)(8) to mean that the limit increases by $25,000 for each calendar year during which the option is outstanding and exercisable.

In response to the proposed regulations, several commenters suggested that the Treasury Department and the IRS reconsider the calculation of the $25,000 limitation in section 423(b)(8). Commenters suggested that the regulations adopt an approach that permits an option to accrue at a rate of $25,000 for each calendar year that the option is simply outstanding. Specifically, even though section 423(b)(8)(A) provides that the right to purchase stock actually accrues when the option first becomes exercisable during a calendar year, the first sentence of section 423(b)(8) provides that the limit on accruals is $25,000 ''for each year in which such option is outstanding.'' Upon further consideration and in response to the foregoing comments, these final regulations modify § 1.423–2(i) of the proposed regulations to provide that the limit increases by $25,000 for each calendar year that an option is outstanding. *Example 5* in § 1.423–2(i)(5) of these final regulations has been modified to illustrate this principle.

5. Stockholder Approval Requirements

To qualify as an employee stock purchase plan, section 423(b)(2) requires that the plan be approved by the stockholders of the granting corporation within 12 months before or after the date the plan is adopted. These final regulations clarify that new stockholder approval is required if there is a change in the shares with respect to which options are issued or a change in the granting corporation. In particular, these final regulations clarify that the stockholders of a subsidiary corporation include the parent corporation and any other stockholders of the subsidiary. Accordingly, these final regulations adopt *Example 1(iii)* in § 1.423–2(c)(5) and *Example 1(iii)* in § 1.422–2(b)(6) of the proposed regulations.

One commenter to the proposed regulations suggested that a conforming change be made to *Example 9(iii)* in § 1.424–1(a)(10) which addresses the substitution of options in the context of an acquisition. *Example 9(iii)* in § 1.424–1(a)(10), as previously set forth in the regulations, requires the stockholders of an acquiring company to approve an amendment of the option plan of an acquired corporate subsidiary to issue parent stock instead of subsidiary stock. The commenter proposed that the example be amended to require the acquiring company (instead of its stockholders) to approve the amendment of the option plan to issue parent stock instead of subsidiary stock. This amendment is consistent with *Example 1(iii)* in § 1.423–2(c)(5) and *Example 1(iii)* in § 1.422–2(b)(6) of these final regulations. Accordingly, *Example 9(iii)* in § 1.424–1(a)(10) of these final regulations has been modified to reflect the adoption of the commenter's suggestion.

Effective/Applicability Date

These regulations apply as of January 1, 2010, and will apply to any statutory option granted on or after that date. Taxpayers may rely on these final regulations for the treatment of any statutory option granted prior to January 1, 2010.

Special Analyses

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

Drafting Information

The principal authors of these regulations are Thomas Scholz and Ilya Enkishev, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805.

■ **Par. 2.** Section 1.421–1, paragraphs (c)(1) and (j)(1) are revised to read as follows:

§ 1.421–1 Meaning and use of certain terms.

* * * * *

(c) *Time and date of granting option.* (1) For purposes of this section and §§ 1.421–2 through 1.424–1, the language ''the date of the granting of the option'' and ''the time such option is granted,'' and similar phrases refer to the date or time when the granting corporation completes the corporate action constituting an offer of stock for sale to an individual under the terms and conditions of a statutory option. Except as set forth in § 1.423–2(h)(2), a corporate action constituting an offer of stock for sale is not considered complete until the date on which the maximum number of shares that can be purchased under the option and the minimum option price are fixed or determinable.

* * * * *

(j) *Effective/applicability date*—(1) *In general.* Except for paragraph (c)(1) of this section, the regulations under this section are effective on August 3, 2004. Paragraph (c)(1) of this section is effective on November 17, 2009. Paragraph (c)(1) of this section applies to statutory options granted on or after January 1, 2010.

* * * * *

■ **Par. 3.** Section 1.422–2, paragraph (b)(6), *Example 1* (iii) is revised to read as follows:

§ 1.422–2 Incentive stock options defined.

* * * * *

(b) * * *

(6) * * *

Example 1. * * *

(iii) Assume the same facts as in paragraph (i) of this *Example 1,* except that the plan was adopted on January 1, 2010. Assume further that the plan was approved by the stockholders of S (in this case, P) on March 1, 2010. On January 1, 2012, S changes the plan to provide that incentive stock options for P stock will be granted to S employees

under the plan. Because there is a change in the stock available for grant under the plan, the change is considered the adoption of a new plan that must be approved by the stockholder of S (in this case, P) within 12 months before or after January 1, 2012.

* * * * *

■ **Par. 4.** Section 1.422–5, paragraph (f)(1) is revised to read as follows:

§ 1.422–5 Permissible provisions.

* * * * *

(f) *Effective/applicability date*—(1) *In general.* Except for § 1.422–2(b)(6) *Example 1* (iii), the regulations under this section are effective on August 3, 2004. Section 1.422–2(b)(6) *Example 1* (iii) is effective on November 17, 2009. Section 1.422–2(b)(6) *Example 1* (iii) applies to statutory options granted on or after January 1, 2010.

* * * * *

■ **Par. 5.** Section 1.423–1 is revised to read as follows:

§ 1.423–1 Applicability of section 421(a).

(a) *General rule.* Subject to the provisions of section 423(c) and § 1.423–2(k), the special rules of income tax treatment provided in section 421(a) apply with respect to the transfer of a share of stock to an individual pursuant to the individual's exercise of an option granted under an employee stock purchase plan, as defined in § 1.423–2, if the following conditions are satisfied—

(1) The individual makes no disposition of such share before the later of the expiration of the two-year period from the date of the grant of the option pursuant to which such share was transferred or the expiration of the one-year period from the date of transfer of such share to the individual; and

(2) At all times during the period beginning on the date of the grant of the option and ending on the day three months before the date of exercise, the individual was an employee of the corporation granting the option, a related corporation, or a corporation (or a related corporation) substituting or assuming the stock option in a transaction to which section 424(a) applies.

(b) *Cross-references.* For rules relating to the requisite employment relationship, see § 1.421–1(h). For rules relating to the effect of a disqualifying disposition, see section 421(b) and § 1.421–2(b). For the definition of the term ''disposition,'' see section 424(c) and § 1.424–1(c). For the definition of the term ''related corporation,'' see § 1.421–1(i).

(c) *Effective/applicability date.* The regulations under this section are effective on November 17, 2009. The regulations under this section apply to options granted under an employee stock purchase plan on or after January 1, 2010.

■ **Par. 6.** Section 1.423–2 is revised to read as follows:

§ 1.423–2 Employee stock purchase plan defined.

(a) *In general*—(1) The term ''employee stock purchase'' plan means a plan that meets the requirements of paragraphs (a)(2) and (a)(3) of this section. If the terms of the plan do not satisfy the requirements of paragraph (a)(3) of this section, then such requirements may be satisfied by the terms of an offering made under the plan. However, where the requirements of paragraph (a)(3) of this section are satisfied by the terms of an offering, such requirements will be treated as satisfied only with respect to options exercised under that offering. One or more offerings may be made under an employee stock purchase plan. Offerings may be consecutive or overlapping, and the terms of each offering need not be identical provided the terms of the plan and the offering together satisfy the requirements of paragraphs (a)(2) and (a)(3) of this section. The plan and the terms of an offering must be in writing or electronic form, provided that such writing or electronic form is adequate to establish the terms of the plan or offering, as applicable.

(2) To satisfy the requirements of this paragraph (a)(2) and § 1.423–1, the plan must meet both of the following requirements—

(i) The plan must provide that options can be granted only to employees of the employer corporation or of a related corporation (as defined in paragraph (i) of § 1.421–1) to purchase stock in any such corporation (see paragraph (b) of this section); and

(ii) The plan must be approved by the stockholders of the granting corporation within 12 months before or after the date the plan is adopted (see paragraph (c) of this section).

(3) To satisfy the requirements of this paragraph (a)(3) and § 1.423–1, the terms of the plan or offering must meet all of the following requirements—

(i) An employee cannot be granted an option if, immediately after the option is granted, the employee owns stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the employer corporation or of a related corporation (see paragraph (d) of this section);

(ii) Options must be granted to all employees of any corporation whose employees are granted any options by reason of their employment by the corporation (see paragraph (e) of this section);

(iii) All employees granted options must have the same rights and privileges (see paragraph (f) of this section);

(iv) The option price cannot be less than the lesser of—

(A) An amount equal to 85 percent of the fair market value of the stock at the time the option is granted, or

(B) An amount not less than 85 percent of the fair market value of the stock at the time the option is exercised (see paragraph (g) of this section).

(v) Options cannot be exercised after the expiration of—

(A) Five years from the date the option is granted if, under the terms of such plan, the option price cannot be less than 85 percent of the fair market value of the stock at the time the option is exercised, or

(B) Twenty-seven months from the date the option is granted, if the option price is not determined in the manner described in paragraph (a)(3)(v)(A) of this section (see paragraph (h) of this section).

(vi) No employee may be granted an option that permits the employee's rights to purchase stock under all employee stock purchase plans of the employer corporation and its related corporations to accrue at a rate that exceeds $25,000 of fair market value of the stock (determined at the time the option is granted) for each calendar year in which the option is outstanding at any time (see paragraph (i) of this section); and

(vii) Options are not transferable by the optionee other than by will or the laws of descent and distribution, and are exercisable, during the lifetime of the optionee, only by the optionee (see paragraph (j) of this section).

(4) The determination of whether a particular option is an option granted under an employee stock purchase plan is made at the time the option is granted. If the terms of an option are inconsistent with the terms of the employee stock purchase plan or the offering under the plan pursuant to which the option is granted, the option will not be treated as granted under an employee stock purchase plan. If an option with terms that are inconsistent with the terms of the plan or an offering under the plan is granted to an employee who is entitled to the grant of an option under the terms of the plan or offering, and the employee is not granted an option under the offering that qualifies as an option granted under an employee stock purchase plan, the

offering will not meet the requirements of paragraph (e) of this section. Accordingly, none of the options granted under the offering will be eligible for the special tax treatment of section 421. However, if an option with terms that are inconsistent with the terms of the plan or an offering under the plan is granted to an individual who is not entitled to the grant of an option under the terms of the plan or offering, the option will not be treated as an option granted under an employee stock purchase plan but the grant of the option will not disqualify the options granted under the plan or offering. If, at the time of grant, an option qualifies as an option granted under an employee stock purchase plan, but after the time of grant one or more of the requirements of paragraph (a)(3) of this section is not satisfied with respect to the option, the option will not be treated as granted under an employee stock purchase plan but this failure to comply with the terms of the option will not disqualify the other options granted under the plan or offering.

(5) *Examples.* The following examples illustrate the principles of paragraph (a):

Example 1. Corporation A operates an employee stock purchase plan under which options for A stock are granted to employees of A. The terms of an offering provide that the option price will be 90 percent of the fair market value of A stock on the date of exercise. A grants an option under the offering to Employee Z, an employee of A. The terms of the option provide that the option price will be 85 percent of the fair market value of A stock on the date of exercise. Because the terms of Z's option are inconsistent with the terms of the offering, the option granted to Z will not be treated as an option granted under the employee stock purchase plan. Further, unless Z is granted an option under the offering that qualifies as an option granted under the employee stock purchase plan, the offering will not meet the requirements of paragraph (e) of this section and none of the options granted under the offering will be eligible for the special tax treatment of section 421.

Example 2. Corporation B operates an employee stock purchase plan that provides that options for B stock may only be granted to employees of B. Under the terms of the plan, options may not be granted to consultants and other non-employees. B grants an option to Consultant Y, a consultant of B. Because Y is ineligible to receive an option under the plan because Y is not an employee, the grant of the option to Y is inconsistent with the terms of the plan and the option granted to Y will not be treated as an option granted under the employee stock purchase plan. However, the grant of the option to Y will not disqualify the options granted under the plan or any offering because Y was not entitled to the grant of an option under the plan.

Example 3. Corporation C operates an employee stock purchase plan under which options for C stock are granted to employees of C. C grants an option pursuant to an offering under the plan to Employee X, an employee of C who is a highly compensated employee. The terms of the employee stock purchase plan exclude highly compensated employees from participation in the plan. Because X is ineligible to receive an option under the plan by reason of X's exclusion from participation in the plan, the option granted to X will not be treated as an option granted under the employee stock purchase plan. However, the grant of the option to X will not disqualify the options granted under the plan or offering because X was not entitled to the grant of an option under the plan.

Example 4. Corporation D operates an employee stock purchase plan under which options for D stock are granted to employees of D. D grants an option pursuant to an offering under the plan to Employee W, an employee of D. The terms of the option provide that the option price will be 90 percent of the fair market value of D stock on the date of exercise. On the date of exercise, W pays only 85 percent of the fair market value of D stock. Because the terms of W's option are not satisfied, the option granted to W will not be treated as an option granted under the employee stock purchase plan. However, the failure to comply with the terms of the option granted to W will not disqualify the options granted under the plan or offering.

(b) *Options restricted to employees.* An employee stock purchase plan must provide that options can be granted only to employees of the employer corporation (or employees of its related corporations) to purchase stock in the employer corporation (or one of its related corporations). If such a provision is not included in the terms of the plan, the plan will not be an employee stock purchase plan and options granted under the plan will not qualify for the special tax treatment of section 421. For rules relating to the employment requirement, see § 1.421–1(h).

(c) *Stockholder approval*—(1) An employee stock purchase plan must be approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted. The approval of the stockholders must comply with all applicable provisions of the corporate charter and bylaws and of applicable State law prescribing the method and degree of stockholder approval required for the issuance of corporate stock or options. If the applicable State law does not prescribe a method and degree of stockholder approval, then an employee stock purchase plan must be approved—

(i) By a majority of the votes cast at a duly held stockholder's meeting at which a quorum representing a majority of all outstanding voting stock is, either in person or by proxy, present and voting on the plan; or

(ii) By a method and in a degree that would be treated as adequate under applicable State law in the case of an action requiring stockholder approval (such as, an action on which stockholders would be entitled to vote if the action were taken at a duly held stockholders' meeting).

(2) For purposes of the stockholder approval required by this paragraph (c), ordinarily, a plan is adopted when it is approved by the granting corporation's board of directors, and the date of the board's action is the reference point for determining whether stockholder approval occurs within the applicable 24-month period. However, if the board's action is subject to a condition (such as stockholder approval) or the happening of a particular event, the plan is adopted on the date the condition is met or the event occurs, unless the board's resolution fixes the date of adoption as the date of the board's action.

(3) An employee stock purchase plan, as adopted and approved, must designate the maximum aggregate number of shares that may be issued under the plan, and the corporations or class of corporations whose employees may be offered options under the plan. A plan that merely provides that the number of shares that may be issued under the plan may not exceed a stated percentage of the shares outstanding at the time of each offering or grant under the plan does not satisfy the requirements of this paragraph (c)(3). However, the maximum aggregate number of shares that may be issued under the plan may be stated in terms of a percentage of the authorized, issued, or outstanding shares on the date of the adoption of the plan. The plan may specify that the maximum aggregate number of shares available for grants under the plan may increase annually by a specified percentage of the authorized, issued, or outstanding shares on the date of the adoption of the plan. A plan that provides that the maximum aggregate number of shares that may be issued as options under the plan may change based on any other specific circumstances satisfies the requirements of this paragraph only if the stockholders approve an immediately determinable maximum number of shares that may be issued under the plan in any event. If there is more than one employee stock purchase plan under which options may be granted and stockholders of the granting corporation merely approve a maximum aggregate number of shares that are

available for issuance under the plans, the stockholder approval requirements described in paragraph (c)(1) of this section are not satisfied. A separate maximum aggregate number of shares available for issuance pursuant to options must be specified and approved for each plan.

(4) Once an employee stock purchase plan is approved by the stockholders of the granting corporation, the plan need not be reapproved by the stockholders of the granting corporation unless the plan is amended or changed in a manner that is considered the adoption of a new plan, in which case the plan must be reapproved within the prescribed 24-month period. Any increase in the aggregate number of shares that may be issued under the plan (other than an increase merely reflecting a change in the number of outstanding shares, such as a stock dividend or stock split) will be considered the adoption of a new plan requiring stockholder approval within the prescribed 24-month period. Similarly, a change in the designation of corporations whose employees may be offered options under the plan will be considered the adoption of a new plan requiring stockholder approval within the prescribed 24-month period unless the plan provides that designations of participating corporations may be made from time to time from among a group consisting of the granting corporation and its related corporations. The group from among which such changes and designations are permitted without additional stockholder approval may include corporations having become parents or subsidiaries of the granting corporation after the adoption and approval of the plan. In addition, a change in the granting corporation or the stock available for purchase under the plan will be considered the adoption of a new plan requiring stockholder approval within the prescribed 24-month period. Any other changes in the terms of an employee stock purchase plan are not considered the adoption of a new plan and, thus, do not require stockholder approval.

(5) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. (i) Corporation E is a subsidiary of Corporation F, a publicly traded corporation. On January 1, 2010, E adopts an employee stock purchase plan under which options for E stock are granted to E employees.

(ii) To meet the requirements of paragraph (c)(1) of this section, the plan must be approved by the stockholders of E (in this case, F) within 12 months before or after January 1, 2010.

(iii) Assume the same facts as in paragraph (i) of this *Example 1,* except that the plan was approved by the stockholders of E (in this case, F) on March 1, 2010. On January 1, 2012, E changes the plan to provide that options for F stock will be granted to E employees under the plan. Because there is a change in the stock available for grant under the plan, under paragraph (c)(4) of this section, the change is considered the adoption of a new plan that must be approved by the stockholders of E (in this case, F) within 12 months before or after January 1, 2012.

Example 2. (i) Assume the same facts as in paragraph (i) of *Example 1,* except that on March 15, 2011, F completely disposes of its interest in E. Thereafter, E continues to grant options for E stock to E employees under the plan.

(ii) The new E options are granted under a plan that meets the stockholder approval requirements of paragraph (c)(1) of this section without regard to whether E seeks approval of the plan from the stockholders of E after F disposes of its interest in E.

(iii) Assume the same facts as in paragraph (i) of this *Example 2,* except that under the plan as adopted on January 1, 2010, only options for F stock are granted to E employees. Assume further that, after F disposes of its interest in E, E changes the plan to provide for the grant of options for E stock to E employees. Because there is a change in the stock available for purchase or grant under the plan, under paragraph (c)(4) of this section, the stockholders of E must approve the plan within 12 months before or after the change to the plan to meet the stockholder approval requirements of paragraph (c) of this section.

Example 3. (i) Corporation G maintains an employee stock purchase plan providing options for G stock. Corporation H does not maintain an employee stock purchase plan. On May 15, 2010, G and H consolidate under State law to form one corporation. The new corporation is named Corporation H. The consolidation agreement describes the G plan, including the maximum aggregate number of shares available for issuance under the plan after the consolidation. Additionally, the consolidation agreement states that the plan will be continued by H after the consolidation. The consolidation agreement is approved by the stockholders of G and H on May 1, 2010. H assumes the plan formerly maintained by G and continues to grant options under the plan to all eligible employees, but the options are for H stock.

(ii) Because there is a change in the granting corporation (from G to H) and the stock available for purchase, under paragraph (c)(4) of this section, H is considered to have adopted a new plan. Because the plan is fully described in the consolidation agreement, including the maximum aggregate number of shares available for issuance under the plan, the approval of the consolidation agreement by the stockholders constitutes approval of the plan. Thus, the stockholder approval of the consolidation agreement satisfies the stockholder approval requirements of paragraph (c)(1) of this section, and the plan is considered to be adopted by H and approved by its stockholders on May 1, 2010.

Example 4. Corporation I adopts an employee stock purchase plan on November 1, 2010. On that date, there are two million shares of I stock outstanding. The plan provides that the maximum aggregate number of shares that may be issued under the plan may not exceed 15 percent of the number of shares of I stock outstanding on November 1, 2010. Because the maximum aggregate number of shares that may be issued under the plan is designated in the plan, the requirements of paragraph (c)(3) of this section are met.

Example 5. (i) Corporation J adopts an employee stock purchase plan on March 15, 2010. The plan provides that the maximum aggregate number of shares of J stock available for issuance under the plan is 50,000, increased on each anniversary date of the adoption of the plan by 5 percent of the then outstanding shares. Because the maximum aggregate number of shares is not designated under the plan, the requirements of paragraph (c)(3) of this section are not met.

(ii) Assume the same facts as in paragraph (i) of this *Example 5,* except that the plan provides that the maximum aggregate number of shares available under the plan is the lesser of (a) 50,000 shares, increased each anniversary date of the adoption of the plan by 5 percent of the then-outstanding shares, or (b) 200,000 shares. Because the maximum aggregate number of shares that may be issued under the plan is designated as the lesser of two numbers, one of which provides an immediately determinable maximum aggregate number of shares that may be issued under the plan in any event, the requirements of paragraph (c)(3) of this section are met.

(d) *Options granted to certain shareholders*—(1) An employee stock purchase plan or offering must, by its terms, provide that an employee cannot be granted an option if the employee, immediately after the option is granted, owns stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the employer corporation or a related corporation. In determining whether the stock ownership of an employee equals or exceeds this 5 percent limit, the rules of section 424(d) (relating to attribution of stock ownership) shall apply, and stock that the employee may purchase under outstanding options (whether or not the options qualify for the special tax treatment afforded by section 421(a)) shall be treated as stock owned by the employee. An option is outstanding for purposes of this paragraph (d) although under its terms it may be exercised only in installments or after the expiration of a fixed period of time. If an option is granted to an employee whose stock ownership (as determined under this paragraph (d)) exceeds the limitation set forth in this paragraph (d), no portion of the option will be treated as having been granted under an employee stock purchase plan.

(2) The determination of the percentage of the total combined voting power or value of all classes of stock of the employer corporation (or a related corporation) that is owned by the employee is made by comparing the voting power or value of the shares owned (or treated as owned) by the employee to the aggregate voting power or value of all shares actually issued and outstanding immediately after the grant of the option to the employee. The aggregate voting power or value of all shares actually issued and outstanding immediately after the grant of the option does not include the voting power or value of treasury shares or shares authorized for issue under outstanding options held by the employee or any other person.

(3) *Examples.* The following examples illustrate the principles this paragraph (d):

Example 1. Employee V, an employee of Corporation K, owns 6,000 shares of K common stock, the only class of K stock outstanding. K has 100,000 shares of its common stock outstanding. Because V owns 6 percent of the combined voting power or value of all classes of K stock, K cannot grant an option to V under K's employee stock purchase plan. If V's father and brother each owned 3,000 shares of K stock and V did not own any K stock, then the result would be the same because, under section 424(d), an individual is treated as owning stock held by the person's father and brother. Similarly, the result would be the same if, instead of actually owning 6,000 shares, V merely held an option on 6,000 shares of K stock, irrespective of whether the transfer of stock under the option could qualify for the special tax treatment of section 421, because this paragraph (d) provides that stock the employee may purchase under outstanding options is treated as stock owned by such employee.

Example 2. Assume the same facts as in *Example 1,* except that K is a 50 percent subsidiary corporation of Corporation L. Irrespective of whether V owns any L stock, V cannot receive an option from L under L's employee stock purchase plan because he owns 5 percent of the total combined voting power of all classes of stock of a subsidiary of L, in this example, K. An employee who owns (or is treated as owning) stock in excess of the limitation of this paragraph (d), in any corporation in a group of related corporations, consisting of a parent and its subsidiary corporations, cannot receive an option under an employee stock purchase plan from any corporation in the group.

Example 3. Employee U is an employee of Corporation M. M has only one class of stock, of which 100,000 shares are issued and outstanding. Assuming U does not own (and is not treated as owning) any stock in M or in any related corporation of M, M may grant an option to U under its employee stock purchase plan for 4,999 shares, because immediately after the grant of the option, U would not own 5 percent or more of the combined voting power or value of all classes of M stock actually issued and outstanding at such time. The 4,999 shares that U would be treated as owning under this paragraph (d) would not be added to the 100,000 shares actually issued and outstanding immediately after the grant for purposes of determining whether U's stock ownership exceeds the limitation of this paragraph (d).

Example 4. Assume the same facts as in *Example 3* but instead of an option for 4,999 shares, M grants U an option, purportedly under its employee stock purchase plan, for 5,000 shares. No portion of this option will be treated as granted under an employee stock purchase plan because U's stock ownership exceeds the limitation of this paragraph (d).

(e) *Employees covered by plan*—(1) Subject to the provisions of this paragraph (e) and the limitations of paragraphs (d), (f) and (i) of this section, an employee stock purchase plan or offering must, by its terms, provide that options are to be granted to all employees of any corporation whose employees are granted any of such options by reason of their employment by that corporation, except that one or more of the following categories of employees may be excluded from the coverage of the plan or offering—

(i) Employees who have been employed less than two years;

(ii) Employees whose customary employment is 20 hours or less per week;

(iii) Employees whose customary employment is for not more than five months in any calendar year; and

(iv) Highly compensated employees (within the meaning of section 414(q)).

(2) A plan or offering does not fail to satisfy the coverage provision of paragraph (e)(1) of this section in the following circumstances—

(i) The plan or offering excludes employees who have completed a shorter period of service or whose customary employment is for fewer hours per week or fewer months in a calendar year than is specified in paragraphs (e)(1)(i), (ii) and (iii) of this section, provided the exclusion is applied in an identical manner to all employees of every corporation whose employees are granted options under the plan or offering.

(ii) The plan or offering excludes highly compensated employees (within the meaning of section 414(q)) with compensation above a certain level or who are officers or subject to the disclosure requirements of section 16(a) of the Securities Exchange Act of 1934, provided the exclusion is applied in an identical manner to all highly compensated employees of every corporation whose employees are granted options under the plan or offering.

(3) Notwithstanding paragraph (e)(1) of this section, employees who are citizens or residents of a foreign jurisdiction (without regard to whether they are also citizens of the United States or resident aliens (within the meaning of section 7701(b)(1)(A))) may be excluded from the coverage of an employee stock purchase plan or offering under the following circumstances—

(i) The grant of an option under the plan or offering to a citizen or resident of the foreign jurisdiction is prohibited under the laws of such jurisdiction; or

(ii) Compliance with the laws of the foreign jurisdiction would cause the plan or offering to violate the requirements of section 423.

(4) No option granted under a plan or offering that excludes from participation any employees, other than those who may be excluded under this paragraph (e), and those barred from participation by reason of paragraphs (d), (f) and (i) of this section, can be regarded as having been granted under an employee stock purchase plan. If an option is not granted to any employee who is entitled to the grant of an option under the terms of the plan or offering, none of the options granted under such offering will be treated as having been granted under an employee stock purchase plan. However, a plan that, by its terms, permits all eligible employees to elect to participate in an offering will not violate the requirements of this paragraph solely because eligible employees who elect not to participate in the offering are not granted options pursuant to such offering.

(5) For purposes of this paragraph (e), the existence of the employment relationship between an individual and the corporation participating under the plan will be determined under § 1.421–1(h).

(6) *Examples.* The following examples illustrate the principles of this paragraph (e):

Example 1. Corporation N has a stock purchase plan that meets all the requirements of paragraphs (a)(2) and (a)(3) of this section except that options are not required to be granted to employees whose weekly rate of pay is less than $1,000. As a matter of corporate practice, however, N grants options under its plan to all employees, irrespective of their weekly rate of pay. Even though N's plan is operated in compliance with the requirements of this paragraph (e), N's plan is not an employee stock purchase plan because the terms of the plan exclude a category of employees that is not permitted under this paragraph (e).

Example 2. Assume the same facts as in *Example 1,* except that the first offering under N's plan provides that options will be granted to all employees of N. The terms of

the first offering will be treated as part of the terms of N's plan, but only for purposes of the first offering. Because the terms of the first offering satisfy the requirements of this paragraph (e), stock transferred pursuant to options exercised under the first offering will be treated as stock transferred pursuant to the exercise of options granted under an employee stock purchase plan for purposes of section 421.

Example 3. Corporation O has a stock purchase plan that excludes from participation all employees who have been employed less than one year. Assuming all other requirements of paragraphs (a)(2) and (a)(3) of this section are satisfied, O's plan qualifies as an employee stock purchase plan under section 423.

Example 4. Corporation P has a stock purchase plan that excludes from participation clerical employees who have been employed less than two years. However, non-clerical employees with less than two years of service are permitted to participate in the plan. P's plan is not an employee stock purchase plan because the exclusion of employees who have been employed less than two years applies only to certain employees of P and is not applied in an identical manner to all employees of P. If, instead, P's plan excludes from participation all employees (both clerical and non-clerical) who have been employed less than two years, then P's plan would qualify as an employee stock purchase plan under section 423 assuming all other requirements of paragraphs (a)(2) and (a)(3) of this section are satisfied.

Example 5. Corporation Q has a stock purchase plan that excludes from participation all officers who are highly compensated employees (within the meaning of section 414(q)). Assuming all other requirements of paragraphs (a)(2) and (a)(3) of this section are satisfied, Q's plan qualifies as an employee stock purchase plan under section 423.

Example 6. Corporation R maintains an employee stock purchase plan that excludes from participation all highly compensated employees (within the meaning of section 414(q)), except highly compensated employees who are officers of R. R's plan is not an employee stock purchase plan because the exclusion of all highly compensated employees except highly compensated employees who are officers of R is not a permissible exclusion under paragraph (e)(2)(ii) of this section.

Example 7. Corporation S is the parent corporation of Subsidiary YY and Subsidiary ZZ. S maintains an employee stock purchase plan with both YY and ZZ participating in the same offering under the plan. Under the terms of the offering under the plan, all employees of YY and ZZ are permitted to participate in the plan with the exception of ZZ's highly compensated employees with annual compensation greater than $300,000. None of the options granted under the offering will be considered granted under an employee stock purchase plan because the exclusion of highly compensated employees with annual compensation greater than $300,000 is not applied in an identical manner to all employees of YY and ZZ granted options in the same offering.

Example 8. Assume the same facts as in *Example 7,* except that Corporation S establishes separate offerings under the plan for YY and ZZ. Under the terms of the separate offering for YY, all employees of YY are permitted to participate in the plan. Under the terms of the separate offering established for ZZ, all employees of ZZ are permitted to participate in the plan with the exception of ZZ's highly compensated employees with annual compensation greater than $300,000. The options granted under the separate offering for YY will be considered granted under an employee stock purchase plan. Further, the options granted under the separate offering for ZZ will be considered granted under an employee stock purchase plan because the exclusion of highly compensated employees with annual compensation greater than $300,000 is applied in an identical manner to all employees of ZZ granted options in the same offering.

Example 9. The laws of Country A require that options granted to residents of Country A be transferable during the lifetime of the option recipient. Corporation T has a stock purchase plan that excludes residents of Country A from participation in the plan. Because compliance with the laws of Country A would cause options granted to residents of Country A to violate paragraph (j) of this section, T may exclude residents of Country A from participation in the plan. Assuming all other requirements of paragraph (a)(2) of this section are satisfied, T's plan qualifies as an employee stock purchase plan under section 423.

(f) *Equal rights and privileges*—(1) Except as otherwise provided in paragraphs (f)(2) through (f)(6) of this section, an employee stock purchase plan or offering must, by its terms, provide that all employees granted options under the plan or offering shall have the same rights and privileges. Thus, the provisions applying to one option under an offering (such as the provisions relating to the method of payment for the stock and the determination of the purchase price per share) must apply to all other options under the offering in the same manner. If all the options granted under a plan or offering do not, by their terms, give the respective optionees the same rights and privileges, none of the options will be treated as having been granted under an employee stock purchase plan for purposes of section 421.

(2) The requirements of this paragraph (f) do not prevent the maximum amount of stock that an employee may purchase from being determined on the basis of a uniform relationship to the total compensation, or the basic or regular rate of compensation, of all employees.

(3) A plan or offering will not fail to satisfy the requirements of this paragraph (f) because the plan or offering provides that no employee may purchase more than a maximum amount of stock fixed under the plan or offering.

(4) A plan or offering will not fail to satisfy the requirements of this paragraph (f) if, in order to comply with the laws of a foreign jurisdiction, the terms of an option granted under a plan or offering to citizens or residents of such foreign jurisdiction (without regard to whether they are also citizens of the United States or resident aliens (within the meaning of section 7701(b)(1)(A))) are less favorable than the terms of options granted under the same plan or offering to employees resident in the United States.

(5)(i) Except as provided in this paragraph and paragraph (f)(5)(ii) of this section, a plan or offering permitting one or more employees to carry forward amounts that were withheld but not applied toward the purchase of stock under an earlier plan or offering and apply the amounts towards the purchase of additional stock under a subsequent plan or offering will be a violation of the equal rights and privileges under paragraph (f)(1) of this section. However, the carry forward of amounts withheld but not applied toward the purchase of stock under an earlier plan or offering will not violate the equal rights and privileges requirement of paragraph (f)(1) of this section, if all other employees participating in the current plan or offering are permitted to make direct payments toward the purchase of shares under a subsequent plan or offering in an amount equal to the excess of the greatest amount which any employee is allowed to carry forward from an earlier plan or offering over the amount, if any, the employee will carry forward from an earlier plan or offering.

(ii) A plan or offering will not fail to satisfy the requirements of this section merely because employees are permitted to carry forward amounts representing a fractional share, that were withheld but not applied toward the purchase of stock under an earlier plan or offering and apply the amounts toward the purchase of additional stock under a subsequent plan or offering.

(6) Paragraph (f) does not prohibit the delaying of the grant of an option to any employee who is barred from being granted an option solely by reason of the employee's failing to meet a minimum service requirement set forth in paragraph (e)(1) of this section until the employee meets such requirement.

(7) *Examples.* The following examples illustrate the principles of this paragraph (f):

Example 1. Corporation U has an employee stock purchase plan that provides

that the maximum amount of stock that each employee may purchase under the offering is one share for each $100 of annual gross pay. The plan meets the requirements of this paragraph (f).

Example 2. Corporation V has an employee stock purchase plan that provides that the maximum amount of stock that each employee may purchase under the offering is one share for each $100 of annual gross pay up to and including $10,000, and two shares for each $100 of annual gross pay in excess of $10,000. The plan will not meet the requirements of this paragraph (f) because the amount of stock that may be purchased under the plan is not based on a uniform relationship to the total compensation of all employees.

Example 3. Corporation W has an employee stock purchase plan that provides that options to purchase stock in an amount equal to ten percent of an employee's annual salary at a price equal to 85 percent of the fair market value on the first day of the offering will be granted to all employees other than those who have been employed less than 18 months. In addition, the plan provides that employees who have not yet met the minimum service requirements on the first day of the offering will be granted similar options on the date the 18 month service requirement has been attained. The plan meets the requirements of this paragraph (f).

Example 4. Corporation X is the parent corporation of Subsidiary AA, Subsidiary BB and Subsidiary CC. X maintains an employee stock purchase plan with AA, BB and CC participating in the same offering under the plan. Under the terms of the offering under the plan, options to purchase stock at a price equal to 90 percent of the fair market value at the time the option is exercised will be granted to all employees. Certain employees of AA are residents of Country B. The laws of Country B provide that options granted to employees who are residents of Country B must have a purchase price not less than 95 percent of the fair market value at the time the option is exercised. The plan will not fail to satisfy the requirements of this paragraph (f) merely because the residents of Country B are granted options under the plan to purchase stock at a price equal to 95 percent of the fair market value at the time the option is exercised.

Example 5. Assume the same facts as in *Example 4,* except that Corporation X establishes two separate offerings under the plan: A separate offering for the employees of AA and a separate offering for the employees of BB and CC. Under the separate offering for the employees of BB and CC, options are granted to all employees with an exercise price equal to 90 percent of the fair market value at the time the option is exercised. Under the separate offering for the employees of AA, options are granted to all employees with an exercise price equal to 95 percent of the fair market value at the time the option is exercised. The plan does not violate the equal rights and privileges requirement of this paragraph (f) merely because the exercise price of options granted under one offering is less than the exercise price of options granted under a separate offering.

Example 6. Corporation Y maintains an employee stock purchase plan. Employee T is employed by Y. T is granted an option under the current offering to purchase a maximum of 100 shares of Y stock at an option price equal to 85 percent of the fair market value of the stock at exercise. The plan permits the carry forward of withheld but unused amounts from an earlier offering. Prior to the exercise date, $2000 of T's salary has been withheld and is available to be applied toward the purchase of Y stock. On the exercise date, the fair market value of Y stock is $20 per share. T is able to purchase 100 shares of Y stock at $17 per share for an aggregate purchase price of $1700. T can carry forward $300 to the subsequent offering. Each employee in the subsequent offering other than T will be permitted to make direct payments toward the purchase of shares under the subsequent offering in a maximum amount of $300 less any amount the employee has carried forward from an earlier offering. The plan does not violate the equal rights and privileges requirement of this paragraph (f).

(g) *Option price*—(1) An employee stock purchase plan or offering must, by its terms, provide that the option price will not be less than the lesser of—

(i) An amount equal to 85 percent of the fair market value of the stock at the time the option is granted, or

(ii) An amount that under the terms of the option may not be less than 85 percent of the fair market value of the stock at the time the option is exercised.

(2) For purposes of determining the option price, the fair market value of the stock may be determined in any reasonable manner, including the valuation methods permitted under § 20.2031–2. However, the option price must meet the minimum pricing requirements of this paragraph (g). For general rules relating to the option price, see § 1.421–1(e). For rules relating to the determination of when an option is granted, *see* §§ 1.421–1(c) and 1.423–2(h)(2). Any option that does not meet the minimum pricing requirements of this paragraph (g) will not be treated as an option granted under an employee stock purchase plan irrespective of whether the plan or offering satisfies those requirements. If an option that does not meet the minimum pricing requirements is granted to an employee who is entitled to the grant of an option under the terms of the plan or offering, and the employee is not granted an option under such offering that qualifies as an option granted under an employee stock purchase plan, the offering will not meet the requirements of paragraph (e) of this section. Accordingly, none of the options granted under the offering will be eligible for the special tax treatment of section 421.

(3) The option price may be stated either as a percentage or as a dollar amount. If the option price is stated as a dollar amount, then the requirement of this paragraph (g) can only be met by a plan or offering in which the price is fixed at not less than 85 percent of the fair market value of the stock at the time the option is granted. If the fixed price is less than 85 percent of the fair market value of the stock at grant, then the option cannot meet the requirement of this paragraph (g) even if a decline in the fair market value of the stock results in such fixed price being not less than 85 percent of the fair market value of the stock at the time the option is exercised, because that result was not certain to occur under the terms of the option.

(4) *Examples.* The following examples illustrate the principles of this paragraph (g):

Example 1. Corporation Z has an employee stock purchase plan that provides that the option price will be 85 percent of the fair market value of the stock on the first day of the offering (which is the date of grant in this case), or 85 percent of the fair market value of the stock at exercise, whichever amount is the lesser. Upon the exercise of an option issued under Z's plan, Z agrees to accept an option price that is less than the minimum amount allowable under the terms of such plan. Notwithstanding that the option was issued under an employee stock purchase plan, the transfer of stock pursuant to the exercise of such option does not satisfy the requirement of this paragraph (g) and cannot qualify for the special tax treatment of section 421.

Example 2. Corporation AA has an employee stock purchase plan that provides that the option price is set at 85 percent of the fair market value of AA stock at exercise, but not less than $80 per share. On the first day of the offering (which is the date of grant in this case), the fair market value of AA stock is $100 per share. The option satisfies the requirement of this paragraph (g), and can qualify for the special tax treatment of section 421.

Example 3. Assume the same facts as in *Example 2,* except that the option price is set at 85 percent of the fair market value of AA stock at exercise, but not more than $80 per share. This option cannot satisfy the requirement of this paragraph (g) irrespective of whether, at the time the option is exercised, 85 percent of the fair market value of AA stock is $80 or less.

(h) *Option period*—(1) An employee stock purchase plan or offering must, by its terms, provide that options granted under the plan cannot be exercised after the expiration of 27 months from the date of grant unless, under the terms of the plan or offering, the option price is not less than 85 percent of the fair market value of the stock at the time of the exercise of the option. If the option price is not less than 85 percent of the fair market value of the stock at the time the option is exercised, then the option period provided under the plan must

not exceed five years from the date of grant. If the requirements of this paragraph (h) are not met by the terms of the plan or offering, then options issued under such plan or offering will not be treated as options granted under an employee stock purchase plan irrespective of whether the options, by their terms, are exercisable beyond the period allowable under this paragraph (h). An option that provides that the option price is not less than 85 percent of the fair market value of the stock at exercise may have an option period of 5 years irrespective of whether the fair market value of the stock at exercise is more or less than the fair market value of the stock at grant. However, if the option provides that the option price is 85 percent of the fair market value of the stock at exercise, but not more than some other fixed amount determined in accordance with the provisions of paragraph (g) of this section, then irrespective of the price paid on exercise, the option period must not be more than 27 months.

(2) Section 1.421–1(c) provides that, for purposes of §§ 1.421–1 through 1.424–1, the language ''the date of the granting of the option'' and the ''time such option is granted,'' and similar phrases refer to the date or time when the granting corporation completes the corporate action constituting an offer of stock for sale to an individual under the terms and conditions of a statutory option. With respect to options granted under an employee stock purchase plan, the principles of § 1.421–1(c) shall be applied without regard to the requirement that the minimum option price must be fixed or determinable in order for the corporate action constituting an offer of stock to be considered complete.

(3) The date of grant will be the first day of an offering if the terms of an employee stock purchase plan or offering designate a maximum number of shares that may be purchased by each employee during the offering. Similarly, the date of grant will be the first day of an offering if the terms of the plan or offering require the application of a formula to establish, on the first day of the offering, the maximum number of shares that may be purchased by each employee during the offering. It is not required that an employee stock purchase plan or offering designate a maximum number of shares that may be purchased by each employee during the offering or incorporate a formula to establish a maximum number of shares that may be purchased by each employee during the offering. If the maximum number of shares that can be purchased under an option is not fixed or determinable until the date the option is exercised, then the date of exercise will be the date of grant of the option.

(4) *Examples.* The following examples illustrate the principles of this paragraph (h):

Example 1. (i) Corporation BB has an employee stock purchase plan that provides that the option price will be the lesser of 85 percent of the fair market value of the stock on the first day of an offering or 85 percent of the fair market value of the stock on the last day of the offering. Options are exercised on the last day of the offering. One million shares of BB stock are reserved for issuance under the plan. The plan provides that no employee may be permitted to purchase stock under the plan at a rate that exceeds $25,000 in fair market value of the BB stock (determined on the date of grant) for each calendar year during which an option granted to the employee is outstanding. The terms of each option granted under an offering provide that a maximum of 500 shares may be purchased by the option recipient during the offering. Because the maximum number of shares that can be purchased under the option is fixed and determinable on the first day of the offering, the date of grant for the option is the first day of the offering.

(ii) Assume the same facts as in paragraph (i) of *Example 1,* except that BB's plan excludes all employees who have been employed less than 18 months. The plan provides that employees who have not yet met the minimum service requirements on the first day of an offering will be granted an option on the date the 18-month service requirement has been attained. With respect to those employees who have been employed less than 18 months on the first day of an offering, the date of grant for the option is the date the 18-month service requirement has been attained.

Example 2. Assume the same facts as in paragraph (i) of *Example 1,* except that the terms of each option granted do not provide that a maximum of 500 shares may be purchased by the option recipient during the offering. Notwithstanding the fixed number of shares reserved for issuance under the plan and the $25,000 limitation set forth in the plan, the maximum number of shares that can be purchased under the option is not fixed or determinable until the last day of the offering when the option is exercised. Therefore the date of grant for the option is the last day of the offering when the option is exercised.

Example 3. Corporation CC has an employee stock purchase plan that provides that the option price will be 85 percent of the fair market value of the stock on the last day of the offering. Options are exercised on the last day of the offering. Each offering under the plan begins on January 1 and ends on December 31 of the same calendar year. The terms of each option granted under an offering provide that the maximum number of shares that may be purchased by any employee during the offering equals $25,000 divided by the fair market value of the stock on the first day of the offering. The maximum number of shares that can be purchased under the option is fixed and determinable on the first day of the offering and therefore the date of grant for the option is the first day of the offering.

Example 4. Assume the same facts as in *Example 3* except that the terms of each option granted under an offering provide that the maximum number of shares that may be purchased by any employee during the offering equals 10 percent of the employee's annual salary (determined as of January 1 of the year in which the offering commences) divided by the fair market value of the stock on the first day of the offering. The maximum number of shares that can be purchased under the option is fixed and determinable on the first day of the offering and therefore the date of grant for the option is the first day of the offering.

(i) *Annual $25,000 limitation*—(1) An employee stock purchase plan or offering must, by its terms, provide that no employee may be permitted to purchase stock under all the employee stock purchase plans of the employer corporation and its related corporations at a rate that exceeds $25,000 in fair market value of the stock (determined at the time the option is granted) for each calendar year in which any option granted to the employee is outstanding at any time. In applying the foregoing limitation—

(i) The right to purchase stock under an option accrues when the option (or any portion thereof) first becomes exercisable during the calendar year;

(ii) The right to purchase stock under an option accrues at the rate provided in the option, but in no case may such rate exceed $25,000 of fair market value of such stock (determined at the time such option is granted) for any one calendar year; and

(iii) A right to purchase stock that has accrued under one option granted pursuant to the plan may not be carried over to any other option.

(2) If an option is granted under an employee stock purchase plan that satisfies the requirement of this paragraph (i), but the option gives the optionee the right to buy stock in excess of the maximum rate allowable under this paragraph (i), then no portion of the option will be treated as having been granted under an employee stock purchase plan. Furthermore, if the option was granted to an employee entitled to the grant of an option under the terms of the plan or offering, and the employee is not granted an option under the offering that qualifies as an option granted under an employee stock purchase plan, then the offering will not meet the requirements of paragraph (e) of this section. Accordingly, none of the options granted under the offering will be eligible for the special tax treatment of section 421.

(3) The limitation of this paragraph (i) applies only to options granted under employee stock purchase plans and does not limit the amount of stock that an employee may purchase under incentive stock options (as defined in section 422(b)) or any other stock options except those to which section 423 applies. Stock purchased under options to which section 423 does not apply will not limit the amount that an employee may purchase under an employee stock purchase plan, except for purposes of the 5-percent stock ownership provision of paragraph (d) of this section.

(4) Under the limitation of this paragraph (i), an employee may purchase up to $25,000 of stock (based on the fair market value of the stock at the time the option was granted) in each calendar year during which an option granted to the employee under an employee stock purchase plan is outstanding. Alternatively, an employee may purchase more than $25,000 of stock (based on the fair market value of such stock at the time the option was granted) in a calendar year, so long as the total amount of stock that the employee purchases does not exceed $25,000 in fair market value of the stock (determined at the time the option was granted) for each calendar year in which any option was outstanding. If, in any calendar year, the employee holds two or more outstanding options granted under employee stock purchase plans of the employer corporation, or a related corporation, then the employee's purchases of stock attributable to that year under all options granted under employee stock purchase plans must not exceed $25,000 in fair market value of the stock (determined at the time the options were granted). Under an employee stock purchase plan, an employee may not purchase stock in anticipation that the option will be outstanding in some future year. Thus, the employee may purchase only the amount of stock that does not exceed the limitation of this paragraph (i) for the year of the purchase and for preceding years during which the option was outstanding. Thus, the amount of stock that may be purchased under an option depends on the number of years in which the option is actually outstanding. The amount of stock that may be purchased under an employee stock purchase plan may not be increased by reason of the failure to grant an option in an earlier year under such plan, or by reason of the failure to exercise an earlier option. For example, if an option is granted to an individual and expires without having been exercised at all, then the failure to exercise the option does not increase the amount of stock which such individual may be permitted to purchase under an option granted in a year following the year of such expiration. If an option granted under an employee stock purchase plan is outstanding in more than one calendar year, then stock purchased pursuant to the exercise of such an option will be applied first, to the extent allowable under this paragraph (i), against the $25,000 limitation for the earliest year in which the option was outstanding, then, against the $25,000 limitation for each succeeding year, in order.

(5) *Examples.* The following examples illustrate the principles of this paragraph (i):

Example 1. Assume that Corporation DD maintains an employee stock purchase plan and that Employee S is employed by DD. On June 1, 2010, DD grants S an option under the plan to purchase a total of 750 shares of DD stock at $85 per share. On that date, the fair market value of DD stock is $100 per share. The option provides that it may be exercised at any time but cannot be exercised after May 31, 2012. Under this paragraph (i), the option must not permit S to purchase more than 250 shares of DD stock during the calendar year 2010, because 250 shares are equal to $25,000 in fair market value of DD stock determined at the time of grant. During the calendar year 2011, S may purchase under the option an amount of DD stock equal to the difference between $50,000 in fair market value of DD stock (determined at the time the option was granted) and the fair market value of DD stock (determined at the time of grant of the option) purchased during the year 2010. During the calendar year 2012, S may purchase an amount of DD stock equal to the difference between $75,000 in fair market value of the stock (determined at the time of grant of the option) and the total amount of the fair market value of the stock (determined at the time of grant of the option) purchased under the option during the calendar years 2010 and 2011. S may purchase $25,000 of stock for the year 2010, and $25,000 of stock for the year 2012, although the option was outstanding for only a part of each of such years. However, S may not be granted another option under an employee stock purchase plan of DD or a related corporation to purchase stock of DD or a related corporation during the calendar years 2010, 2011, and 2012, so long as the option granted June 1, 2010, is outstanding.

Example 2. Assume the same facts as in *Example 1,* except that the option granted to S in 2010 is terminated in 2011 without any part of the option having been exercised, and that subsequent to the termination and during 2011, S is granted another option under DD's employee stock purchase plan. Under that option, S may be permitted to purchase $25,000 of stock for 2011. The failure of S to exercise the option granted to S in 2010, does not increase the amount of stock that S may be permitted to purchase under the option granted to S in 2011.

Example 3. Assume the same facts as in *Example 1,* except that, on May 31, 2012, S exercised the option granted to S in 2010, and purchased 600 shares of DD stock. Five hundred shares, the maximum amount of stock that could have been purchased in 2011, under the option, are treated as having been purchased for the years 2010 and 2011. Only 100 shares of the stock are treated as having been purchased for 2012. After S's exercise of the option on May 31, 2012, S is granted another option under DD's employee stock purchase plan. S may be permitted under the new option to purchase for 2012 stock having a fair market value of no more than $15,000 at the time the new option is granted.

Example 4. Corporation EE maintains an employee stock purchase plan and Employee R is employed by EE. On August 1, 2010, EE grants R an option under the plan to purchase 150 shares of EE stock at $85 per share during each of the calendar years 2010, 2011, and 2012. On that date, the fair market value of EE stock is $100 per share. The option provides that it may be exercised at any time during years 2010, 2011, and 2012. Because this option permits R to purchase only $15,000 of EE's stock for each year the option is outstanding, R could be granted another option by EE, or by a related corporation, in year 2010, permitting R to purchase an additional $10,000 of stock during each of the calendar years 2010, 2011, and 2012.

Example 5. Corporation FF maintains an employee stock purchase plan and Employee Q is employed by FF. On September 1, 2010, FF grants Q an option under the plan that will be automatically exercised on August 31, 2011, and August 31, 2012. The terms of the option provide that no more than 150 shares may be purchased on each date that the option is automatically exercised. On August 31, 2011, Q may purchase under the option an amount of FF stock equal to $50,000 in fair market value of FF stock (determined at the time the option was granted). On August 31, 2012, Q may purchase under the option an amount of FF stock equal to the difference between $75,000 in fair market value of Q stock (determined at the time the option was granted) and the fair market value of Q stock (determined at the time of grant of the option) purchased during year 2011.

(j) *Restriction on transferability.* An employee stock purchase plan or offering must, by its terms, provide that options granted under the plan are not transferable by the optionee other than by will or the laws of descent and distribution, and must be exercisable, during the optionee's lifetime, only by the optionee. For general rules relating to the restriction on transferability required by this paragraph (j), *see* § 1.421–1(b)(2). For a limited exception to the requirement of this paragraph (j), see section 424(h)(3).

(k) *Special rule where option price is between 85 percent and 100 percent of value of stock*—(1)(i) If all the conditions necessary for the application of section 421(a) exist, this paragraph (k)

provides additional rules that are applicable in cases where, at the time the option is granted, the option price per share is less than 100 percent (but not less than 85 percent) of the fair market value of the share. In that case, upon the disposition of the share by the employee after the expiration of the two-year and the one-year holding periods, or upon the employee's death while owning the share (whether occurring before or after the expiration of such periods), there shall be included in the employee's gross income as compensation (and not as gain upon the sale or exchange of a capital asset) the lesser of—

(A) The amount, if any, by which the price paid under the option was exceeded by the fair market value of the share at the time the option was granted, or

(B) The amount, if any, by which the price paid under the option was exceeded by the fair market value of the share at the time of such disposition or death.

(ii) For purposes of applying the rules of this paragraph (k), if the option price is not fixed or determinable at the time the option is granted, the option price will be computed as if the option had been exercised at such time. The amount of compensation resulting from the application of this paragraph (k) shall be included in the employee's gross income for the taxable year in which the disposition occurs, or for the taxable year closing with the employee's death, whichever event results in the application of this paragraph (k).

(iii) The application of the special rules provided in this paragraph (k) shall not affect the rules provided in section 421(a) with respect to the employee exercising the option, the employer corporation, or a related corporation. Thus, notwithstanding the inclusion of an amount as compensation in the gross income of an employee, as provided in this paragraph (k), no income results to the employee at the time the stock is transferred to the employee, and no deduction under section 162 is allowable at any time to the employer corporation or a related corporation with respect to such amount.

(iv) If, during the employee's lifetime, the employee exercises an option granted under an employee stock purchase plan, but the employee dies before the stock is transferred to the employee pursuant to the exercise of the option, then for the purpose of sections 421 and 423, on the employee's death, the stock is deemed to be transferred immediately to the employee, and immediately thereafter, the employee is deemed to have transferred the stock to the employee's executor, administrator, trustee, beneficiary by operation of law, heir, or legatee, as the case may be.

(2) If the special rules provided in this paragraph (k) are applicable to the disposition of a share of stock by an employee, then the basis of the share in the employee's hands at the time of the disposition, determined under section 1011, shall be increased by an amount equal to the amount includible as compensation in the employee's gross income under this paragraph (k). However, the basis of a share of stock acquired after the death of an employee by the exercise of an option granted to the employee under an employee stock purchase plan shall be determined in accordance with the rules of section 421(c) and § 1.421–2(c). If the special rules provided in this paragraph (k) are applicable to a share of stock upon the death of an employee, then the basis of the share in the hands of the estate or the person receiving the stock by bequest or inheritance shall be determined under section 1014, and shall not be increased by reason of the inclusion upon the decedent's death of any amount in the decedent's gross income under this paragraph (k). See *Example (9)* of this paragraph (k) with respect to the determination of basis of the share in the hands of a surviving joint owner.

(3) *Examples.* The following examples illustrate the principles of this paragraph (k):

Example 1. On June 1, 2010, Corporation GG grants to Employee P, an employee of GG, an option under GG's employee stock purchase plan to purchase a share of GG stock for $85. The fair market value of GG stock on such date is $100 per share. On June 1, 2011, P exercises the option and on that date GG transfers the share of stock to P. On January 1, 2013, P sells the share for $150, its fair market value on that date. P's income tax return is filed on the basis of the calendar year. The income tax consequences to P and GG are as follows—

(i) Compensation in the amount of $15 is includible in P's gross income for the year 2013, the year of the disposition of the share. The $15 represents the difference between the option price ($85) and the fair market value of the share on the date the option was granted ($100), because the value is less than the fair market value of the share on the date of disposition ($150). For the purpose of computing P's gain or loss on the sale of the share, P's cost basis of $85 is increased by $15, the amount includible in P's gross income as compensation. Thus, P's basis for the share is $100. Because the share was sold for $150, P realizes a gain of $50, which is treated as long-term capital gain; and

(ii) GG is not entitled to any deduction under section 162 at any time with respect to the share transferred to P.

Example 2. Assume the same facts as in *Example 1,* except that P sells the share of GG stock on January 1, 2014, for $75, its fair market value on that date. Because $75 is less than the option price ($85), no amount in respect of the sale is includible as compensation in P's gross income for the year 2014. P's basis for determining gain or loss on the sale is $85. Because P sold the share for $75, P realized a loss of $10 on the sale that is treated as a long-term capital loss.

Example 3. Assume the same facts as in *Example 1,* except that the option provides that the option price shall be 90 percent of the fair market value of the stock on the day the option is exercised. On June 1, 2011, when the option is exercised, the fair market value of the stock is $120 per share so that P pays $108 for the share of the stock. Compensation in the amount of $10 is includible in P's gross income for the year 2013, the year of the disposition of the share. This is determined in the following manner: The excess of the fair market value of the stock at the time of the disposition ($150) over the price paid for the share ($108) is $42; and the excess of the fair market value of the stock at the time the option was granted ($100) over the option price, computed as if the option had been exercised at such time ($90), is $10. Accordingly, $10, the lesser, is includible in gross income. In this situation, P's cost basis of $108 is increased by $10, the amount includible in P's gross income as compensation. Thus, P's basis for the share is $118. Because the share was sold for $150, P realizes a gain of $32 that is treated as long-term capital gain.

Example 4. Assume the same facts as in *Example 1,* except that the option provides that the option price shall be the lesser of 95 percent of the fair market value of the stock on the first day of the offering period and 95 percent of the fair market value of the stock on the day the option is exercised. On June 1, 2011, when the option is exercised, the fair market value of the stock is $120 per share. P pays $95 for the share of the stock. Compensation in the amount of $5 is includible in P's gross income for the year 2013, the year of the disposition of the share. This is determined in the following manner: The excess of the fair market value of the stock at the time of the disposition ($150) over the price paid for the share ($95) is $55; and the excess of the fair market value of the stock at the time the option was granted ($100) over the option price, computed as if the option had been exercised at such time ($95), is $5. Accordingly, $5, the lesser, is includible in gross income. In this situation, P's cost basis of $95 is increased by $5, the amount includible in P's gross income as compensation. Thus, P's basis for the share is $100. Because the share was sold for $150, P realizes a gain of $50 that is treated as long-term capital gain.

Example 5. Assume the same facts as in *Example 1,* except that instead of selling the share on January 1, 2013, P makes a gift of the share on that day. In that case $15 is includible as compensation in P's gross income for 2013. P's cost basis of $85 is increased by $15, the amount includible in P's gross income as compensation. Thus, P's basis for the share is $100, which becomes

the donee's basis, as of the time of the gift, for determining gain or loss.

Example 6. Assume the same facts as in *Example 2,* except that instead of selling the share on January 1, 2014, P makes a gift of the share on that date. Because the fair market value of the share on that day ($75) is less than the option price ($85), no amount in respect of the disposition by way of gift is includible as compensation in P's gross income for 2014. P's basis for the share is $85, which becomes the donee's basis, as of the time of the gift, for the purpose of determining gain. The donee's basis for the purpose of determining loss, determined under section 1015(a), is $75 (fair market value of the share at the date of gift).

Example 7. Assume the same facts as in *Example 1,* except that after acquiring the share of stock on June 1, 2011, P dies on August 1, 2012, at which time the share has a fair market value of $150. Compensation in the amount of $15 is includible in P's gross income for the taxable year closing with P's death, $15 being the difference between the option price ($85) and the fair market value of the share when the option was granted ($100), because such value is less than the fair market value at date of death ($150). The basis of the share in the hands of P's estate is determined under section 1014 without regard to the $15 includible in the decedent's gross income.

Example 8. Assume the same facts as in *Example 7,* except that P dies on August 1, 2011, at which time the share has a fair market value of $150. Although P's death occurred within one year after the transfer of the share to P, the income tax consequences are the same as in *Example 7.*

Example 9. Assume the same facts as in *Example 1,* except that the share of stock was issued in the names of P and P's spouse jointly with right of survivorship, and that P and P's spouse sold the share on June 15, 2012, for $150, its fair market value on that date. Compensation in the amount of $15 is includible in P's gross income for the year 2012, the year of the disposition of the share. The basis of the share in the hands of P and P's spouse for the purpose of determining gain or loss on the sale is $100, that is, the cost of $85 increased by the amount of $15 includible as compensation in P's gross income. The gain of $50 on the sale is treated as long-term capital gain, and is divided equally between P and P's spouse.

Example 10. Assume the same facts as in *Example 1,* except that the share of stock was issued in the names of P and P's spouse jointly with right of survivorship, and that P predeceased P's spouse on August 1, 2012, at which time the share had a fair market value of $150. Compensation in the amount of $15 is includible in P's gross income for the taxable year closing with his death. See *Example 7.* The basis of the share in the hands of P's spouse as survivor is determined under section 1014 without regard to the $15 includible in the decedent's gross income.

Example 11. Assume the same facts as in *Example 10,* except that P's spouse predeceased P on July 1, 2012. Section 423(c) does not apply in respect of the death of P's spouse. Upon the subsequent death of P on August 1, 2012, the income tax consequences in respect of P's taxable year closing with the date of P's death, and in respect of the basis of the share in the hands of P's estate, are the same as in *Example 7.* If P had sold the share on July 15, 2012 (after the death of P's spouse), for $150, its fair market value at that time, the income tax consequences would be the same as in *Example 1.*

(l) *Effective/applicability date.* The regulations under this section are effective on November 17, 2009. The regulations under this section apply to options granted under an employee stock purchase plan on or after January 1, 2010.

■ **Par. 6.** Section 1.424–1, paragraphs (a)(10) *Example 9* (iii) and (g)(1) are revised to read as follows:

§ 1.424–1 Definition and special rules applicable to statutory options.

(a) * * *

(10) * * *

Example 9. * * * (iii) Assume the same facts as in paragraphs (i) and (ii) of this *Example 9.* Assume further that as part of the acquisition, X amends its plan to allow future grants under the plan to be grants to acquire Y stock. Because the amendment of the plan to allow options on a different stock is considered the adoption of a new plan under § 1.422–2(b)(2)(iii), the stockholders of X (in this case, Y) must approve the plan within 12 months before or after the date of the amendment of the plan. If the stockholders of X (in this case, Y) timely approve the plan, the future grants to acquire Y stock will be incentive stock options (assuming the other requirements of § 1.422–2 have been met).

* * * * *

(g) *Effective/applicability date*—(1) *In general.* Except for § 1.424–1(a)(10) *Example 9* (iii), the regulations under this section are effective on August 3, 2004. Section 1.424–1(a)(10) *Example 9* (iii) is effective on November 17, 2009. Section 1.424–1(a)(10) *Example 9* (iii) applies to statutory options granted on or after January 1, 2010.

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: November 9, 2009.

Michael F. Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9470]

RIN 1545–BH69

Information Reporting Requirements Under Internal Revenue Code Section 6039

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to the return and information statement requirements under section 6039 of the Internal Revenue Code (Code). These regulations reflect changes to section 6039 made by section 403 of the Tax Relief and Health Care Act of 2006. These regulations affect corporations that issue statutory stock options and provide guidance to assist corporations in complying with the return and information statement requirements under section 6039.

DATES: *Effective Date:* These regulations are effective on November 17, 2009.

Applicability Date: For dates of applicability, *see* §§ 1.6039–1(g) and 1.6039–2(e).

FOR FURTHER INFORMATION CONTACT: Thomas Scholz or Ilya Enkishev at (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2129. Responses to this collection of information are required to assist taxpayers with the completion of their income tax returns for the taxable year in which a disposition of stock acquired under a statutory option occurs.

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 control number assigned by the Office of Management and Budget.

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.

Background

Section 403 of the Tax Relief and Health Care Act of 2006 (Act) amended the information reporting requirements of section 6039. Prior to its amendment, section 6039 required corporations to furnish a written statement to each employee, in a manner prescribed by the Secretary in the regulations, regarding: (i) The corporation's transfer of stock pursuant to the employee's exercise of an incentive stock option described in section 422(b); and (ii) the transfer of stock by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). Corporations must furnish employees with the information statements required by section 6039 on or before January 31 of the year following the year for which the statement is required. Prior to the amendment of section 6039 made by the Act, the regulations under section 6039 were last updated in 2004. *See* TD 9144 (69 FR 46401).

As amended by the Act, section 6039 requires corporations to file an information return with the IRS, in addition to providing employees with an information statement, following a stock transfer. Section 6039, as amended by the Act, applies to stock transfers occurring on or after January 1, 2007. However, in Notice 2008–8, 2008–3 IRB 276 (December 19, 2007) (see § 601.601(d)(2)(ii)(*b*)), the IRS waived the obligation to file an information return for 2007 stock transfers governed by section 6039.

On July 17, 2008, the Department of Treasury published a notice of proposed rulemaking (REG–103146–08) in the **Federal Register** (73 FR 40999) under section 6039. In addition to describing the return and information reporting requirements pursuant to section 6039, the notice of proposed rulemaking waived the obligation to file an information return for 2008 stock transfers governed by section 6039. A public hearing on the proposed regulations was held on October 30, 2008. Written and electronic comments responding to the notice of proposed rulemaking were received. After consideration of these comments, the Department of Treasury adopts the proposed regulations as final regulations, with the modifications set forth in this Treasury decision. The significant revisions are discussed in this preamble.

Explanation of Provisions

1. Overview

These final regulations describe the information that is required in the return filed with the IRS and the information statement furnished to employees pursuant to section 6039. There are two sections under these final regulations: § 1.6039–1, Returns required in connection with certain options; and § 1.6039–2, Statements to persons with respect to whom information is reported. A principal objective of these final regulations is to require corporations to furnish employees with sufficient information to enable them to calculate their tax obligations upon disposition of the shares acquired by the exercise of a statutory option. As discussed further in this preamble, the IRS will issue two forms (with accompanying instructions) that corporations must use to satisfy the return and information statement requirements under section 6039.

Comments received in response to the proposed regulations were generally favorable. Commenters observed that the proposed regulations improved the existing regulations by requiring corporations to provide additional information useful to employees for purposes of computing tax liability with respect to the disposition of shares acquired pursuant to the exercise of a statutory option. These final regulations are generally similar to the proposed regulations with the modifications described below in response to the comments submitted by taxpayers.

2. Return and Information Statement Requirements for Stock Acquired Pursuant to Incentive Stock Options

With respect to the transfer of stock pursuant to the exercise of an incentive stock option, the information required in the return and the information statement pursuant to § 1.6039–1(a) and § 1.6039–2(a) of these final regulations is the same information that is required pursuant to the proposed regulations.

3. Return and Information Statement Requirements for Stock Acquired Under Employee Stock Purchase Plans

a. Transfers of Legal Title for Stock Acquired Under an Employee Stock Purchase Plan

Section 6039(a)(2) requires every corporation which records (or has by its agent recorded) a transfer of the legal title of a share of stock acquired by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c) to file a return with respect to each transfer made during a particular year. Section 6039(c)(2) provides that the return under section 6039(a)(2) is required only with respect to the first transfer of such stock by the person who exercised the option. Section 6039(b) requires every corporation filing a return under section 6039(a)(2) to furnish to each employee named in such return a written statement with respect to the transfer or transfers made by the employee during a particular year.

Several commenters noted that it has become common practice for employers to maintain a system in which shares acquired by employees under an employee stock purchase plan are deposited directly into a brokerage account established on behalf of the employee. In the typical arrangement, a contractual agreement exists with a recognized broker or financial institution, and employees who elect to participate in the employee stock purchase plan direct that all shares acquired upon the exercise of the option be immediately deposited into a brokerage account established on behalf of the employee. The legal title of the shares deposited into the brokerage account is typically held by another entity acting as a securities depository, which holds the shares in the street name of the broker. The employee has a beneficial interest in the shares, but the securities depository holds legal title of the shares.

The final regulations modify § 1.6039–1(b)(3) of the proposed regulations to provide that a transfer of legal title to a recognized broker or financial institution immediately following the exercise of an option is treated as the first transfer of legal title for purposes of the section 6039(a)(2) filing requirement. Accordingly, if an employer operates an employee stock purchase plan pursuant to which shares acquired upon exercise of the option will be immediately deposited into a brokerage account established on behalf of the employee, then the deposit of shares by the employee into the brokerage account following the exercise of the option is the first transfer of legal title of the shares acquired by the employee and the corporation is only required to file a return relating to such transfer of legal title.

For employees whose shares are immediately deposited into a brokerage account following the exercise of an option, the exercise of the option and the first transfer of legal title occur on the same date. In such a case, the dates to be provided under §§ 1.6039–1(b)(1)(vii) (the date the option was exercised) and (ix) (the date legal title was first transferred) will be the same.

If, instead of establishing a brokerage arrangement, an employer either issues a stock certificate directly to an employee who purchases stock pursuant to an employee stock purchase plan, or

registers the shares in the employee's name on the employer's record books and the employer or its transfer agent holds the shares for the employee in book-entry form, then, for purposes of section 6039(a)(2) and (c)(2), the issuance of the stock certificate or the registration of the stock ownership on the record books is not considered the first transfer of legal title of the stock acquired by the employee. Accordingly, the employer is not required to file a return and furnish an information statement to the employee (pursuant to section 6039(a)(2) and (b)) with respect to such transfer of the stock to the employee. Instead, the employer is required to file a return and furnish an information statement to the employee with respect to the first transfer of the legal title of the stock acquired by the employee (for example, when the employee sells the stock or transfers the stock to a brokerage account established on behalf of the employee). Consequently, if a stock certificate is issued or the ownership of the shares is registered on the employer's record books following the exercise of an option, the exercise of the option and the first transfer of legal title occur on different dates, unless the shares are immediately sold or otherwise transferred. Accordingly, in such a case, the dates to be provided under §§ 1.6039–1(b)(1)(vii) (the date the option was exercised) and (ix) (the date legal title was first transferred) will be different.

b. Reporting of Information With Respect to the Special Tax Rule Under Section 423(c)

Acknowledging that one of the primary purposes of these regulations is to provide information to employees for purposes of computing their tax liability with respect to the disposition of shares acquired pursuant to statutory options, commenters suggested that the return and information statement provided with respect to options granted under an employee stock purchase plan contain additional information necessary to calculate the tax liability in the case of a qualifying disposition of the stock. Under section 423(a), a qualifying disposition occurs if the stock acquired under an employee stock purchase plan is disposed of no earlier than two years after the date of grant of the option and one year after the date of exercise of the option.

Section 423(c) provides a special rule for calculating the timing and amount of compensation income that must be recognized in the event of a qualifying disposition when the exercise price is less than 100 percent of the value of a share on the date of grant. Generally, the compensation income recognized is the lesser of: (a) The excess of the fair market value of the share on the date of grant over the exercise price, and (b) the excess of the fair market value of a share at the time of disposition (or death) over the price paid per share. The flush language of section 423(c) provides that if the exercise price is not known on the date of grant, the exercise price shall be determined as if the option were exercised on the date of grant.

There are various circumstances under which the exercise price will not be known on the date of grant. For example, the exercise price will not be known on the date of grant if the exercise price is equal to the lesser of 85 percent of the fair market value of the stock on the date of grant or 85 percent of the fair market value of the stock on the date of exercise. In addition, the exercise price will not be known on the date of grant if the exercise price is calculated based on a certain percentage (not less than 85 percent) of the fair market value of the stock on the date of exercise. In order to compute the tax liability resulting from a qualifying disposition of the stock acquired using either of the foregoing pricing formulas, the employee needs to know the exercise price determined as if the option were exercised on the date of grant of the option.

In response to the comments, these final regulations modify the proposed regulations by adding § 1.6039–1(b)(vi) to these final regulations. If the exercise price per share of an option is not fixed or determinable on the date the option was granted to the employee, § 1.6039–1(b)(vi) of these final regulations requires corporations to include in the return and information statement the exercise price per share determined as if the option were exercised on the date of grant.

c. Requirement of Return and Information Statement Under Section 6039(a)(2) and (b)

Commenters asked for clarification regarding whether the return and information statement requirements of section 6039(a)(2) and (b) apply only to the transfer of shares pursuant to a qualifying disposition. Section 6039(a)(2) requires that an information return be filed by every corporation which in any calendar year records (or has by its agent recorded) a transfer of the legal title of a share of stock acquired by the transferor pursuant to his or her exercise of an option described in section 423(c). The IRS and the Treasury Department have concluded that the reference in section 6039(a)(2) to an option described in 423(c) relates to the exercise price of the option (as evidenced by the parenthetical phrase in 6039(a)(2) following the reference to section 423(c)) rather than whether or not the shares are disposed of in a qualifying disposition as also described in 423(c). Furthermore, section 6039(c)(2) provides that the return and information statement requirements of section 6039(a)(2) and (b) are triggered by the first transfer of the legal title of the shares. This provision would be unnecessary if section 6039(a)(2) only applied to qualifying dispositions. Therefore, these final regulations provide that the return and information statement requirements are not dependent upon whether such transfer of legal title is a qualifying or disqualifying disposition.

Commenters also asked for clarification regarding whether the return and information statement requirements of section 6039(a)(2) and (b) only apply to the transfer of shares acquired pursuant to an option described in section 423(c) where the exercise price is less than 100 percent of the value of a share on the date of grant. These final regulations provide that the return and information statement requirements of section 6039(a)(2) and (b) also apply to the transfer of shares acquired pursuant to an option where the exercise price is not fixed or determinable on the date of grant, as well as to the transfer of shares acquired pursuant to an option described in section 423(c) where the exercise price is less than 100 percent of the value of a share on the date of grant.

4. Nonresident Aliens

Several commenters suggested that the return and information statement requirements of section 6039 should not apply to nonresident aliens (as defined in section 7701(b)) who perform services outside the United States. These commenters point out that the reported information may not be useful to nonresident aliens because they likely will not have any U.S. tax liability.

In response to comments, these final regulations modify the proposed regulations by adding § 1.6039–1(e) which provides an exception to the return requirements of section 6039(a) for certain nonresident aliens. With respect to incentive stock options, the return requirement of section 6039(a)(1) is not applicable to the exercise of an incentive stock option by an employee who is a nonresident alien and to whom the corporation is not required to

provide a Form W–2, Wage and Tax Statement (or its designated successor) for any calendar year within the time period beginning with the first day of the calendar year in which the option was granted to the employee and ending on the last day of the calendar year in which the employee exercised the incentive stock option. With respect to employee stock purchase plans, the return requirement of section 6039(a)(2) is not applicable to the first transfer of legal title of a share of stock by an employee who is a nonresident alien and to whom the corporation is not required to provide a Form W–2 for any calendar year within the time period beginning with the first day of the calendar year in which the option was granted to the employee and ending on the last day of the calendar year in which the employee first transferred legal title to shares acquired under the option. For purposes of § 1.6039–1(e) of these final regulations, the term *corporation* is defined in section 7701(a) and includes, but is not limited to, the corporation issuing the stock, a related corporation of the corporation, any agent of the corporation, any party distributing shares of stock or other payments in connection with the plan (for example, a brokerage firm), and any party in control of the payment of remuneration for employment to the employee.

5. Forms To Satisfy the Return and Information Statement Requirements

Returns required by § 1.6039–1(a) of these final regulations and information statements required by § 1.6039–2(a) of these final regulations must be made using Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and filed in the manner provided in the instructions thereto. Returns required by § 1.6039–1(b) of these final regulations and information statements required by § 1.6039–2(b) of these final regulations must be made using Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan under Section 423(c) (or its designated successor) and filed in the manner provided in the instructions thereto. Section 1.6039–1(c) of the proposed regulations provided that Forms 3921 and 3922 must be filed on or before January 31 of the year following the year for which the return and statement are required. Section 1.6039–1(c) of these final regulations has been revised to provide that Forms 3921 and 3922 must be filed in accordance with the guidelines and procedures set forth in the instructions to Forms 3921 and 3922. The IRS expects to release Forms 3921 and 3922 in the near future.

Several commenters suggested that taxpayers be allowed to satisfy the information statement requirements of § 1.6039–2(a) and (b) of these final regulations by delivering a substitute form that includes all of the information required to be included on the Forms 3921 or 3922, as applicable. Taxpayers may satisfy the return requirements of § 1.6039–1(a) and (b) as well as the information statement requirements of § 1.6039–2(a) and (b) by submitting substitute Forms 3921 and 3922 in accordance with the guidelines set forth in Publication 1179 (or its designated successor). For example, it would be permissible for a taxpayer to satisfy the return requirements of § 1.6039–1(a) and (b) by submitting Forms 3921 and 3922 to the IRS, and satisfy the information statement requirements of § 1.6039–2(a) and (b) by delivering substitute Forms 3921 and 3922 to the appropriate recipients in accordance with the guidelines set forth in Publication 1179 (or its designated successor).

Effective/Applicability Date

These final regulations will apply as of January 1, 2007. However, taxpayers are not required to comply with the return requirements of § 1.6039–1(a) and (b) of these final regulations for stock transfers that occur during the 2007, 2008 and 2009 calendar years. Notwithstanding the waiver of the return requirements for 2007, 2008 and 2009 stock transfers, taxpayers must furnish information statements to employees for such stock transfers. For purposes of furnishing information statements for stock transfers that occur during the 2007 or 2008 calendar years, taxpayers may rely on § 1.6039–1 of the 2004 final regulations (69 FR 46401) or § 1.6039–2 of the 2008 proposed regulations (REG–103146–08) (73 FR 40999). For purposes of furnishing information statements for stock transfers that occur during the 2009 calendar year, taxpayers may rely on § 1.6039–1 of the 2004 final regulations (69 FR 46401), § 1.6039–2 of the 2008 proposed regulations (REG–103146–08) (73 FR 40999), or these final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the filing of a return with the IRS and the provision of employee statements required under this Treasury decision will impose a minimal administrative burden on small entities. It is estimated that it will take approximately 30 minutes to prepare and provide the information required by these regulations. Further, the information to be provided is readily available. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Thomas Scholz and Ilya Enkishev, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805.

■ **Par. 2.** Section 1.6039–1 is revised to read as follows:

§ 1.6039–1 Returns required in connection with certain options.

(a) *Requirement of return with respect to incentive stock options under section 6039(a)(1).* (1) Every corporation which in any calendar year transfers to any person a share of stock pursuant to such person's exercise of an incentive stock option shall, for such calendar year, file a return with respect to each transfer made during such year. This return must include the following information—

(i) The name, address, and employer identification number of the corporation transferring the stock;

(ii) If other than the corporation identified in paragraph (a)(1)(i) of this section, the name, address and employer identification number of the

corporation whose stock is being transferred;

(iii) The name, address, and identifying number of the person to whom the share or shares of stock were transferred pursuant to the exercise of the option;

(iv) The date the option was granted to the person;

(v) The exercise price per share;

(vi) The date the option was exercised by the person;

(vii) The fair market value of a share of stock on the date the option was exercised by the person; and

(viii) The number of shares of stock transferred to the person pursuant to the exercise of the option.

(2) Each return required by this paragraph (a) shall be made on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and shall be filed in such manner as provided in the instructions thereto.

(b) *Requirement of return with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation which in any calendar year records, or has by its agent recorded, a transfer of the legal title of a share of stock acquired by the transferor (person who acquires the shares pursuant to the exercise of the option) pursuant to the transferor's exercise of an option granted under an employee stock purchase plan as described in section 423(c) and where the exercise price is less than 100 percent of the value of the stock on date of grant or is not fixed or determinable on the date of the grant, shall, for such calendar year, file a return with respect to each transfer made during such year. This return must include the following information—

(i) The name, address, and identifying number of the transferor;

(ii) The name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The date the option was granted to the transferor;

(iv) The fair market value of the stock on the date the option was granted;

(v) The actual exercise price paid per share;

(vi) The exercise price per share determined as if the option were exercised on the date the option was granted to the transferor (to be provided only if the exercise price per share is not fixed or determinable on the date the option was granted);

(vii) The date the option was exercised by the transferor;

(viii) The fair market value of the stock on the date the option was exercised by the transferor;

(ix) The date the legal title of the shares was transferred by the transferor (see paragraph (b)(3) of this section); and

(x) The number of shares to which legal title was transferred by the transferor.

(2) Each return required by this paragraph (b) shall be made on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and shall be filed in such manner as provided in the instructions thereto.

(3) A return is required by reason of a transfer described in section 6039(a)(2) only with respect to the first transfer of legal title of the shares by the transferor, including the first transfer of legal title to a recognized broker or financial institution. If a contractual agreement exists or is entered into with a recognized broker or financial institution pursuant to which shares acquired upon exercise of the option will be immediately deposited into a brokerage account established on behalf of the transferor, then the deposit of shares by the transferor into the brokerage account following the exercise of the option is the first transfer of legal title of the shares acquired by the transferor, and the corporation is only required to file a return relating to such transfer of legal title.

(4) Every corporation that transfers any share of stock pursuant to the exercise of an option described in this paragraph shall identify such stock in a manner sufficient to enable the accurate reporting of the transfer of legal title to such shares. Such identification may be accomplished by assigning to the certificates of stock issued pursuant to the exercise of such options a special serial number or color.

(c) *Time for filing returns.* Each return required by this section for a calendar year must be filed in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty.* For provisions relating to the penalty applicable to the failure to file a return under this section, see section 6721.

(e) *Exception to return requirements of section 6039(a) for certain nonresident aliens*—(1) *Return requirement under section 6039(a)(1).* The return requirement of section 6039(a)(1) is not applicable to the exercise of an incentive stock option by an employee who is a nonresident alien (as defined in section 7701(b)) and to whom the corporation is not required to provide a Form W–2, Wage and Tax Statement (or its designated successor) for any calendar year within the time period beginning with the first day of the calendar year in which the option was granted to the employee and ending on the last day of the calendar year in which the employee exercised the option.

(2) *Return requirement under section 6039(a)(2).* The return requirement of section 6039(a)(2) is not applicable to the first transfer of legal title of a share of stock by an employee who is a nonresident alien (as defined in section 7701(b)) and to whom the corporation is not required to provide a Form W–2 for any calendar year within the time period beginning with the first day of the calendar year in which the option was granted to the employee and ending on the last day of the calendar year in which the employee first transferred legal title to shares acquired under the option as described in paragraph (b)(3) of this section.

(3) For purposes of this paragraph (e), the term *corporation* is defined in section 7701(a) and includes, but is not limited to, the corporation issuing the stock, a related corporation of the corporation, any agent of the corporation, any party distributing shares of stock or other payments in connection with the plan (for example, a brokerage firm), and any party in control of the payment of remuneration for employment to the employee.

(f) *Effective/applicability date*—(1) *In general.* This section is effective on November 17, 2009. This section will apply as of January 1, 2007.

(2) *Transition period.* Taxpayers are not required to comply with the return requirements of paragraphs (a) and (b) of this section for stock transfers that occur during the 2007, 2008 and 2009 calendar years.

■ **Par. 3.** A new § 1.6039–2 is added to read as follows:

§ 1.6039–2 Statements to persons with respect to whom information is reported.

(a) *Requirement of statement with respect to incentive stock options under section 6039(b).* (1) Every corporation filing a return under § 1.6039–1(a) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made to such person during such year. This statement must include the information described in § 1.6039–1(a)(1).

(2) Each statement required by this paragraph (a) to be furnished to any person must be furnished to such person on Form 3921, Exercise of an Incentive Stock Option Under Section 422(b) (or its designated successor) and be delivered at such time and in such

manner as provided in the instructions thereto.

(b) *Requirement of statement with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation filing a return under § 1.6039–1(b) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made by such person during such year. This statement must include the information described in § 1.6039–1(b)(1).

(2) Each statement required by this paragraph (b) to be furnished to any person must be furnished to such person on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and be delivered at such time and in such manner as provided in the instructions thereto.

(3) If the statement required by this paragraph is made by the authorized transfer agent of the corporation, it is deemed to have been made by the corporation. The term *transfer agent,* as used in this section, means any designee authorized to keep the stock ownership records of a corporation and to record a transfer of title of the stock of such corporation on behalf of such corporation.

(c) *Time for furnishing statements*—(1) *In general.* Each statement required by this section to be furnished to any person for a calendar year must be furnished to such person on or before January 31 of the year following the year for which the statement is required.

(2) *Extension of time.* An extension of time to furnish statements required by this section may be granted in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty.* For provisions relating to the penalty applicable to the failure to furnish a statement under this section, see section 6722.

(e) *Effective/applicability date*—(1) *In general.* This section is effective on November 17, 2009. This section will apply as of January 1, 2007.

(2) *Reliance and transition period.* Notwithstanding § 1.6039–1(g), corporations must furnish information statements to employees in accordance with this section for stock transfers that are subject to § 1.6039–1(a) and (b), and occur during the 2007, 2008 and 2009 calendar years. For purposes of furnishing information statements for stock transfers that occur during the 2007 or 2008 calendar years, taxpayers may rely on § 1.6039–1 of the 2004 final regulations (69 FR 46401) or § 1.6039–2 of the 2008 proposed regulations REG–103146–08 (73 FR 40999). For purposes of furnishing information statements for stock transfers that occur during the 2009 calendar year, taxpayers may rely on § 1.6039–1 of the 2004 final regulations (69 FR 46401), § 1.6039–2 of the 2008 proposed regulations (REG–103146–08) (73 FR 40999), or this section.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: November 9, 2009.

Michael Mandaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–27451 Filed 11–16–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR 2550

RIN 1210–AB13

Investment Advice—Participants and Beneficiaries

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule; delay of effective and applicability date.

SUMMARY: This document delays the effective and applicability dates of final rules under the Employee Retirement Income Security Act, and parallel provisions of the Internal Revenue Code of 1986, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). These rules were published in the **Federal Register** on January 21, 2009. The effective and applicability dates of the final rules were deferred until November 18, 2009, in order to permit a review of policy and legal issues raised with respect to the rules. This document further delays the effective and applicability dates of these final rules from November 18, 2009, until May 17, 2010, to allow additional time for the Department to complete its analysis of questions of law and policy concerning the rules.

DATES: The effective and applicability date of the rule amending 29 CFR Part 2550, published January 21, 2009, at 74 FR 3822, delayed March 20, 2009, at 74 FR 11847, and May 22, 2009, at 74 FR 23951, is further delayed until May 17, 2010.

FOR FURTHER INFORMATION CONTACT: Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

On January 21, 2009, the Department of Labor published final rules on the provision of investment advice to participants and beneficiaries of participant-directed individual account plans and to beneficiaries of individual retirement accounts and certain similar plans (IRAs) (74 FR 3822). The rules implement a statutory prohibited transaction exemption under ERISA Sec. 408(b)(14) and Sec. 408(g), and under section 4975 of the Internal Revenue Code of 1986 (Code),[1] and also contain an administrative class exemption granting additional relief. As published, these rules were to be effective on March 23, 2009. Paragraph (g) of Sec. 2550.408g–1 provided that the rule would apply to covered transactions occurring on or after March 23, 2009.

By memorandum dated January 20, 2009, Rahm Emanuel, Assistant to the President and Chief of Staff, directed Agency Heads to consider extending for 60 days the effective date of regulations that have been published in the **Federal Register** but not yet taken effect. The memorandum further advised that, where such regulations are extended, agencies should allow 30 days for interested persons to comment on issues of law and policy raised by the rules. In accordance with that memorandum, and taking into account the considerations listed in the Memorandum of January 21, 2009, from Peter R. Orszag, Director of the Office of Management and Budget, the Department published in the **Federal Register** on February 4, 2009, a document seeking comment on a proposed 60-day extension of the effective dates for these rules until May 22, 2009, and a proposed conforming amendment to the applicability date of Sec. 2550.408g–1 (74 FR 6007). The document also requested comment on issues of law and policy raised by the final rules. The Department indicated that upon completion of its review, it might decide to allow the rules to take effect, issue a further extension, withdraw the rules, or propose amendments, and solicited comment on each of these possible outcomes. In response to this invitation, the Department received 28 comment

[1] These provisions were added to ERISA and the Code by the Pension Protection Act of 2006 (PPA), Public Law 109–280, 120 Stat. 780 (Aug. 17, 2006).

letters.[2] A number of these comments expressed the view that the final rules raise significant issues of law and policy. Among these, some expressed disagreement with the final rules' interpretation of the statutory exemption, and further questioned the adequacy of the class exemption's conditions in mitigating against the potential for investment adviser self-dealing.

On March 20, 2009, the Department adopted the 60-day extension of the final rule's effective and applicability date for agency review of questions of law and policy raised by commenters (74 FR 11847). On May 22, 2009, in order to afford the Department additional time to consider the issues raised by commenters, the Department adopted a further delay of these dates until November 18, 2009 (74 FR 23951). The Department believes that the complexity and significance of the issues involved justify delaying the effective and applicability dates of the final rule for an additional 180 days. This additional time will allow the Department to complete its analysis of the issues of law and policy and determine the appropriate steps to be taken. Accordingly, the Department is adopting herein a 180 day delay of the effective and applicability date of the final rule published on January 21, 2009. With the adoption of this delay, the effective and applicability date of the final rule will be May 17, 2010.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

■ For the reasons set forth above, the publication on January 21, 2009 (74 FR 3822), of the final rule amending 29 CFR Part 2550, is further amended as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 6–2009, 74 FR 21524 (May 7, 2009). Secs. 2550.401b–1, 2550.408b–1, 2550.408b–19, 2550.408g–1, and 2550.408g–2 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657(c)(2), Pub. L. 107–16, 115 Stat. 38, 136 (2001)). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611(g)(3), Public Law 109–280, 120 Stat. 780, 975 (2006).

§ 2550.408g–1 [Amended]

■ 2. Section 2550.408g–1 is amended by removing the date ''November 18, 2009'' and adding in its place ''May 17, 2010'' in paragraph (g).

Signed at Washington, DC, this 10th day of November 2009.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. E9–27532 Filed 11–16–09; 8:45 am]

BILLING CODE 4510–29–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001 and 4022

RIN 1212–AB19

USERRA Benefits Under Title IV of ERISA

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA'') provides that an individual who leaves his or her job to serve in the uniformed services is generally entitled to reemployment by his or her previous employer and, upon reemployment, to receive credit for benefits, including employee pension plan benefits, that would have accrued but for the employee's absence due to the military service. This final rule amends PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) to address a narrow but important issue regarding PBGC's guarantee of benefits for participants who are serving in the uniformed services at the time that their pension plan terminates. Under PBGC's existing regulations, a benefit is guaranteed only if the participant satisfies the conditions for entitlement to the benefit on or before the plan's termination date. PBGC is providing an exception to this rule in the unique circumstances of persons serving in the uniformed services as of the plan's termination date, consistent with USERRA's statutory mandate to treat such persons, upon reemployment, as if they had never left the employ of their former employer. This final rule provides that so long as a service member is reemployed within the time limits set by USERRA, even if the reemployment occurs after the plan's termination date, PBGC will treat the participant as having satisfied the reemployment condition as of the termination date. This will ensure that the pension benefits of reemployed service members, like those of other employees, would generally be guaranteed for periods up to the plan's termination date.

DATES: Effective December 17, 2009. (*See* Applicability in **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, or Constance Markakis, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, Suite 12300, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TTD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (''PBGC'') administers the single-employer pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (''ERISA''). When a covered plan terminates in either a distress termination under section 4041(c) of ERISA, or an involuntary termination (one initiated by PBGC) under section 4042 of ERISA, PBGC typically becomes statutory trustee of the plan with responsibility for paying benefits in accordance with the provisions of Title IV.

The amount of benefits paid by PBGC under a terminated, trusteed plan is generally determined as of the plan's termination date.[1] Under section 4022(a) of ERISA, PBGC guarantees the payment of nonforfeitable benefits

[2] These comments are available on the Department's Web site at: *http://www.dol.gov/ebsa/regs/cmt-investmentadvicefinalrule.html.*

[1] Section 404 of the Pension Protection Act of 2006 (''PPA 2006''), Public Law 109–280, added sections 4022(g) and 4044(e) of ERISA, which provide that, when an underfunded plan terminates during the bankruptcy of the plan sponsor, the date the sponsor's bankruptcy petition was filed is treated as the termination date of the plan for purposes of determining the amount of benefits PBGC guarantees and the amount of benefits in priority category 3 in the section 4044 asset allocation. These changes apply to plan terminations that occur during the bankruptcy of the plan sponsor if the bankruptcy filing date is on or after September 16, 2006. *See* PBGC proposed rule on Bankruptcy Filing Date Treated as Plan Termination Date for Certain Purposes, 73 FR 37390 (Jul. 1, 2008). For convenience, this preamble generally will refer to the plan's termination date, although in many cases this reference will instead apply to the bankruptcy filing date.

under the plan, subject to the limitations of section 4022(b), as of the date the plan terminates. Under § 4022.3 of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans, PBGC guarantees the amount, as of the termination date, of a benefit provided under the plan (subject to certain limitations) if ''the benefit is, on the termination date, a nonforfeitable benefit.'' To be guaranteed, the benefit must also qualify as a pension benefit as defined in § 4022.2, and the participant must be entitled to the benefit under § 4022.4. The amount of any additional nonguaranteed benefits payable from the plan's assets under section 4044 or PBGC's recoveries under section 4022(c) of ERISA is also determined as of the termination date.

Section 4001(a)(8) of ERISA and § 4001.2 define a ''nonforfeitable benefit'' with respect to a plan as:

> A benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of this Act (other than the submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit which returns all or a portion of a participant's accumulated mandatory employee contributions upon the participant's death), whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of this Act or the Internal Revenue Code of 1986.

Guaranteed benefits under Title IV of ERISA are benefits with respect to which a participant has satisfied the conditions for entitlement under the plan as of the termination date. Therefore, plan benefits such as an early retirement subsidy or disability retirement benefit with respect to which a participant has not satisfied the conditions for entitlement (e.g., a years-of-service requirement or the onset of disability) as of the termination date are not guaranteed.[2]

On July 29, 2009 (at 74 FR 37666), PBGC published in the **Federal Register** a proposed rule to address the interaction of Title IV's requirement that benefits be nonforfeitable on the termination date in order to be guaranteed with the rights of reemployed service members in their employee pension benefit plans under the Uniformed Services Employment and Reemployment Rights Act of 1994 (''USERRA''), Public Law 103–353 (October 13, 1994). PBGC received no public comments on the proposed rule and the final regulation is unchanged from the proposed regulation.

Congress enacted USERRA to protect certain rights and benefits of employees who voluntarily or involuntarily leave civilian employment to serve in the uniformed services.[3] Under USERRA, returning service members are generally entitled to reemployment in their pre-service positions, with the status, pay, and benefits to which they would have been entitled had they not served in the uniformed services. The stated purposes of USERRA are—

- To encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service,
- To minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service under honorable conditions, and
- To prohibit discrimination against persons because of their service in the uniformed services.

38 U.S.C. 4301. The provisions of USERRA are generally effective with respect to reemployments initiated on or after December 12, 1994.

The Department of Labor (''DOL'') issued a final rule on USERRA, 70 FR 75246 (Dec. 19, 2005). The preamble to that rule states that, in construing USERRA and its implementing regulations, DOL intends to ''apply with full force and effect'' the interpretive maxim of the Supreme Court in *Fishgold* v. *Sullivan Drydock and Repair Corp.,* 328 U.S. 275, 285 (1946), that legislation on reemployment rights for service members ''is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need. * * *'' 70 FR 75246.

DOL's final regulation on USERRA, codified at 20 CFR part 1002, covers various types of military training and service. Section 1002.6 provides:

> USERRA's definition of ''service in the uniformed services'' covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war. Although most often understood as applying to National Guard and reserve military personnel, USERRA also applies to persons serving in the active components of the Armed Forces. Certain types of service specified in 42 U.S.C. 300hh–11 by members of the National Disaster Medical System are covered by USERRA.

USERRA establishes specific rights for reemployed service members in their employee pension benefit plans. Each period of service performed by an individual in the uniformed services is deemed, upon reemployment, to constitute service with the employer(s) maintaining the plan for purposes of determining participation, vesting, and accrual of benefits under the plan. 38 U.S.C. 4318(a)(2)(A) and (B); 20 CFR 1002.259. As explained in the preamble to DOL's final rule implementing USERRA, the reemployed service member is treated for pension purposes under the plan as though he or she had remained continuously employed. 70 FR at 75280.[4]

Entitlement to pension credit arises only where the returning service member is reemployed by his or her pre-service employer.[5] There is no entitlement to pension credit in cases in which an employee permanently and lawfully loses reemployment rights—for example, where an employee dies during the period of military service (however, see recent changes to the Internal Revenue Code[6]), where an employer is excused from its reemployment obligations based on a statutory defense or where an employee

[2] ERISA section 4022(e) provides that a qualified preretirement survivor annuity under a single-employer plan is not treated as forfeitable solely because the participant has not died as of the termination date.

[3] Terms used in this final rule, such as ''service in the uniformed services,'' are intended to have the meaning provided under USERRA and the Department of Labor regulations implementing USERRA. For convenience, this preamble sometimes uses the term ''military service'' as shorthand for ''service in the uniformed services.''

[4] Consistent with this principle of treating a reemployed service member as if his or her employment had not been interrupted by military service, DOL's final rule requires that any preparation time before entering military service or recuperation time (or period of hospitalization or convalescence) after completing service before reporting back to work, to the extent permitted by USERRA, be treated as continuous service with the employer upon reemployment for purposes of determining the employee's pension entitlement. 20 CFR 1002.259; *see* 70 FR at 75276.

[5] A service member who meets five eligibility criteria is entitled to be reemployed: The employee is absent from employment by reason of service in the uniformed services; the employee gives advance notice of the service; the employee has five years or less of cumulative service in the uniformed services with respect to the employment relationship with the employer; the service member makes a timely return to, or application for reinstatement in, his or her employment after completing service; and the employee receives an honorable discharge from service. 38 U.S.C. 4312(a)–(c). There are three statutory defenses that an employer may assert against a claim for USERRA benefits; the employer bears the burden of proving these defenses. 38 U.S.C. 4312(d).

[6] The Heroes Earnings Assistance and Relief Tax Act of 2008 (''HEART'') amended the Internal Revenue Code with respect to the provision of certain benefits under an employee pension benefit plan for participants who die or become disabled while performing qualified military service. 26 U.S.C. 401(a)(37); 26 U.S.C. 414(u)(9). PBGC may provide additional guidance in the future regarding HEART provisions under Title IV.

elects not to seek reemployment within the specified time frame.[7] 38 U.S.C. 4312(d)(1); *see* 70 FR at 75280. Plan termination, however, is not identified as a circumstance that results in a permanent and lawful loss of reemployment rights for purposes of computing an employee's pension entitlement.

In the case of a standard termination, under ERISA section 4041(b)(1)(D) and § 4041.28(a) of PBGC's regulation on Termination of Single-Employer Plans, plan assets must satisfy all plan benefits through priority category 6 under section 4044 of ERISA. Priority category 6 includes benefits that, as of the termination date, are conditioned on a future event. Accordingly, even without these regulatory changes, a plan terminating in a standard termination must provide benefits relating to periods of military service through the termination date for participants who become reemployed in accordance with USERRA provisions, even if such reemployment occurs after the plan's termination date.[8]

Section 4312(f) of USERRA describes the information that a service member must submit to an employer in order to establish that the individual meets the statutory requirement for reemployment, including information establishing that the individual's application for reemployment is timely; that he or she has not exceeded the five-year military service limitation; and that the type of separation from military service does not disqualify the individual from reemployment.

Regulatory Changes

Under USERRA, an individual who is reemployed following military service is entitled to the pension benefits that he or she would have earned if he or she had remained continuously employed. As noted above, Title IV of ERISA provides that, for a benefit to be nonforfeitable, the conditions for entitlement to the benefit must be satisfied on or before the plan's termination date. In order to harmonize the significant federal mandate to protect service members' rights and benefits under USERRA with Title IV's rules on nonforfeitable benefits, PBGC is amending its regulation on Benefits Payable in Terminated Single-Employer Plans. This amendment provides that a participant will be deemed to have satisfied the reemployment condition for entitlement to the benefit as of the plan's termination date, for purposes of PBGC's guarantee, if PBGC determines, based on a demonstration by the participant or otherwise, that he or she became reemployed and entitled to the restoration of the pension benefit pursuant to USERRA, even if the reemployment occurred after the plan's termination date. Thus, for example, if a participant had 14 years of pension service at the time he or she entered military service, and had spent one year in the military as of the plan's termination date, the participant will be considered to have 15 years of service, for guarantee purposes, so long as he or she returns to his or her former employment within the bounds set by USERRA.

When a plan termination occurs during the bankruptcy of the plan sponsor, PBGC treats the bankruptcy filing date as the plan's termination date for certain purposes (see note 1). New § 4022.11 includes a provision that applies this concept to USERRA benefits. For example, if a participant is performing military service as of the bankruptcy filing date, any benefit relating to the period of military service that is accrued and vested through the bankruptcy filing date will be considered nonforfeitable if the participant becomes reemployed pursuant to USERRA after the bankruptcy filing date.

PBGC will provide guidance on how individuals can establish, for purposes of their Title IV benefit, their entitlement to benefits under USERRA. Persons with questions about these benefits should contact PBGC's Benefits Administration and Payment Department.

PBGC emphasizes that the regulatory changes are very narrow, applying only to the unique circumstances presented by federal statutes affording special protection to the men and women serving the nation in the uniformed services. Except as provided in this amendment, a benefit will be treated as nonforfeitable only if all conditions for entitlement to the benefit have been satisfied on or before the termination date. This includes benefits such as disability benefits, subsidized early retirement benefits (e.g., ''30 and out'' benefits), and benefits that may be similar in certain respects to the benefits covered by this amendment, such as a benefit conditioned on an employee's being reemployed after a period of layoff.

Applicability

The amendments made by this final rule will apply to reemployments under USERRA initiated on or after December 12, 1994. Starting December 17, 2009, PBGC will begin adjusting final benefit determinations of affected participants and make back payments with interest.

Compliance With Rulemaking Guidelines

PBGC has determined, in consultation with the Office of Management and Budget, that this final rule is not a ''significant regulatory action'' under Executive Order 12866.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities. The amendments harmonize the requirements of USERRA with the nonforfeitable benefits requirements of Title IV of ERISA. Virtually all of the amendments affect only PBGC and persons who receive benefits from PBGC. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects

29 CFR Part 4001

Pensions.

29 CFR Part 4022

Pension insurance, Pensions.

■ For the reasons given above, PBGC is amending 29 CFR parts 4001 and 4022 as follows.

PART 4001—TERMINOLOGY

■ 1. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

■ 2. In § 4001.2, add a new definition in alphabetical order to read as follows:

§ 4001.2 Definitions.

* * * * *

PPA 2006 bankruptcy termination means a plan termination to which section 404 of the Pension Protection Act of 2006 applies. Section 404 of the Pension Protection Act of 2006 applies to any plan termination in which the termination date occurs while bankruptcy proceedings are pending with respect to the contributing sponsor of the plan, if the bankruptcy proceedings were initiated on or after

[7] USERRA contains a broad prohibition against waivers of statutory rights. The preamble to DOL's regulation on USERRA provides that an employee cannot waive USERRA's right to reemployment until that right has matured, i.e., until the period of service is completed. 70 FR at 75257.

[8] Under the final regulation, as explained below, such benefits would be in priority category 4 (covering guaranteed benefits) if the reemployment occurs after the plan's termination date and if all other conditions are met. These benefits thus would continue to be part of benefit liabilities that would have to be provided in a standard termination.

September 16, 2006. Bankruptcy proceedings are pending, for this purpose, if a contributing sponsor has filed or has had filed against it a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date of the plan.

* * * * *

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 3. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 4. In § 4022.2, amend the first paragraph by removing the words ''plan year, proposed termination date, substantial owner'' and adding in their place ''plan year, PPA 2006 bankruptcy termination, proposed termination date, statutory hybrid plan, substantial owner.''

■ 5. Add new § 4022.11 to subpart A to read as follows:

§ 4022.11 Guarantee of benefits relating to uniformed service.

This section applies to a benefit of a participant who becomes reemployed after service in the uniformed services that is covered by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

(a) A benefit described in paragraph (b) of this section that would satisfy the requirements of § 4022.3(a) and (c) (together with any benefit earned for the period preceding military service) except for the fact that the participant was not reemployed on or before the termination date will be deemed to satisfy those requirements if PBGC determines, based upon a demonstration by the participant or otherwise, that he or she became reemployed after the termination date and entitled to the benefit under USERRA.

(b) A benefit described in this paragraph (b) is a benefit attributable to a period of service commencing before the termination date and ending on the termination date during which the participant was serving in the uniformed services as defined in 38 U.S.C. 4303(13) (or was in a subsequent reemployment eligibility period) and to which the participant is entitled under USERRA.

(c) Example: A plan's vesting requirement is 5 years of service with the employer. A participant has completed 4 years of service when he leaves employment for uniformed service. The plan terminates while the participant is in military service. As of the termination date, the participant would have had 5 years of service and 5 years of benefit accruals if he had remained continuously employed. Upon reemployment after the termination date but within the time limits set by USERRA, the participant would have had 6 years of service under the plan for vesting and benefit accrual purposes, if the plan had not terminated. PBGC would treat the participant as having a vested, nonforfeitable plan benefit with 5 years of vesting service and benefit accruals as of the termination date.

(d) In the case of a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in this section.

Issued in Washington, DC, this 10th day of November 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing publication of this final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E9–27573 Filed 11–16–09; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AB03

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Administrative Ruling System

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing this final rule to amend the procedures for publicly issuing an administrative ruling[1] relating to the Bank Secrecy Act (''BSA''). Reliance on these administrative rulings is limited to persons who are similarly situated to the original recipient of an applicable administrative ruling. To disseminate its interpretations in a more timely and efficient manner, FinCEN will use its website to make these administrative rulings available to the public.[2]

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

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, FinCEN (800) 949–2732 and select option 6.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The BSA, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, authorizes the Secretary of the Treasury (the ''Secretary''), among other things, to issue regulations requiring financial institutions to keep records and file reports that the Secretary determines ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence matters, including analysis, to protect against international terrorism.'' [3] The Secretary's authority to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.[4] FinCEN has interpreted the BSA through implementing regulations that appear at 31 CFR Part 103.

In 1987, the Department of the Treasury's Office of Financial Enforcement [5] established an administrative ruling system to ensure uniform guidance and effective and efficient dissemination of official Treasury interpretations of the BSA.[6] The administrative ruling system was designed to: provide financial institutions with binding ruling interpretations of Part 103; and to provide interpretations of hypothetical situations.[7] 31 CFR 103.85 requires that the interpretations intended to have precedential value be published periodically in the **Federal Register** and yearly in the Appendix to Part 103.

[1] ''Administrative ruling'' is the title FinCEN uses to represent documents commonly referred to as interpretative rules.

[2] FinCEN's criteria for determining whether a particular ruling will be published is located under the heading ''Rulings'' on the FinCEN Web site at *http://www.fincen.gov*.

[3] 31 U.S.C. 5311.

[4] *See* Treasury Order 180–01 (Sept. 26, 2002).

[5] The Office of Financial Enforcement originally had authority to issue regulations implementing the BSA. In 1994, the Treasury Department merged the Office of Financial Enforcement with FinCEN and granted FinCEN the authority to implement the BSA.

[6] *See* 52 FR 35545 (Sep. 22, 1987) (final rule instituting an administrative ruling system).

[7] If the subject situation is hypothetical, it must include ''a statement justifying why the particular situation described warrants the issuance of a ruling.'' 31 CFR 103.81(6).

B. Section-by-Section Analysis

FinCEN is amending section 103.85 by removing the requirement that rulings be published in the **Federal Register** before similarly situated persons other than the recipients of the rulings can rely upon them. In addition, FinCEN is no longer publishing these administrative rulings in an Appendix to Part 103. Instead, these rulings will be available on the FinCEN Web site or by mail per written request.[8]

Using alternatives to the **Federal Register** to provide notice to the public of administrative rulings is not uncommon. Many agencies publish bulletins containing their administrative rulings including the Office of the Comptroller of Currency, Internal Revenue Service (''IRS''), and U.S. Customs Service and Border Protection. Specifically, in July of 1955, the IRS implemented the Internal Revenue Bulletin (''IRB'') under Revenue Procedure 55–1 to ''* * * promote uniform application of the tax laws by Service employees and to assist taxpayers in attaining maximum voluntary compliance.'' [9] At the time, the IRS determined that the IRB was the most appropriate forum to provide notice to the public of its administrative rulings.

In 1987, when implementing the BSA administrative ruling system, the Department of the Treasury did not have a bulletin for publishing its determinations concerning the BSA. Therefore, the Department of the Treasury determined that publishing the administrative rulings in the **Federal Register** ensured proper distribution to the public. However, since implementation of the BSA administrative ruling system, various electronic and other means of disseminating information to the public have become available. In particular, FinCEN, like many other administrative agencies, has developed a Web site to provide notice of agency actions to the public. The current address for the Web site is: *www.fincen.gov/statutes_regs/rulings/*. Similar to the IRS's determination in creating the IRB in 1955, FinCEN, in promoting uniform application and compliance with the BSA, has determined that publishing administrative rulings on the FinCEN website distributes information to the public more broadly and more expediently than publication in the **Federal Register**. There are a variety of persons who are affected by the BSA. The majority of such affected persons are probably more familiar with the Internet than with the **Federal Register**. Communications with these affected persons through FinCEN's regulatory Helpline has shown that the majority of callers referred to the FinCEN website as a source for information. Also, when responding to questions from affected persons, FinCEN staff members regularly refer individuals to the FinCEN website for information. Because FinCEN's website is specifically tailored to the BSA, affected persons are not required to sift through the volumes of information available in the **Federal Register** before finding a relevant interpretive rule addressing the affected person's issue. Considering the time and resources FinCEN allocates to updating the website and increasing the website's usability, FinCEN believes that it would be inefficient and unnecessary to also publish administrative rulings in the **Federal Register**.

II. Proposed Location in Chapter X

As discussed in a previous **Federal Register** Notice, 73 FR 66414, Nov. 7, 2008, FinCEN is separately proposing to remove Part 103 of Chapter I of Title 31, Code of Federal Regulations, and add Chapter 1000 to 1099 (''Chapter X''). If the notice of proposed rulemaking for Chapter X is finalized, the changes in the present final rule would be reorganized according to the proposed Chapter X. The planned reorganization will have no substantive effect on the regulatory changes herein, except that the words ''part 103'' in the first sentence of 31 CFR 103.85 would be replaced by ''this chapter.'' The regulatory changes of this specific rulemaking would be renumbered according to the proposed Chapter X as follows:

(a) 103.85 would be moved to 1010.715.

(b) 103.81 would be moved to 1010.711

(c) Appendix A to Part 103—Administrative Rulings would be removed in its entirety and Appendix E to Chapter X—Administrative Rulings would not appear.

III. Notice and Comment Under the Administrative Procedure Act

The administrative ruling procedural changes at 31 CFR 103.85 will take effect 30 days after publication in the **Federal Register**.

The Administrative Procedure Act (''APA'') allows an agency to dispense with notice and comment for ''rules of agency organization, procedure, or practice.'' [10] This amendment promulgates general statements of policy, procedures and practices governing the scope and operation of an administrative ruling system. Hence, pursuant to 5 U.S.C. 553(b)(A), notice and public procedure are unnecessary.

IV. Regulatory Flexibility Act

Since no notice of proposed rulemaking is required by the APA (5 U.S.C. 551 *et seq.*), or by any other statute, this document is not subject to the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

V. Paperwork Reduction Act

The collection of information requirements have been reviewed and approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d). (OMB Control No. 1506–0009). Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Executive Order 12866

As this rulemaking primarily deals with agency management, it has been determined not to be a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

VII. Unfunded Mandates Act of 1995

Since no notice of proposed rulemaking is required by the APA (5 U.S.C. 551 *et seq.*), or by any other statute, FinCEN has determined that it is not required to prepare a written statement under section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (March 22, 1995).

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the

[8] Administrative Rulings 88–5, 89–5, 92–1 and 92–2 will be posted on FinCEN's public Web site. Administrative Rulings 88–1, 88–3, 88–4, 89–1, and 89–2 have been superseded by changes to 31 CFR 103.22 and 31 U.S.C. 5318 and are hereby formally rescinded under 31 CFR 103.86(a)(1) and (3). These administrative rulings will not be available on the website.

[9] *See* Rev. Proc. 68–44 (July 1968) (Discussion of the objectives of the IRB).

[10] 5 U.S.C. § 553(b).

Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Public Law 107–56, 115 Stat. 307.

■ 2. Section 103.85 is revised to read as follows:

§ 103.85 Issuing rulings.

The Director, FinCEN, or his designee may issue a written ruling interpreting the relationship between part 103 and each situation for which the ruling has been requested in conformity with § 103.81. A ruling issued under this section shall bind FinCEN only in the event that the request describes a specifically identified actual situation. A ruling issued under this section shall have precedential value, and hence may be relied upon by others similarly situated, only if FinCEN makes it available to the public through publication on the FinCEN website under the heading ''Administrative rulings'' or other appropriate forum. All rulings with precedential value will be available by mail to any person upon written request specifically identifying the ruling sought. FinCEN will make every effort to respond to each requestor within 90 days of receiving a request.

Appendix A—Administrative Rulings [Removed]

■ 3. Appendix A to part 103 is removed.

Dated: *November 9, 2009.*

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E9–27449 Filed 11–16–09; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1017]

RIN 1625–AA11

Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing Regulated Navigation Areas (RNA) covering specific bars along the coasts of Oregon and Washington. The RNAs are necessary to help ensure the safety of the persons and vessels operating in those hazardous bar areas. The RNAs will do so by establishing clear procedures for restricting and/or closing the bars and mandating additional safety requirements for recreational and small commercial vessels operating in the RNAs when certain conditions exist.

DATES: This rule is effective December 17, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1017 and are available online by going to *http://www.regulations.gov,* inserting USCG–2008–1017 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 LT Kion Evans, Thirteenth Coast Guard District, Prevention Division, Inspections and Investigations Branch; telephone (206)–220–7232, e-mail *Kion.J.Evans@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 February 12, 2009, we published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington'' in the **Federal Register** (74 FR 7022). We received 168 comments on the proposed rule. Public meetings were requested and three were held at the following dates and locations: April 14, 2009 in Astoria, Oregon; April 15, 2009 in Newport, Oregon; and June 2, 2009 in Coos Bay, Oregon.

Background and Purpose

The bars along the coasts of Oregon and Washington are a maritime operating environment unique to the Pacific Northwest. More importantly, the bars can and very often do become extremely hazardous for all types of maritime traffic. In fact, a review of recreational, passenger, and commercial fishing vessel casualty data shows that since 1992 there have been 39 vessel capsizings on or in the vicinity of the bars, resulting in 66 fatalities. Some notable recent vessel casualties include the capsizing of the inspected charter vessel TAKI–TOOO while trying to cross the Tillamook Bay bar, resulting in the deaths of 11 people, and the capsizing of the uninspected passenger vessel SYDNEY MAE II while attempting to cross the Umpqua River bar, resulting in the deaths of 3 people. In addition, several commercial fishing vessels, including the CATHERINE M, the ASH, the STARRIGAVAN and the NETWORK have recently capsized on or in the vicinity of various bars, resulting in the deaths of 10 people.

As evidenced in part by the tragedies noted above, the current regulations governing maritime traffic operating on and in the vicinity of the bars along the coasts of Oregon and Washington are insufficient to ensure the safety of the persons and vessels operating in those areas. Additionally, multiple Coast Guard and National Transportation Safety Board (NTSB) casualty investigations have indicated a need for additional regulations to mitigate the risks associated with the bars and enhance the safety of the persons and vessels operating on and in the vicinity of them. As such, the Thirteenth Coast Guard District is establishing this rule to help ensure the safety of persons and vessels operating on or in the vicinity of the bars.

Discussion of Comments and Changes

The Coast Guard received a total of 168 comments, with 122 comments coming from the 91 documents submitted to the public docket and 46 comments coming from the public meetings. Nine comments requested additional time to comment and/or public meetings. In response to these comments the comment period was extended until June 30, 2009 and an additional public meeting was held in Coos Bay, Oregon.

Unsafe Condition Formula

Twenty-five comments were received about the formula used to determine what constitutes an *Unsafe Condition* as defined in 33 CFR 165.1325(b). The comments expressed concern that the formula is too conservative, prevents smaller recreational and fishing vessels from crossing the bar in even mild to moderate conditions, and doesn't address all the factors that should be

considered in determining whether an unsafe condition exists for a particular vessel such as wave period, swell period, vessel type, and direction of travel.

No changes to the rule were made based on these comments because the formula is only one variable that will be considered by the Captain of the Port (COTP) or his designated representative in deciding whether or not to restrict a bar. As noted in 33 CFR 165.1325(c)(1)(i), they will also ''use their professional maritime experience and knowledge of local environmental conditions in making their determination. Factors that will be considered include, but are not limited to: size and type of vessel, sea state, winds, wave period, and tidal currents.'' The formula has been used for some time in 33 CFR 177.07 to define the phrase ''other unsafe condition.'' In addition, the COTP or his designated representative may permit vessels to cross a restricted bar on a case-by-case basis.

Reopening Restricted/Closed Bars

Twenty comments were received about how the Coast Guard will monitor and re-open restricted or closed bars. The comments expressed concern that the Coast Guard does not always re-open bars in a timely manner.

No changes to the rule were made based on these comments because the Coast Guard has and will continue to use all available resources to safely and efficiently monitor and, when possible, re-open restricted or closed bars as quickly as possible.

Exigent Circumstances

Several comments were received about when a vessel is trying to return to port to avoid bad weather and the bar is restricted or closed. In particular, the comments expressed a concern that vessels could be left in a more dangerous situation if they were not allowed to cross the bar.

No changes to the rule were made based on these comments because the rule allows the COTP or his designated representative to permit vessels to cross a restricted or closed bar on a case-by-case basis. As such, if a vessel operator were to find himself/herself in such a position they could request permission to cross the bar.

Application of Bar Closures to Deep Draft Vessels

Fourteen comments were received about the application of bar closures to deep draft vessels. Specifically, the comments requested that deep draft vessels be exempt from the rule because of their size, use of licensed pilots, design and construction, and onboard life saving equipment as well as the economic cost of delaying such vessels.

A change to the rule was made based on these comments. In 33 CFR 165.1325(c)(1)(ii), a provision was added so that the COTP will be required to consult with the local pilots association, when practicable, prior to closing any bar having deep draft vessel access. In addition, it is important to note that the rule also allows the COTP or his designated representative to permit vessels to cross a closed bar on a case-by-case basis.

Economic Effects

Sixteen comments were received about the possible economic effects of the proposed rule on small entities and local economies. Specifically, the comments expressed concern that the rule would reduce recreational boating opportunities, force recreational boaters to purchase larger vessels, reduce tourism activity on passenger vessels, and/or interfere with commercial fishing activities.

No changes to the rule were made based on these comments because the rule will not increase the number of bar restrictions or closures from past years. The rule is essentially a codification of how the decisions have been made in the past.

Checking-In on VHF Channel 16

Six comments were received about the requirement to check in on VHF Channel 16 when crossing a restricted bar. The comments noted that depending on the season the number of vessels affected could potentially overload the frequency. In addition, one comment expressed concern about passing sensitive information about a vessel's destination.

A change to the rule was made based on these comments. The rule now designates VHF Channel 22A as the designated ''check-in'' frequency. The rule was not changed to address the concern about passing sensitive information about a vessel's destination because the requirement to provide a vessel's destination can be met simply by saying the vessel is heading ''outbound,'' ''offshore,'' ''inbound,'' or by using any other similarly descriptive language.

Go/No-Go Plan Exemption

Several comments were received that requested uninspected passenger vessels (6-pack) 30 feet and greater having a Coast Guard accepted and/or reviewed Go/No-Go Plan be given the same exemption to the application of the rule as provided for inspected small passenger vessels.

No changes to the rule were made based on these comments because the exemption was implemented for inspected vessels since such vessels are regularly inspected by the Coast Guard to ensure their safe operation. Uninspected vessels, on the other hand, are not subject to regular inspections so there are fewer assurances regarding their safety.

Use of the Term ''Restriction''

One comment was received about the use of the term ''restriction.'' The commenter felt that it was misleading because it was not being used in accordance with its common meaning.

Two changes to the rule were made based on this comment. The definition of ''bar restriction'' was clarified and a definition of ''bar closure'' was added to ensure the terms are easily understandable as used in the rule.

Ceremonial/Subsistence Crossings

One comment was received about the application of the rule to vessels transiting the bar for ceremonial or subsistence purposes.

No changes to the rule were made based on this comment. The rule covers such vessels, however, the rule does allow the COTP or his designated representative to permit vessels to cross a restricted or closed bar on a case-by-case basis. As such, a vessel wishing to cross a restricted or closed bar regardless of its purpose may request permission to do so from the COTP or his designated representative.

Lifejackets

Sixteen comments were received suggesting that lifejacket wear be required by all persons on board vessels crossing a bar. Three of the comments suggested that lifejackets be required to be worn both inside and outside the cabin of such vessels.

No changes to the rule were made based on these comments because the provisions requiring that lifejackets be readily accessible to all persons in the enclosed areas of vessels provide sufficient opportunity for those persons to properly don a lifejacket if a need to do so arises. The term ''immediately available'' was changed to ''readily accessible'' in order to better align with other related Coast Guard regulations.

Bar Cameras

One comment recommended the use of bar cameras and requested public access to the video feeds from those cameras.

No changes to the rule were made based on this comment because it is outside the scope of the rule to address this recommendation. The Coast Guard may consider this recommendation in the future.

Federalism

Two comments were received about federalism concerns based on a belief that the rule conflicts with state law and, in particular, the Oregon Board of Maritime Pilots responsibilities to ensure safe and efficient commercial vessel transportation.

No changes to the rule were made based on these comments because the Coast Guard has the statutory authority to implement this rule as referenced in the authority citation for 33 CFR part 165.

Reference in 33 CFR 177.04

One comment was received noting that the reference to 33 CFR 177.07(g) contained in 33 CFR 177.04 needs to be changed to reference 33 CFR 177.07(f). This suggestion has been forwarded to the responsible Coast Guard Headquarters unit. This rule makes no changes to 33 CFR Part 177 because such changes are beyond the authority of the Thirteenth Coast Guard District.

Other Comments

A variety of other comments were received expressing concern that, among other things, (1) all vessel operators are being penalized for the actions of a few bad operators, (2) the rule is one size fits all, (3) the rule does not take into account dredge spoil mound wave amplifications, and (4) the rule does not address the option of ''hanging close to shore'' for better sea conditions.

All comments received were considered in drafting the final rule. No comments other than those already mentioned, however, resulted in any changes to the rule because, although important, they were either outside the scope of the rule or appeared to be based on a misunderstanding of the rule. The Coast Guard encourages mariners having further questions about the rule and how to comply with it to contact the Coast Guard point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

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 expects the economic impact of this proposed rule to be negligible in part because: (1) The rule does not require the purchase of equipment not already required to be on board the vessels affected. (2) The rule changes only the procedures for restricting and/or closing the bars, not the standards for determining when a restriction and/or closure will take place. (3) The restriction and/or closure of the bars is temporary and will only occur when necessary due to severe weather. (4) The maritime public will be advised of bar restrictions and/or closures via Broadcast Notice to Mariners and other methods of communication. (5) Vessels may be allowed to enter the RNAs when a bar restriction and/or closure is in place on a case-by-case basis with permission of the COTP or his designated representative.

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 would affect the following entities, some of which may be small entities: The owners and operators of recreational vessels, uninspected passenger vessels, inspected small passenger vessels, and commercial fishing vessels. The rule would not have a significant economic impact on a substantial number of small entities, however, for the following reasons: (1) The rule does not require the purchase of equipment not already required to be on board the vessels affected. (2) The rule changes only the procedures for restricting and/or closing the bars, not the standards for determining when a restriction and/or closure will take place. (3) The restriction and/or closure of the bars is temporary and will only occur when necessary due to severe weather. (4) The maritime public will be advised of bar restrictions and/or closures via Broadcast Notice to Mariners and other methods of communication. (5) Vessels may be allowed to enter the RNAs when a bar restriction and/or closure is in place on a case-by-case basis with permission of the COTP or his designated representative.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. Two comments were received on this subject and were addressed in ''Discussion of Comments and Changes.''

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. No comments were received on this subject.

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. No comments were received on this subject.

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. No comments were received on this subject.

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. No comments were received on this subject.

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. No comments were received on this subject.

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. No comments were received on this subject.

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. No comments were received on this subject.

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 establishing, disestablishing, or changing Regulated Navigation Areas. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1325 to read as follows:

§ 165.1325 Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington.

(a) *Regulated navigation areas.* Each of the following areas is a regulated navigation area:

(1) Quillayute River Entrance, Wash.: From the west end of James Island 47°54′23″ N., 124°39′05″ W. southward to buoy No. 2 at 47°53′42″ N., 124°38′42″ W. eastward to the shoreline at 47°53′42″ N., 124°37′51″ W., thence northward along the shoreline to 47°54′29″ N., 124°38′20″ W. thence northward to 47°54′36″ N., 124°38′22″ W. thence westward to the beginning.

(2) Grays Harbor Entrance, Wash.: From a point on the shoreline at 46°59′00″ N., 124°10′10″ W. westward to 46°59′00″ N., 124°15′30″ W. thence southward to 46°51′00″ N., 124°15′30″ W. thence eastward to a point on the shoreline at 46°51′00″ N., 124°06′40″ W. thence northward along the shoreline to a point at the south jetty 46°54′20″ N., 124°08′07″ W. thence eastward to 46°54′10″ N., 124°05′00″ W. thence northward to 46°55′00″ N., 124°03′30″ W. thence northwestward to Damon Point at 46°56′50″ N., 124°06′30″ W. thence westward along the north shoreline of the harbor to the north jetty at 46°55′40″ N., 124°10′27″ W. thence northward along the shoreline to the beginning.

(3) Willapa Bay, Wash.: From a point on the shoreline at 46°46′00″ N., 124°05′40″ W. westward to 46°44′00″ N., 124°10′45″ W. thence eastward to a point on the shoreline at 46°35′00″ N., 124°03′45″ W. thence northward along the shoreline around the north end of Leadbetter Point thence southward along the east shoreline of Leadbetter Point to 46°36′00″ N., 124°02′15″ W. thence eastward to 46°36′00″ N., 124°00′00″ W. thence northward to Toke point at 46°42′15″ N., 123°58′00″ W. thence westward along the north shoreline of the harbor and northward along the seaward shoreline to the beginning.

(4) Columbia River Bar, Wash.-Oreg.: From a point on the shoreline at 46°18′00″ N., 124°04′39″ W. thence westward to 46°18′00″ N., 124°09′30″ W. thence southward to 46°12′00″ N., 124°09′30″ W. thence eastward to a point on the shoreline at 46°12′00″ N., 123°59′33″ W. thence eastward to Tansy Point Range Front Light at 46°11′16″ N., 123°55′05″ W.; thence northward to Chinook Point at 46°15′08″ N., 123°55′25″ W. thence northwestward to the north end of Sand Island at

46°17′29″ N., 124°01′25″ W. thence southwestward to a point on the north shoreline of the harbor at 46°16′25″ N., 124°02′28″ W. thence northwestward and southwestward along the north shoreline of the harbor and northward along the seaward shoreline to the beginning.

(5) Nehalem River Bar, Oreg.: From a point on the shoreline 45°41′25″ N., 123°56′16″ W. thence westward 45°41′25″ N., 123°59′00″ W. thence southward to 45°37′25″ N., 123°59′00″ W. thence eastward to a point on the shoreline at 45°37′25″ N., 123°56′38″ W. thence northward along the shoreline to the north end of the south jetty at 45°39′40″ N., 123°55′45″ W. thence westward to a point on the shoreline at 45°39′45″ N., 123°56′19″ W. thence northward along the shoreline to the beginning.

(6) Tillamook Bay Bar, Oreg.: From a point on the shoreline at 45°35′15″ N., 123°57′05″ W. thence westward 45°35′15″ N., 124°00′00″ W. thence southward to 45°30′00″ N., 124°00′00″ W. thence eastward to a point on the shoreline at 45°30′00″ N., 123°57′40″ W. thence northward along the shoreline to the north end of Kincheloe Point at 45°33′30″ N., 123°56′05″ W. thence northward to a point on the north shoreline of the harbor at 45°33′40″ N., 123°55′59″ W. thence westward along the north shoreline of the harbor then northward along the seaward shoreline to the beginning.

(7) Netarts Bay Bar, Oreg.: From a point on the shoreline at 45°28′05″ N. thence westward to 45°28′05″ N., 124°00′00″ W. thence southward to 45°24′00″ N., 124°00′00″ W. thence eastward to a point on the shoreline at 45°24′00″ N., 123°57′45″ W. thence northward along the shoreline to 45°26′03″ N., 123°57′15″ W. thence eastward to a point on the north shoreline of the harbor at 45°26′00″ N., 123°56′57″ W. thence northward along the shoreline to the beginning.

(8) Siletz Bay Bar, Oreg.: From a point on the shoreline at 44°56′32″ N., 124°01′29″ W. thence westward to 44°56′32″ N., 124°03′00″ W. thence southward to 44°54′40″ N., 124°03′15″ W. thence eastward to a point on the shoreline at 44°54′40″ N., 124°01′55″ W. thence northward along the shoreline to 44°55′35″ N., 124°01′25″ W. thence northward to a point on the north shoreline of the harbor at 44°55′45″ N., 124°01′20″ W. thence westward and northward along the shoreline to the beginning.

(9) Depoe Bay Bar, Oreg.: From a point on the shoreline at 44°49′15″ N., 124°04′00″ W. thence westward to 44°49′15″ N., 124°04′35″ W. thence southward to 44°47′55″ N., 124°04′55″ W. thence eastward to a point on the shoreline at 44°47′53″ N., 124°04′25″ W. thence northward along the shoreline and eastward along the south bank of the entrance channel to the highway bridge thence northward to the north bank at the bridge thence westward along the north bank of the entrance channel and northward along the seaward shoreline to the beginning.

(10) Yaquina Bay Bar, Oreg.: From a point on the shoreline at 44°38′11″ N., 124°03′47″ W. thence westward to 44°38′11″ N., 124°05′55″ W. thence southward to 44°35′15″ N., 124°06′05″ W. thence eastward to a point on the shoreline at 44°35′15″ N., 124°04′02″ W. thence northward along the shoreline and eastward along the south bank of the entrance channel to the highway bridge thence northward to the north bank of the entrance channel at the bridge thence westward along the north bank of the entrance channel and northward along the seaway shoreline to the beginning.

(11) Siuslaw River Bar, Oreg.: From a point on the shoreline at 44°02′00″ N., 124°08′00″ W. thence westward to 44°02′00″ N., 124°09′30″ W. thence southward to 44°00′00″ N., 124°09′30″ W. thence eastward to a point on the shoreline at 44°00′00″ N., 124°08′12″ W. thence northward along the shoreline and southward along the west bank of the entrance channel to 44°00′35″ N., 124°07′48″ W. thence southeastward to a point on the east bank of the entrance channel at 44°00′20″ N., 124°07′31″ W. thence northward along the east bank of the entrance channel and northward along the seaward shoreline to the beginning.

(12) Umpqua River Bar, Oreg.: From a point on the shoreline at 43°41′20″ N., 124°11′58″ W. thence westward to 3°41′20″ N., 124°13′32″ W. thence southward to 43°38′35″ N., 124°14′25″ W. thence eastward to a point on the shoreline at 43°38′35″ N., 124°12′35″ W. thence northward along the shoreline to light ''8'' at 43°40′57″ N., 124°11′13″ W. thence southwestward to a point on the west bank of the entrance channel at 43°40′52″ N., 124°11′34″ W. thence southwestward along the west bank of the entrance channel thence northward along the seaward shoreline to the beginning.

(13) Coos Bay Bar, Oreg.: From a point on the shoreline at 43°22′15″ N., 124°19′34″ W. thence westward to 43°22′20″ N., 124°22′28″ W. thence southwestward to 43°21′00″ N., 124°23′35″ W. thence southeastward to a point on the shoreline at 43°20′25″ N., 124°22′28″ W. thence northward along the shoreline and eastward along the south shore of the entrance channel to a point on the shoreline at 43°20′52″ N., 124°19′12″ W. thence eastward to a point on the east shoreline of the harbor at 43°21′00″ N., 124°18′50″ W. thence northward to a point on the west shoreline of the harbor at 43°21′45″ N., 124°19′10″ W. thence south and west along the west shoreline of the harbor thence northward along the seaward shoreline to the beginning.

(14) Coquille River Bar, Oreg.: From a point on the shoreline at 43°08′25″ N., 124°25′04″ W. thence southwestward to 43°07′50″ N., 124°27′05″ W. thence southwestward to 43°07′03″ N., 124°28′25″ W. thence eastward to a point on the shoreline at 43°06′00″ N., 124°25′55″ W. thence northward along the shoreline and eastward along the south shoreline of the channel entrance to 43°07′17″ N., 124°25′00″ W. thence northward to the east end of the north jetty at 43°07′24″ N., 124°24′59″ W. thence westward along the north shoreline of the entrance channel and northward along the seaward shoreline to the beginning.

(15) Rogue River Bar, Oreg.: From a point on the shoreline at 42°26′25″ N., 124°26′03″ W. thence westward to 42°26′10″ N., 124°27′05″ W. thence southward to 42°24′15″ N., 124°27′05″ W. thence eastward to a point on the shoreline at 42°24′15″ N., 124°25′30″ W. thence northward along the shoreline and eastward along the south shoreline of the entrance channel to the highway bridge thence northward across the inner harbor jetty to a point on the north shoreline of the entrance channel at the highway bridge thence westward along the north shoreline of the entrance channel thence northward along the seaward shoreline to the beginning.

(16) Chetco River Bar, Oreg.: From a point on the shoreline at 42°02′35″ N., 124°17′20″ W. thence southeastward to 42°01′45″ N., 124°16′30″ W. thence northwestward to a point on the shoreline at 42°02′10″ N., 124°15′35″ W. thence northwestward along the shoreline thence northward along the east shoreline of the channel entrance to 42°02′47″ N., 124°16′03″ W. thence northward along the west face of the inner jetty and east shoreline of the channel entrance to the highway bridge thence westward to the west shoreline of the channel at the highway bridge thence southward along the west shoreline of the channel thence westward along the seaward shoreline to the beginning.

(b) *Definitions.* For the purposes of this section:

(1) *Bar closure* means that the operation of any vessel within a regulated navigation area established in

paragraph (a) of this section has been prohibited by the Coast Guard.

(2) *Bar crossing plan* (also known as a Go/No-Go plan) means a plan developed by local industry professionals, in coordination with the Coast Guard, for a bar within a regulated navigation area established in paragraph (a) of this section and adopted by the master or operator of a small passenger vessel to guide his vessel's operations on and in the vicinity of that bar.

(3) *Bar restriction* means that operation of a recreational or uninspected passenger vessel within a regulated navigation area established in paragraph (a) of this section has been prohibited by the Coast Guard.

(4) *Commercial fishing industry vessel* means a fishing vessel, fish tender vessel, or a fish processing vessel.

(5) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer that has been authorized by the Captain of the Port to act on his behalf.

(6) *Fish processing vessel* means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(7) *Fish tender vessel* means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility.

(8) *Fishing vessel* means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(9) *Readily accessible* means equipment that is taken out of stowage and is available within the same space as any person for immediate use during an emergency.

(10) *Recreational vessel* is any vessel manufactured or used primarily for non-commercial use or leased, rented, or chartered to another for the latter's non-commercial use. It does not include a vessel engaged in carrying paying passengers.

(11) *Small passenger vessel* means a vessel inspected under 46 CFR subchapter T or 46 CFR subchapter K.

(12) *Uninspected passenger vessel* means an uninspected vessel—

(i) Of at least 100 gross tons;

(A) Carrying not more than 12 passengers, including at

least one passenger-for-hire; or

(B) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; or

(ii) Of less than 100 gross tons;

(A) Carrying not more than six passengers, including at least one passenger-for-hire; or

(B) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than six passengers.

(13) *Unsafe condition* exists when the wave height within a regulated navigation area identified in paragraph (a) of this section is equal to or greater than the maximum wave height determined by the formula L/10 + F = W where:

L = Overall length of a vessel measured in feet in a straight horizontal line along and parallel with the centerline between the intersections of this line with the vertical planes of the stem and stern profiles excluding deckhouses and equipment.

F = The minimum freeboard when measured in feet from the lowest point along the upper strake edge to the surface of the water.

W = Maximum wave height in feet to the nearest highest whole number.

(c) *Regulations*—(1) (i) *Bar restriction.* Passage across the bars located in the regulated navigation areas established in paragraph (a) of this section will be restricted for recreational and uninspected passenger vessels as determined by the Captain of the Port (COTP) or his designated representative. In making this determination, the COTP or his designated representative will determine whether an unsafe condition exists for such vessels as defined in paragraph (b) of this section. Additionally, the COTP or his designated representative will use their professional maritime experience and knowledge of local environmental conditions in making their determination. Factors that will be considered include, but are not limited to: size and type of vessel, sea state, winds, wave period, and tidal currents. When a bar is restricted, the operation of recreational and uninspected passenger vessels in the regulated navigation area established in paragraph (a) of this section in which the restricted bar is located is prohibited unless specifically authorized by the COTP or his designated representative.

(ii) Bar closure. The bars located in the regulated navigation areas established in paragraph (a) of this section will be closed to all vessels whenever environmental conditions exceed the operational limitations of the relevant Coast Guard search and rescue resources as determined by the COTP. When a bar is closed, the operation of any vessel in the regulated navigation area established in paragraph (a) of this section in which the closed bar is located is prohibited unless specifically authorized by the COTP or his designated representative. For bars having deep draft vessel access, the COTP will consult with the local pilots association, when practicable, prior to closing the affected bar.

(iii) The Coast Guard will notify the public of bar restrictions and bar closures via a Broadcast Notice to Mariners on VHF–FM Channel 165 and 22A. Additionally, Coast Guard personnel may be on-scene to advise the public of any bar restrictions and/or closures.

(2) *Safety Requirements for Recreational Vessels.* The operator of any recreational vessel operating in a regulated navigation area established in paragraph (a) of this section shall ensure that whenever their vessel is being towed or escorted across a bar by the Coast Guard all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of their vessel.

(3) *Safety Requirements for Uninspected Passenger Vessels (UPV).* (i) The master or operator of any uninspected passenger vessel operating in a regulated navigation area established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of their vessel:

(A) When crossing the bar and a bar restriction exists for recreational vessels of the same length or

(B) Whenever their vessel is being towed or escorted across the bar by the Coast Guard.

(ii) The master or operator of any uninspected passenger vessel operating in a regulated navigation area established in paragraph (a) of this section during the conditions described in paragraph (c)(3)(i)(A) of this section shall contact the Coast Guard on VHF–FM Channel 22A prior to crossing the bar between sunset and sunrise. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons onboard the vessel, and

(D) Vessel destination.

(4) *Safety Requirements for Small Passenger Vessels (SPV).*

(i) The master or operator of any small passenger vessel operating in a

regulated navigation area established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of their vessel:

(A) When crossing the bar and a bar restriction exists for recreational vessels or uninspected passenger vessels of the same length or

(B) Whenever their vessel is being towed or escorted across the bar by the Coast Guard.

(ii) Small passenger vessels with bar crossing plans that have been reviewed by and accepted by the Officer in Charge, Marine Inspection (OCMI) are exempt from the safety requirements provided in paragraph (c)(4)(i) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section so long as when crossing the bar the master or operator ensures that all persons on their vessel wear lifejackets in accordance with their bar crossing plan. If the vessel's bar crossing plan does not specify the conditions when the persons on their vessel must wear lifejackets, however, then the master or operator must comply with the safety requirements provided in paragraph (c)(4)(i) of this section in their entirety.

(iii) The master or operator of any small passenger vessel operating in a regulated navigation area established in paragraph (a) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section shall contact the Coast Guard on VHF–FM Channel 22A prior to crossing the bar between sunset and sunrise. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons onboard the vessel, and

(D) Vessel destination.

(5) *Safety Requirements for Commercial Fishing Vessels (CFV).* (i) The master or operator of any commercial fishing vessel operating in a regulated navigation area established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets or immersion suits and that lifejackets or immersion suits are readily accessible for/to all persons located in any enclosed spaces of their vessel:

(A) When crossing the bar and a bar restriction exists for recreational vessels or uninspected passenger vessels of the same length or

(B) Whenever their vessel is being towed or escorted across the bar by the Coast Guard.

(ii) The master or operator of any commercial fishing vessel operating in a regulated navigation area established in paragraph (a) of this section during the conditions described in paragraph (c)(5)(i)(A) of this section shall contact the Coast Guard on VHF–FM Channel 22A prior to crossing the bar between sunset and sunrise. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons onboard the vessel, and

(D) Vessel destination.

(6) All persons and vessels within the regulated navigation areas established in paragraph (a) of this section must comply with the orders of Coast Guard personnel. Coast Guard personnel include commissioned, warrant, and petty officers of the United States Coast Guard.

Dated: October 15, 2009.

G.T. Blore,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. E9–27516 Filed 11–16–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 3

[EPA–HQ–OEI–2003–0001; FRL–8980–7]

RIN 2025–AA26

Technical Amendment of Cross-Media Electronic Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the Final Cross-Media Electronic Reporting Rule (CROMERR) to exclude from the regulation all documents and information submitted electronically to EPA by applicants for, and recipients of grants, cooperative agreements and other forms of financial assistance pursuant to EPA financial assistance regulations.

DATES: This final rule is effective on November 17, 2009.

ADDRESSES: EPA has established a docket for this action under No. EPA–HQ–OEI–2003–0001. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 electronically through *http://www.regulations.gov* or in hard copy at the CROMERR Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the CROMERR Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Evi Huffer, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1697; *huffer.evi@epa.gov,* or David Schwarz, Office of Environmental Information (2823T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 566–1704; *schwarz.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action will affect governments, non-profit organizations, international organizations, commercial firms, individuals and other entities who are eligible for EPA financial assistance (recipients) that submit information electronically to EPA for financial assistance awards pursuant to Title 40 of the Code of Federal Regulations (CFR) Subchapter B—Grants and Other Federal Assistance.

Category	Examples of affected entities
Governments	Foreign governments, States, tribes or territories, including intertribal consortia and Tribal education agencies. County, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments, any other regional or interstate government entity, or any agency or instrumentality of a local government. For purposes of this rulemaking, the term ''state'' includes the District of Columbia and the United States territories, as specified in the applicable statutes. That is, the term ''state'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Marina Islands and the Trust Territory of the Pacific Islands, depending on the statute.
International organizations	Agencies of the United Nations, the European Union, the World Health Organization and similar international bodies.
Non-profit organizations	Environmental organizations, trade associations, associations of government officials, institutions of higher education, public and private hospitals, and other quasi-public and other private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and private health centers.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. What does this rule do?

This rule extends the current Cross-Media Electronic Reporting Regulation (CROMERR) applicability exemption for financial assistance regulations (grants) to include all financial assistance regulations under Title 40, providing regulatory relief to applicants for, and recipients of, EPA financial assistance who submit information electronically to EPA pursuant to other parts of Title 40 of the CFR. Specifically, this final rule amends 40 CFR 3.1(b) by adding a new paragraph (3) which excludes such documents and data from Part 3.

III. Why is EPA taking this action?

EPA published the CROMERR final rulemaking on October 13, 2005 (70 FR 59853). In publishing the final rule, EPA did not intend for the new part 3 requirements to apply to the Agency's financial assistance regulations. This is evidenced by the statement in the final rule preamble that the ''new part 3 does not address contracts, grants or financial management regulations contained in Title 48 of the CFR.'' (70 FR 59853, October 13, 2005). EPA recently discovered, however, that CROMERR does apply to grants found in parts of Title 40 of the CFR. Augmenting this discrepancy, states, tribes, and local governments submitting applications, reports, or data to satisfy grant requirements under Title 40 are currently exempt under CROMERR section 3.1(c) when the environmental grant programs are linked to EPA-authorized programs. Today's final rule excludes all documents and data submitted electronically to EPA by financial assistance applicants and recipients pursuant to financial assistance requirements under Title 40 of the CFR from CROMERR.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose any information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 3) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2025–0003. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because this rule pertains to grants which the section 553 of the APA specifically exempts from notice and comment rulemaking requirements (5 USC 553(a)(2)). Thus, EPA is not required to promulgate a proposed rule or take comment on the rule.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, tribal, or local governments or the private sector. The action imposes no additional requirements or enforceable duty on any State, tribal, or local governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This rule relieves a regulatory burden to environmental grant applicants and grantees submitting electronic documents and information to EPA.

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

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action provides regulatory relief to grant applicants and grantees and imposes no additional requirements. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This action provides regulatory relief to tribal, state, local government, and non-profit organization grant applicants and

grantees. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA lacks the discretionary authority to address environmental justice in this final rulemaking because it does not affect the level of protection provided to human health or the environment. This final rule exempts grant applicants and grantees submitting documents and information electronically to EPA pursuant to environmental grant regulations under 40 CFR from CROMERR.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2) and provides regulatory relief to state, tribe, local government, and non-profit organization environmental grant applicants and grantees. This rule will be effective on November 17, 2009.

List of Subjects in 40 CFR Part 3

Environmental protection, Conflict of interests, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

Dated: November 5, 2009.

Lisa P. Jackson,

Administrator.

Therefore, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 3—[AMENDED]

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 7 U.S.C. 136 to 136y; 15 U.S.C. 2601 to 2692; 33 U.S.C. 1251 to 1387; 33 U.S.C. 1401 to 1445; 33 U.S.C. 2701 to 2761; 42 U.S.C. 300f to 300j–26; 42 U.S.C. 4852d; 42 U.S.C. 6901–6992k; 42 U.S.C. 7401 to 7671q; 42 U.S.C. 9601 to 9675; 42 U.S.C. 11001 to 11050; 15 U.S.C. 7001; 44 U.S.C. 3504 to 3506.

Subpart A—General Provisions

■ 2. Section 3.1 is amended by revising paragraphs (b)(1) and (b)(2) and by adding paragraph (b)(3) to read as follows:

§ 3.1 Who does this part apply to?

* * * * *

(b) * * *

(1) Documents submitted via facsimile in satisfaction of reporting requirements as permitted under other parts of Title 40 or under authorized programs;

(2) Electronic documents submitted via magnetic or optical media such as diskette, compact disc, digital video disc, or tape in satisfaction of reporting requirements, as permitted under other parts of Title 40 or under authorized programs; or

(3) Documents and information submitted under grants, cooperative agreements, or financial assistant regulations contained in Title 40.

* * * * *

[FR Doc. E9–27304 Filed 11–16–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XS90

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch by Vessels in the Amendment 80 Limited Access Fishery in the Eastern Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 Pacific ocean perch allocation specified for vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 12, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 Pacific ocean perch TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI is 1,742 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2009 Pacific ocean perch TAC allocated to vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,600 mt and is setting aside the remaining 142 mt as incidental catch to support other groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch by vessels participating in the Amendment 80 limited access fishery in the Eastern Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 10, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: November 12, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–27584 Filed 11–12–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 220
Tuesday, November 17, 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

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC10

Common Crop Insurance Regulations; Apple Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of reopening of comment period.

SUMMARY: The Federal Crop Insurance Corporation is reopening and extending the comment period for the proposed rule published in the **Federal Register** on Tuesday, September 8, 2009. The proposed rule amends the Common Crop Insurance Regulations, Apple Crop Insurance Provisions to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. During the comment period, FCIC received comments that due to the public comment period overlapping with the apple harvest in some areas, sixty days was not adequate to properly review the proposed changes. FCIC agrees additional time is appropriate to ensure all interested persons have time to fully review the proposed rule and provide meaningful comments.

DATES: The comment period for the proposed rule published on September 8, 2009, (73 FR 46023) is reopened. Written comments and opinions on this rule will be accepted until close of business December 17, 2009 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled ''Apple Crop Provisions'', by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205.
- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131–3055.
- *E-Mail: DirectorPDD@rma.usda.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.

FOR FURTHER INFORMATION CONTACT: Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926- 7730.

SUPPLEMENTARY INFORMATION:

Background

On Tuesday, September 8, 2009, FCIC published a proposed rule in the **Federal Register.** The proposed rule amends the Common Crop Insurance Regulations, Apple Crop Insurance Provisions to provide policy changes, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse.

The proposed rule public comment period of 60 days ended on November 9, 2009. Based on several requests received during the comment period, FCIC is reopening and extending the comment period until December 17, 2009. This action will allow interested persons additional time to prepare and submit comments regarding the proposed rule.

Signed in Washington, DC, on November 10, 2009.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E9–27595 Filed 11–16–09; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–333P]

Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance carisoprodol, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Acting Assistant Secretary for Health of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by DEA. If finalized, this action would impose the regulatory controls and criminal sanctions of schedule IV on those who handle carisoprodol and products containing carisoprodol.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before December 17, 2009. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after midnight Eastern Standard Time (EST) on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–333'' on all written and electronic correspondence. Written comments sent via regular or express mail should be sent to the Drug Enforcement Administration, *Attention:* DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this

document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight EST on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight EST on the day the comment period closes. Commenters in time zones other than EST may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Comments and Requests for Hearing: In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557). All persons are invited to submit their comments or objections with regard to this proposal. Requests for a hearing may be submitted by interested persons and must conform to the requirements of 21 CFR 1308.44 and 1316.47. The request should state, with particularity, the issues concerning which the person desires to be heard and the requestor's interest in the proceeding. Only interested persons, defined in the regulations as those ''adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811),'' may request a hearing. 21 CFR 1308.42. Please note that DEA may grant a hearing only ''for the purpose of receiving factual evidence and expert opinion regarding the issues involved in the issuance, amendment, or repeal of a rule issuable'' pursuant to 21 U.S.C. 811(a). All correspondence regarding this matter should be submitted to the DEA using the address information provided above.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the DEA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

Carisoprodol is a centrally acting muscle relaxant and is indicated for the relief of discomfort associated with acute, painful musculoskeletal conditions. Carisoprodol has been available since 1959 as a prescription drug in the United States under the trade name Soma®. It is also marketed as generic products. Carisoprodol is similar to a variety of central nervous system (CNS) depressants, including meprobamate (C–IV) and chlordiazepoxide (C–IV). The actual abuse data from several databases demonstrate that carisoprodol is abused in the United States. Because of growing concerns about abuse of carisoprodol, a number of states have regulated carisoprodol under their controlled substance regulations, and a number of additional states are currently considering such regulation.

Because of the evidence relating to diversion, abuse, and trafficking of carisoprodol, in March 1996, the DEA requested from the DHHS a scientific and medical evaluation and a scheduling recommendation for carisoprodol, in accordance with 21 U.S.C. 811(b).

In February 1997, the U.S. Food and Drug Administration (FDA) Drug Abuse Advisory Committee (DAAC) deliberated upon the abuse and scheduling issues and concluded that the data were insufficient to control carisoprodol under the CSA at that time. Since the FDA DAAC meeting, pharmacological studies addressing the abuse liability of carisoprodol have been conducted under the direction of the National Institute on Drug Abuse (NIDA) and the College on Problems of Drug Dependence (CPDD). DEA acquired new carisoprodol-related data on actual abuse, law enforcement encounters and other information and sent this supplementary information to DHHS on November 14, 2005. FDA acquired new data from the Drug Abuse Warning Network (DAWN), National Survey on Drug Use and Health (NSDUH), Florida Medical Examiners Commission reports, FDA's Adverse Event Reporting System (AERS) and information from the published scientific literature and conducted a scientific and medical evaluation. These data collectively indicate that carisoprodol has abuse potential and is being diverted, trafficked, with increasing frequency and magnitude.

Carisoprodol abuse has been associated with increasing numbers of emergency department (ED) visits in recent years as indicated by DAWN. The ''abuse frequency,'' calculated as ED visits per 10,000 prescriptions, of carisoprodol (frequency range during 2002–2007: 15.1 to 22.6 visits/10,000 prescriptions) is similar to that of a schedule IV drug, diazepam (frequency range during 2002–2007: 12.5 to 14.1 visits/10,000 prescriptions). Carisoprodol is used as either the sole drug or in combination with other substances such as opioids, benzodiazepine, alcohol, marijuana, and cocaine. Data from the AERS database show that carisoprodol is associated with adverse health events including dependence and withdrawal syndrome.

The data from National Poison Data System of the American Association of Poison Control Centers documented 8,821 carisoprodol toxic exposure cases including 3,605 cases in which it was

the sole drug mentioned in 2007. Medical Examiners Commission Reports released by the Florida Department of Law Enforcement (FDLE) indicate that carisoprodol/meprobamate related deaths in Florida increased by 100 percent from 208 deaths in 2003 to 415 deaths in 2008.

The National Forensic Laboratory Information System (NFLIS), a DEA system that tracks analyzed drug exhibits submitted by the federal, state, and local law enforcement, documented evidence of substantial diversion of carisoprodol. For example, law enforcement submitted a total of 3,873 carisoprodol drug items to participating forensic laboratories in 2008. NFLIS consistently listed carisoprodol in the top 25 most frequently identified drugs since 2000. The 2007 NSDUH data show that 2.7 million individuals used Soma® in their lifetime (i.e., ever used) for a non-medical purpose.

The data from in vitro electrophysiological studies using the whole-cell patch clamp technique demonstrate that carisoprodol elicits barbiturate-like effects. Intravenous drug self-administration studies in rhesus monkeys show that carisoprodol has positive reinforcing effects. Meprobamate, pentobarbital, and chlordiazepoxide substitute fully for the discriminative stimulus effects of carisoprodol in rats. Bemegride, a barbiturate antagonist, antagonizes the discriminative stimulus effects of carisoprodol.

Data from an animal study indicates that carisoprodol has dependence liability similar to barbital (schedule IV), a central nervous system depressant. Carisoprodol administered orally fully prevented the appearance of abstinence phenomena in dogs tolerant and dependent on barbital. Several published reports document evidence of tolerance and dependence to carisoprodol and indicate the occurrence of abstinence symptoms during carisoprodol withdrawal in humans.

On October 6, 2009, the Acting Assistant Secretary for Health, DHHS, sent the Deputy Administrator of DEA a scientific and medical evaluation and a letter recommending that carisoprodol be placed into schedule IV of the CSA. Enclosed with the October 6, 2009, letter was a document prepared by the FDA entitled, ''Basis for the Recommendation for Control of Carisoprodol in Schedule IV of the Controlled Substances Act (CSA).'' The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)). The factors considered by the Assistant Secretary of Health and DEA 21 U.S.C. 811(c)) with respect to carisoprodol were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

Based on the recommendation of the Assistant Secretary for Health, received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), and the independent review of the available data by DEA, the Deputy Administrator of DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

1. Carisoprodol has a low potential for abuse relative to the drugs or other substances in Schedule III. Animal studies indicate that carisoprodol is similar to schedule IV drugs such as meprobamate and chlordiazepoxide in its central nervous system depressant effects. The documented data on law enforcement encounters and actual abuse of carisoprodol demonstrate that it has a potential for abuse and is being diverted and abused. Since 2000, DEA's NFLIS database consistently mentioned carisoprodol in the top 25 drugs that were most frequently identified by state and local forensic laboratories thereby indicating that carisoprodol is being diverted. Emergency department visits data from DAWN indicate that abuse frequency of carisoprodol is similar to that of diazepam, a schedule IV drug. Recent data from DAWN medical examiner reports and emergency department visits showed an increase in carisoprodol abuse.

2. Carisoprodol has a currently accepted medical use in treatment in the United States. Carisoprodol is an FDA approved drug and is used for the relief of discomfort associated with acute, painful musculoskeletal conditions.

3. Abuse of carisoprodol may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III. Carisoprodol, similar to barbital (schedule IV), prevents the abstinence syndrome in drug withdrawn barbital-dependent dogs. Published reports indicate that carisoprodol causes psychological or physical dependence and withdrawal syndrome.

Based on these findings, the Deputy Administrator of DEA concludes that carisoprodol, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible warrants control in schedule IV of the CSA. (21 U.S.C. 812(b)(4))

References to the above studies and data may be found in the Health and Human Services scheduling recommendation and DEA's independent analysis, both of which are available on the electronic docket associated with this rulemaking.

Requirements for Handling Carisoprodol

If this rule is finalized as proposed, carisoprodol would be subject to CSA regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, and exporting of a schedule IV controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports, exports, engages in research or conducts instructional activities with carisoprodol, or who desires to manufacture, distribute, dispense, import, export, engage in instructional activities or conduct research with carisoprodol, would need to be registered to conduct such activities in accordance with 21 CFR part 1301.

Security. Carisoprodol would be subject to schedules III–V security requirements and would need to be manufactured, distributed, and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76, and 1301.77.

Labeling and Packaging. All labels and labeling for commercial containers of carisoprodol which are distributed on or after finalization of this rule would need to comply with requirements of 21 CFR 1302.03–1302.07.

Inventory. Every registrant required to keep records and who possesses any quantity of carisoprodol would be required to keep an inventory of all stocks of carisoprodol on hand pursuant to 21 CFR 1304.03, 1304.04 and 1304.11. Every registrant who desires registration in schedule IV for carisoprodol would be required to conduct an inventory of all stocks of the substance on hand at the time of registration.

Records. All registrants would be required to keep records pursuant to 21

CFR 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23.

Prescriptions. All prescriptions for carisoprodol or prescriptions for products containing carisoprodol would be required to be issued pursuant to 21 CFR 1306.03–1306.06 and 1306.21, 1306.22–1306.27.

Importation and Exportation. All importation and exportation of carisoprodol would need to be in compliance with 21 CFR part 1312.

Criminal Liability. Any activity with carisoprodol not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after finalization of this proposed rule would be unlawful.

Regulatory Certifications

Executive Order 12866

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking ''on the record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order 12866, section 3(d)(1).

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

In considering the impact on small entities, the first question is whether a substantial number of small entities are affected. In this instance, the entities affected are those now selling carisoprodol-containing products without registration. DEA has identified 22 firms manufacturing carisoprodol-containing products in 2009.[1] Fifteen of these firms have existing DEA registrations. This leaves seven firms from this data set selling carisoprodol without registration. DEA has no information on the number of non-registrants distributing or importing carisoprodol, but there is every reason to believe that the number of such firms is well in excess of the seven already identified. The Small Business Administration size standard for a small wholesaler of drugs is 100 employees. It is clearly possible to operate a drug distributing firm with fewer than 100 employees. There can be no question that a substantial number of small entities will be affected by this rule.

The impact on non-registrants now selling carisoprodol will occur in two forms: the cost of registration and the cost of meeting the security requirements in 21 CFR part 1301. There is also a potential impact on firms not now selling carisoprodol who might have wished to enter the market.

The annual registration fee for a distributor, importer, or exporter is $1,147. There is some uncertainty in estimating the cost of meeting the security requirements, because most nonregistrants already meet the security requirements, at least in part, for schedule III and IV substances. To be conservative, it is assumed that every nonregistrant will have to buy a safe to store carisoprodol. A safe with capacity of 13.5 cubic feet should be adequate. A safe of this size may be purchased for $1,350.[2] Annualized over 15 years at 7.0 percent, that is $148 per year. Total annual cost of compliance with the rule, then, is $1,295. The usual standard for a significant economic impact is 1.0 percent of revenue. For $1,295 per year to be a significant economic impact, annual revenue of a firm would have to be under $130,000. Any firm in the business of distributing drugs needs annual revenue well in excess of that amount to sustain itself.

It should be acknowledged that, for a small firm, there may be some inconvenience and expense in preparing necessary forms for registration and registration renewal. These are minor costs. There are also recordkeeping requirements, but these impose little or no incremental cost for a firm that is already maintaining records needed for a wholesale business. The costs of registration and security requirements will not be a significant economic impact.

If a firm chose not to register and to drop its carisoprodol line, the cost to the firm would exceed its earnings on the carisoprodol sales. The firm might also lose some customers who do not want to buy from a vendor without carisoprodol in its product line. A competent manager will recognize this cost. In light of the very small cost of registering, he would presumably choose to drop carisoprodol from the firm's products only if the firm were earning a negligible profit from that line and he judged that dropping it would not turn away significant customers. In light of the foregoing analysis, DEA finds that this rule will not have a significant economic impact on a substantial number of small entities. DEA has no information regarding the number of persons who may distribute carisoprodol-containing products, but do not manufacture, package, repackage, or relabel those products. Therefore, DEA seeks comment on any entities that might be affected by this control action.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator

[1] IMS Health National Prescription Audit (NPA).

[2] NationwideSafes.com *http://www.nationwidesafes.com/capacity-more-than-4pt0-cu-ft.html.*

hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is amended by redesignating paragraphs (c)(5) through (c)(52) as paragraphs (c)(6) through (c)(53) and adding a new paragraph (c)(5) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(5) Carisoprodol	8192

* * * * *

Dated: November 10, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–27583 Filed 11–16–09; 8:45 am]

BILLING CODE 4410–09–P

Notices

Federal Register
Vol. 74, No. 220
Tuesday, November 17, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 10, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: USDA APHIS Peer Reviewer's Certification Regarding Conflict of Interest.

OMB Control Number: 0579–0304.

Summary Of Collection: The Information or Data Quality Act (Pub. L. 106–554, 515 Appendix C, 114 Stats. 2763A–153–154) and OMB's Peer Review Bulletin (70 FR 2664–2677) requires federal agencies to select peer reviewer's of influential and highly influential information and to examine their financial ties to regulate entities, other stakeholders, and the agency. Some of the information that the Animal and Plant Health Inspection Service (APHIS) disseminates is ''influential'' that is, it has a clear and substantial impact on important public policies or important private sector decisions.

Need and Use of the Information: APHIS will collect information using APHIS form 6004, Peer Reviewer Information, to ensure that all nonfederal peer reviewers who are recruited by the Agency have no conflicts of interest with respect to peer review of a specific scientific document that will be used for purposes of making policy or dissemination to the public.

Description of Respondents: Individuals or households.

Number of Respondents: 50.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 13.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–27508 Filed 11–16–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 10, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Negative Quality Control Review Schedule.

OMB Control Number: 0584–0034.

Summary of Collection: The legislative basis for the operation of the quality control system is provided by section 16 of the Food and Nutrition Act of 2008. State agencies are required to perform Quality Control (QC) reviews for the Supplemental Nutrition Assistance Program (SNAP). Section 275.21(a) requires State agencies to submit reports to enable the Food and Nutrition Service (FNS) to monitor their compliance with Program requirements relative to the Quality Control Review System. FNS will collect information using forms FNS–245 *Negative Case Action Review Schedule and* FNS–248 *Status of Sample Selection and Completion.*

Need and Use of the Information: FNS will collect information to record data in negative case reviews. Negative case actions include the denial, termination or suspension of benefits. FNS will also measure program operations and determination of a State's eligibility for enhanced administrative funding and to monitor the progress of sample selection and completion. If the information were not collected, it would delay the awarding of monetary incentives in which the negative error rate played a role.

Description of Respondents: State, Local, or Tribal Government; Federal Government; Individuals or households.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 118,633.

Food and Nutrition Service

Title: Data Collection Related to Participation of Faith-Based and Community Organizations.

OMB Control Number: 0584–0540.

Summary of Collection: The Department of Agriculture, Food and Nutrition Service (FNS) issued a 60-day notice entitled ''Data Collection related to Institutions and Organizations,'' as part of the Department's efforts to fulfill its responsibilities under Executive Orders 13279 ''Equal Protection of the Laws for Faith-Based and Community Organizations,'' and Executive Order 13280, ''Responsibilities of the Department of Agriculture and the Agency for International Development with Respect to Faith-Based and Community Initiatives. Additionally Executive Order 13280 charges the Department to give equal treatment to faith-based and community organizations that apply to participate in the Department's programs.

Need and Use of the Information: The data collected will enable FNS to identify the faith-based and community organizations participating in Federal nutrition assistance programs, determine the level of their participation, ensure that FNS' programs are open to all eligible organizations and evaluate the effectiveness of its technical assistance and outreach efforts. Without the data FNS will be hampered in its efforts to fully meet the requirements established by the aforementioned executive order and regulations.

Description of Respondents: Not-for-profit institutions; Individual or households; State, Local or Tribal Government.

Number of Respondents: 57.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 131,966.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–27507 Filed 11–16–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Office of the Secretary

Notice of an Opportunity To Apply for Membership on the National Advisory Council on Innovation and Entrepreneurship

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce is currently seeking applications for membership on the National Advisory Council on Innovation and Entrepreneurship (Council). The purpose of the Council is to advise the Secretary of Commerce on matters related to innovation and entrepreneurship.

ADDRESSES: Please submit application information to the Office of Innovation and Entrepreneurship at Room 4077, 1401 Constitution Avenue, NW., Washington, DC 20230 or electronically to *entrepreneurship@doc.gov*.

DATES: All applications must be received by the Office of Innovation and Entrepreneurship by close of business on November 30, 2009.

FOR FURTHER INFORMATION CONTACT: The Office of Innovation and Entrepreneurship, Room 4077, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–5336, e-mail: *entrepreneurship@doc.gov*.

SUPPLEMENTARY INFORMATION: The Office of Innovation and Entrepreneurship is accepting applications for the Council for the upcoming 2-year charter term beginning November 2009. Members shall serve until the Council charter expires in November 2011. Members will be selected, in accordance with applicable Department of Commerce guidelines, based on their ability to advise the Secretary of Commerce on matters relating to innovation and entrepreneurship. Members of the Council shall be selected in a manner that ensures that the Council is balanced in terms of perspectives and expertise with regard to innovation and entrepreneurship. To that end, the Secretary seeks to appoint members who represent diversity in industry, experience, and geographic area. Additional factors which may be considered in the selection of Council members include candidates' proven experience in innovation and entrepreneurship, or in promoting entrepreneurship. Priority may be given to successful entrepreneurs, innovators, angel investors, venture capitalists, and other experts drawn from non-governmental organizations, foundations and non-profits that have significant experience in innovation and entrepreneurship. Nominees will be evaluated consistent with the factors specified in this notice and their ability to carry out the goals of the Council. Self-nominations will be accepted. Appointments will be made without regard to political affiliation. The Council will identify and recommend solutions to issues critical to enabling entrepreneurs and firms to successfully commercialize new ideas and technologies into high-growth, innovation-based businesses and to create new jobs. The Council will also serve as a vehicle for ongoing dialogue with the entrepreneurship community. The duties of the Council are solely advisory; it shall report to the Secretary of Commerce, through the Office of Policy and Strategic Planning in the Office of the Secretary.

Membership: Members will serve at the discretion of the Secretary of Commerce. Because members will be appointed as experts, members will be considered special government employees. Members participating in Council meetings and events will be responsible for their travel, living, and other personal expenses. Meetings will be held regularly and not less than twice annually, usually in Washington, DC. Members are required to attend a majority of the Council's meetings. The first Council meeting for the new charter term has not yet been established.

Eligibility: In addition to the factors stated above, eligibility for membership is limited to U.S. citizens who are not full-time employees of a government entity, are not registered with the Department of Justice under the Foreign Agents Registration Act, and are not a federally-registered lobbyist.

Application Procedure: For consideration, a nominee should send (1) resume, (2) personal statement of interest, (3) an affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended, and (4) an affirmative statement that the applicant is not a federally-registered lobbyist. Applications should be sent to the Office of Innovation and

Entrepreneurship at Room 4077, 1401 Constitution Avenue NW., Washington, DC 20230. Applications may also be submitted electronically to *entrepreneurship@doc.gov*.

Appointments of members of the Council will be made by the Secretary of Commerce.

Dated: November 10, 2009.

John J. Phelan, III,

Director for Management and Organization.

[FR Doc. E9–27506 Filed 11–16–09; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT

[9/8/2009 through 11/6/2009]

Firm	Address	Date accepted for filing	Products
Chicago Turnrite Company, Inc.	4459 W. Lake St., Chicago, IL, 60624.	9/23/2009	Precision machined parts for the marine, agriculture, railroad, hydraulic and index components industries.
Magil Corporation	500 N. Oakwood Rd., Lake Zurich, IL 60047.	9/24/2009	High tech electric motors designed for elevators.
C Cretors and Company	3243 N. California Avenue, Chicago, IL 60618.	9/23/2009	Food concession and industrial food processing equipment.
Transwall Office Systems, Inc	P.O. Box 1930, 1220 West Chester, PA 19380.	10/14/2009	Moveable, modular walls of steel, glass and aluminum partitions and systems office furniture.
Altronics Manufacturing Inc	12 Executive Drive, Unit 2, Hudson, NH 03051.	9/24/2009	Surface mount and thru-hole printed circuit board PCB assembly, and fully integrated services including cables, Electro-mechanical assemblies and full box-build chassis integration.
Jewell Instruments LLC	850 Perimeter Road, Manchester, NH 03103.	9/24/2009	Custom analog and digital panel meters, avionic mechanisms, inertial sensors, precision solenoids and test equipment. They also provide design and engineering services.
Doors and More Inc	2775 Baxter Lane, Bozeman, MT 59718.	9/8/2009	Flush doors.
Distech Systems, Inc	1005 Mt. Read Boulevard, Rochester, NY 14606.	9/24/2009	Automated robotic tray handling systems.
Attica Lumber Co., Inc	P.O. Box 118, 71 Market, Attica, NY 14011.	9/24/2009	Hardwood moldings, dovetailed drawers, store fixtures and kitchen cabinet components.
Jazz Semiconductor Inc	4321 Jamboree Road, Newport Beach, CA 92660.	10/27/2009	Analog-Intensive Mixed-Signal CA (AIMS) process technologies.
Innovative Coatings, Inc	24 Jayar Road, Medway, MA 02053.	9/25/2009	Custom molded grips, caps, sleeves and covers.
Champion Bus, Inc./General Coach America.	331 Graham Rd., Imlay City, MI 48444.	9/25/2009	Passenger busses and coaches for public transportation.
CAB Footwear LP	2100 Wyoming Ave., El Paso, TX 79903.	9/25/2009	Leather footwear, custom boots.
Matenaer Corporation	810 Schoenhaar Dr., West Bend, WI 53090.	10/29/2009	Stamped metal products for the agriculture, lawn and garden, heavy truck, construction hardware and equipment, automotive, engine & transmission, and consumer products industries.
Marquette Tool and Die Company.	3185 S. Kingshighway, St. Louis, MO 63139.	10/23/2009	Metal tooling, stampings.
Sweeney Enterprises, Inc	321 Waring Welfare Rd., Boerne, TX 78006.	10/23/2009	Automatic (stand alone) animal feeders.
Sunset Metal Works, Inc	221 Sunset Blvd. W., Chambersburg, PA 17202.	11/2/2009	Fabrication manufacturing. Engineering, cutting, welding, machining, forming and painting components to customer specifications.
True Precision Plastics, Inc	310 Running Pump Road, Lancaster, PA 17603.	11/3/2009	Plastic injection molded parts such as housings hubs, gears and other components for scales, security cameras and wireless antennas.
S & S Cycle, Inc	14025 County Highway G, Viola, WI 54664–8892.	9/10/2009	Complete engines, performance parts, and stock replacement parts.
ThyssenKrupp Bilstein of America, Inc.	8685 Berk Blvd., Hamilton, OH 45015.	9/25/2009	Shock absorbers.
Montana Sundown dba Rocky Mountain.	1883 Highway 93 S, Hamilton, MT 59840.	10/9/2009	Custom notched logs for log home kits.
Pacific Coast Anodizing Inc	1616 W Pine Avenue, Fresno, CA 93728.	10/29/2009	Metal finishing facility.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT—Continued

[9/8/2009 through 11/6/2009]

Firm	Address	Date accepted for filing	Products
PT Systems, Inc	1980 Olivera Rd., Ste. A, Concord, CA 94520.	11/2/2009	Assembly of PC boards, cables and signal generator manufacture of utility sub-meters.
Digital Machine Company	1055 B Louis Drive, Warminster, PA 18974.	11/2/2009	Custom precision machined parts and components for precision flow measuring equipment.
K-Fab, Inc	1408 N. Vine Street, Berwick, PA 18603.	11/2/2009	Cab assemblies for trucks and forklifts; scrapers for large earth moving equipment; and axles for vehicles from special dies and tools.
Alchemy Glass & Light, Inc	5715 McKinley Avenue, Los Angeles, CA 90011.	10/9/2009	Glass sinks, countertops, light fixtures, tableware, and mirrors through kiln forming and finishing processes.
Hawaiian Candies & Nuts, Ltd dba Menehune Mac.	707 A Waiakamilo Road, Honolulu, HI 96817.	10/23/2009	Macadamia nut chocolates, macadamia nut confections, and cookies.
Mountain States Steel	325 South Geneva Road, Lindon, UT 84042.	11/3/2009	Fabricated structural steel for bridges and towers used in industrial, commercial, and government construction.
Williamson Corporation	70 Domino Drive, Concord, MA 01742.	10/28/2009	Industrial thermometers.
Jannel Packaging, Inc	5 Mear Road, Holbrook, MA 02343.	10/28/2009	Polyethylene film bags with and without adhesive backing.
Perceptron, Inc	47827 Halyard Drive, Plymouth, MI 48170.	11/3/2009	Coordinate-measuring machines for in-line measurement.
S&S Steel Fabrication	2292 W 500 N, Hurricane, UT 84737.	10/29/2009	Fabricated structural steel for industrial, commercial, and government construction projects.
Cardinal Scale Manufacturing Co.	203 E. Daugherty, Webb City, MO 64870.	9/25/2009	Scales & weighing equipment and components.
Precision Metalcraft, LLC	2853 S. Hillaide St., Wichita, KS 67216–2546.	10/28/2009	High precision stainless steel, titanium & aluminum structural components for the aerospace industry.
Gorbel, Inc	600 Fishers Run, P.O. Box, Fishers, NY 14453–0593.	10/29/2009	Lifting solutions including work station, jib and gantry cranes that can handle loads from 50 pounds to 40 tons.
Comfort Care Textiles, Inc	312 Fleetwood Street, Coatesville, PA 19320.	10/28/2009	Reusable incontinent under pads, diapers, briefs, bibs and other health care products.
Electro Medical Equipment Co. Inc.	12015 Industriplex Blvd., Baton Rouge, LA 70809.	10/9/2009	Various medical nylon straps.
Key City Furniture Company Inc.	1804 River Street, Wilkesboro, NC 28697.	10/30/2009	Upholstered furniture.
Oberdorfer LLC	6259 Thompson Road, Syracuse, NY 13206.	10/9/2009	Aluminum castings with dry sand, permanent mold, semi-permanent mold, and no-bake processes to meet and exceed customer requirement and quality standards.
Tonka Seafoods, Inc	22 S South Sing Lee Alley, Petersburg, AK 99833.	10/30/2009	Salmon, fresh whole and filleted, smoked salmon.
Klune Industries, Inc	1800 North 300 West, Spanish Fork, UT 84660.	9/22/2009	Precision machined aircraft components and assemblies.
Synesso, Inc	309 S Cloverdale Suite, Seattle, WA 98108.	10/29/2009	Espresso and coffee machines.
White Electronic Designs Corporation.	3601 E. University Drive, Phoenix, AZ 85034–7217.	9/23/2009	Semiconductors and related devices.
Turning Solutions, Inc	34 East Harmer Street, Warren, PA 16365.	9/10/2009	Metal and nonmetal turned CNC precision products such as bolts, nuts, rivets, valves, pipe fittings and washers.
Keadle Lumber Enterprises, Inc.	889 Railroad Street, Thomaston, GA 30286.	10/29/2009	Wood chips, lumber and small timbers.
HydroDot, Inc	238 Littleton Road, Westford, MA 01886.	10/29/2009	EzeNet is a fabric headpiece with sockets for HydroDot electrodes. HydroDots are the patented electrodes for the EzeNet.
CB Manufacturing & Sales Company.	4455 Infirmary Road, West, OH 45449.	10/29/2009	Industrial saws, blades and knives as well as metal grinding services.
D. L. Martin Company	25 Harbaugh Drive, Mercersburg, PA 17326.	10/29/2009	Precision machined parts such as components for heavy industrial equipment, construction equipment, custom hydraulics and mining equipment.
S E Moulding, Inc	408 N. Baltimore Avenue, Mt. Holly, PA 17065.	10/29/2009	Custom injection molded parts of plastic for the medical, automotive and food industries.
Rochester Gear, Inc	213 Norman Street, Rochester, NY 14613–1813.	11/3/2009	Spur, bevel, straight and spiral gears, speed changers.
Refractory Anchors, Inc	9836 S 219th E. Ave., Broken Arrow, OK 74014.	10/29/2009	High temperature refractory anchors, mastics and hex-metal.
Burr King Manufacturing Co., Inc.	1220 Tamara Lane, Warsaw, MO 65355.	10/29/2009	Polishing equipment, deburring and grinding machines.
Preston-Eastin Inc	5341 E. Independence, Tulsa, OK 74115.	11/3/2009	Positioning products used in the process of working metals. Positioners, clamps, floor tumblers.
Haumiller Engineering Company.	445 Renner Drive, Elgin, IL 60123.	11/3/2009	Small plastic part assembly and test equipment.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT—Continued

[9/8/2009 through 11/6/2009]

Firm	Address	Date accepted for filing	Products
B & B Precise Products, Inc ...	25 Neck Road, Benton, ME 04901.	10/29/2009	Aircraft rotating components.
Hermance Machine Company	178 Campbell Street, Williamsport, PA.	10/30/2009	Machines from small powermatic saws to large CNC routers. Also, installation and servicing of this machinery.
Escape Velocity Systems, Inc	2520 55th Street, Suite 204, Boulder, CO 80301.	11/3/2009	Development and integration of enterprise resource planning (ERP) software for businesses.
Accra-Fab, Inc	23201 E Apple Way Dr., Liberty Lake, WA 99019.	11/4/2009	Component parts.
Advance Corporation	8200 97th Street South, Cottage Grove, MN 55016.	10/9/2009	Plaques for awards.
Felton Brush Incorporation	7 Burton Drive, Londonderry, NH 03053.	11/4/2009	Highly engineered sub-assemblies through a broad range of fabrication capabilities.
Bentonville Casting Company, Inc.	1019 South East 8th St., Bentonville, AR 72712–6413.	11/4/2009	Gray and ductile iron castings according to customer specifications.
Bevolo Gas & Electric Lights Inc.	521 Conti St., New Orleans, LA 70130.	11/4/2009	Commercial lighting fixtures.
Insinger Machine Company	6245 State Road, Philadelphia, PA 19135.	11/4/2009	Commercial dishwashing machines and other food product machinery.
Choice Precision Machine, Inc	4380 Commerce Drive, Whitehall, PA 18052.	11/4/2009	Custom precision machined parts for multiple industries.
QDP Manufacturing Solutions, Inc.	1150 McKinley Street, Anoka, MN 55303.	11/4/2009	Metal machined parts for hydraulic components.
American Hollow Boring Company.	1901 Raspberry Street, Erie, PA 16502.	11/4/2009	Centrifugal pipe molds for the soil pipe industry.
B & J Manufacturing Corporation.	55 Constitution Drive, Taunton, MA 02780.	11/4/2009	Brass giftware and electroplating service.
Highwood USA LLC	87 Tide Road, Tamaqua, PA 18252.	11/4/2009	Urethane and other foam products.
Turnbow Trailers Inc	115 West Broadway, Oilton, TX 74052.	11/6/2009	Trailers for the transportation of goods.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 10, 2009.

Bryan Borlik,

Program Director, TAA for Firms.

[FR Doc. E9–27522 Filed 11–16–09; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943]

Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination

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

DATES: *Effective Date:* November 17, 2009.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that certain oil country tubular goods (''OCTG'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Pursuant to requests from interested parties, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Eugene Degnan, 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) 482–4474 or 482–0414, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On April 8, 2009, Maverick Tube Corporation, United States Steel Corporation, TMK IPSCO, V&M Star L.P., V&M Tubular Corporation of America, Wheatland Tube Corp., Evraz Rocky Mountain Steel, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (collectively, ''Petitioners''), filed a petition in proper form on behalf of the domestic industry and workers

producing OCTG, concerning imports of OCTG from the PRC (''Petition'').[1] The Department initiated this investigation on April 28, 2009.[2]

On June 10, 2009, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the PRC of OCTG. The ITC's determination was published in the **Federal Register** on June 10, 2009.[3]

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296 27323 (May 19, 1997); *see also Initiation Notice,* 72 FR at 20672. We received no comments from interested parties on issues related to the scope.

Period of Investigation

The period of investigation (''POI'') is October 1, 2008 through March 31, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (April 2009).[4]

Comment From Government of China

On October 29, 2009, the Government of the PRC filed a submission to the Department alleging that the Department cannot lawfully apply its non-market economy (''NME'') antidumping methodology to the PRC in the less than fair value investigation of OCTG, while simultaneously applying the countervailing duty (''CVD'') law to the PRC in the parallel CVD OCTG investigation.[5]

The Department disagrees with this claim that application of the NME provisions of the Act concurrently with application of the countervailing duty provisions of the Act is precluded by any provision of law. Accordingly, the Department preliminarily determines to continue to follow its practice in several recent less than fair value investigations of merchandise from China by applying the NME provisions of the Act in accordance with the terms of those provisions, while concurrently conducting the countervailing duty investigation of the same merchandise in accordance with the relevant terms of the Act. Additionally, we note that the GOC assertion relies on GPX International Tire Corp. v United States, Slip Op. 2009–103 (CIT 2009), which is not a final judgment of the Court.

Respondent Selection

In the *Initiation Notice,* the Department stated that it intended to select respondents based on quantity and value (''Q&V'') questionnaires.[6] On April 30, 2009 and May 7, 2009, the Department requested Q&V information from the 212 companies that Petitioners identified as potential exporters or producers of OCTG from the PRC.[7] Additionally, the Department posted the Q&V questionnaire for this investigation on its Web site at *http://www.trade.gov/ia.*

The Department received timely Q&V responses from 43 exporters that shipped merchandise under investigation to the United States during the POI, and from four companies who stated that they had no shipments of merchandise under investigation to the United States during the POI. On July 1, 2009, the Department selected Jiangsu Changbao Steel Tube Co., Ltd. (''Changbao'') and Tianjin Pipe International Economic and Trading Corporation (''TPCO'') as mandatory respondents in this investigation.[8] The Department sent its antidumping duty questionnaire to Changbao and TPCO on July 1, 2009.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on November 3, 2009, and November 4, 2009, respectively, Changbao and TPCO requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination by 60 days. Changbao and TPCO also each requested that the Department extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a four-month period to a six-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the requests and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register.** Suspension of liquidation will be extended accordingly.

Targeted Dumping Allegation

On September 21, 2009, Petitioners requested that the Department extend the deadline for the submission of targeted dumping allegations to October 16, 2009, stating that they required additional time to analyze data because TPCO had just recently submitted an almost entirely new U.S. sales database, and Petitioners believed significant questions remained regarding whether Changbao had reported the full universe of its U.S. sales. The Department granted Petitioners' request, and on October 16, 2009, Petitioners filed allegations of targeted dumping which were based on the p/2 targeted dumping methodology used in the less than fair value investigation of coated free sheet paper from the Republic of Korea. *See Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper From the Republic of Korea,* 72 FR 60630 (October 25, 2007). However, the current targeted dumping methodology used by the Department is the methodology employed in *Certain Steel Nails From the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value,* 73 FR 33985 (June 16, 2008) (''*Nails*'').

Given the timing of the allegations, the Department was unable to address the targeted dumping allegations for this preliminary determination. The Department will request that the Petitioner file additional information, in conformance with the methodology used in *Nails,* after the preliminary determination. We intend to then issue a preliminary finding regarding these allegations, after the preliminary determination but with sufficient time to allow all parties time to comment before the final determination.

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[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as Amended, filed on April 8, 2009.

[2] *See Oil Country Tubular Goods From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 74 FR 20671 (May 5, 2009) (''*Initiation Notice*'').

[3] *See Certain Oil Country Tubular Goods From China,* 74 FR 27559 (June 10, 2009); *see also Certain Oil Country Tubular Goods From China: Investigation Nos. 701–TA–463 and 731–TA1159* (*Preliminary*) USITC Publication 4081 (June 2009).

[4] *See* 19 CFR 351.204(b)(1).

[5] *See* Certain Oil Country Tubular Goods From the People's Republic of China: Simultaneous Application of the Department's Current Non-Market Economy Antidumping Methodology and Countervailing Duty Law to China (October 29, 2009).

[6] *See Initiation Notice,* 74 FR at 20676.

[7] *See* Petition at Vol 1., Exhibit I–6.

[8] *See* July 1, 2009, Memorandum to Wendy J. Frankel, Director, Office 8, from Eugene Degnan, Acting Program Manager, Office 8, regarding Selection of Respondents for the Antidumping Investigation of Certain Oil Country Tubular Goods From the People's Republic of China (''Respondent Selection Memo'').

Critical Circumstances

On April 8, 2009, Petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of OCTG from the PRC. On October 2, 2009, TPCO and Changbao submitted information on their exports of OCTG from November 2008 through August 2009, as requested by the Department.[9] In accordance with 19 CFR 351.206(c)(2)(i), because Petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later (*i.e.*, the comparison period). The comparison period is normally compared to a corresponding period prior to the filing of the petition (*i.e.*, the base period). The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may establish the base and comparison periods based on the earlier date.[10] In their critical circumstances allegation, the petitioners allege that exporters and producers had reason to believe a proceeding covering OCTG from the PRC would likely be instituted as of July 2008.[11] Consequently, the petitioners request that the Department use January through June 2008 as the base period and July through December 2008 as the comparison period.

In this allegation, the petitioners assert that producers and exporters had reason to believe a proceeding was likely well in advance to the ultimate filing of the petition based on the following events: An October 2007 conference presentation alluding to a possible ''trade case;'' [12] the Department's November 2007 CVD determinations covering carbon quality steel pipe and light-walled rectangular pipe and tube; Canada's March 2008 imposition of antidumping (''AD'') and CVD on ''seamless carbon or alloy steel oil and gas well casings;'' [13] a March 2008 statement from a PRC distributor of OCTG that ''only the issuing of anti-dumping duties will be able to cut imports from China;'' the Department's initiation of AD and CVD proceedings on certain circular welded carbon quality steel line pipe from the Republic of Korea and the PRC; the May and June affirmative findings by the ITC and the Department regarding the above-mentioned pipe cases; a June 2008 Associated Press article which states that the other pipe rulings ''could be the first of a wave of victories by U.S. companies battling Chinese imports;'' and, in July 2008, the European Union (''EU'') initiated AD investigations of seamless tubular products from the PRC.[14] The petitioners allege that these events culminated in the July 21, 2008, warning by Hou Yin of China Iron & Steel Association that ''the U.S. may start an anti-dumping investigation on Chinese seamless pipes soon.'' [15]

Although the Department has found producers and exporters had reason to believe that a proceeding was likely prior to a petition being filed in prior cases,[16] the evidence put forth by the petitioners in this case does not indicate that producers and exporters here had reason to believe that a proceeding was likely as of July 2008. The petitioners point to a litany of events dating back to October 2007 to indicate that the industry was on notice of a potential case. The petitioners point primarily to a reported statement by a representative of the China Iron & Steel Association that ''the U.S. may start an anti-dumping investigation on Chinese seamless pipes soon, following the EU.'' [17] This statement, taken in the context of the other events cited by the petitioners, is not enough to demonstrate that producers, exporters, and importers of OCTG from the PRC had, or should have had, reason to believe the filing of a petition was likely as of July 2008. The events cited by the petitioners, unlike the events the Department has relied on in similar cases,[18] are speculative and do not refer

[9] *See* Letter from TPCO, ''TPCO's Submission of Monthly Shipment Information: Certain Oil Country Tubular Goods (OCTG) from China,'' dated October 2, 2009, (TPCO's Monthly Shipment Data) at Attachment I. *See also* Letter from Changbao, ''Antidumping Duty Investigation: Certain Oil Country Tubular Goods from the People's Republic of China (A–570–943)—Critical Circumstances Questionnaire Response,'' dated October 2, 2009, (Changbao's Monthly Shipment Data) at 3.

[10] *See* 19 CFR 351.206(i).

[11] *See* Volume IV of the petition at 3–8.

[12] *See* Volume IV of the petition at 4 and page 15 of Exhibit V, which states, in relevant part: ''Those who believe that OCTG prices could spike also argue that a trade case could soon be filed against Chinese OCTG producers. But that case may be hard to argue with imports in general declining and mills reporting strong profits.''

[13] *http://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev-eng.html#SeamlessCasing*

[14] *See* Volume IV of the Petition (''Critical Circumstances Allegation'') at 3–7 and Exhibits IV–1 through IV–7.

[15] *See* Critical Circumstances Allegation at 6–7 and Exhibit IV–8.

[16] *See, e.g., Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003), and accompanying Issues and Decision Memorandum at Comment 7 (finding reason to believe a case was likely based upon widely disseminated newspaper articles stating: ''America's catfish industry, stung by dropping prices triggered by a flood of cheaper fish from Vietnam, is gearing up for a possible antidumping campaign'' and ''Vietnamese seafood exporters are entering a new war on the U.S. market, as American rivals are lobbying on an anti-dumping taxation''); and *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany,* 67 FR 55802 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 6 (finding reason to believe a case was likely based upon trade publication which ''alerted steel wire rod importers, exporters, and producers the proceedings concerning the subject merchandise were likely in a number of countries'').

[17] *See* Volume IV of the petition at Exhibit IV–8.

[18] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China,* 69 FR 70997 (December 8, 2004) at Comment &A. *See also Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 4986 (January 31, 2003), unchanged in the final determination, *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets*

Continued

specifically to subject merchandise. Therefore, we find that the petitioners have not demonstrated that importers, exporters, or producers, had reason to believe, at some time prior to the beginning of the proceeding that a proceeding covering OCTG from the PRC was likely.

In further determining whether the above statutory criteria have been satisfied, we examined: (1) The evidence presented in Petitioners' April 8, 2009, petition and (2) additional information obtained from TPCO and Changbao.[19]

In accordance with section 733(e)(1)(A)(i) of the Act, to determine whether there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, the Department generally considers current or previous antidumping duty orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise. Petitioners noted that Canada placed an antidumping duty order on seamless carbon or alloy steel oil and gas well casings effective March 10, 2008.[20] We have reviewed this order and found that the product coverage overlaps the product coverage of the Department's AD investigation of OCTG from the PRC. We are not aware of the existence of any additional antidumping orders on OCTG from the PRC, whether in the United States or other countries. However, as a result of the Canadian order cited above, the Department finds there is a history of injurious dumping of OCTG from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

In accordance with Section 733(e)(1)(A)(ii) of the Act, to determine whether importers of OCTG from the PRC knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, the Department must rely on the facts before it at the time the determination is made. The Department generally bases its decision with respect to knowledge on the margins calculated in the preliminary antidumping duty determination and the ITC preliminary injury determination.

The Department normally considers margins of 25 percent or more for export price (''EP'') sales and 15 percent or more for constructed export price (''CEP'') sales sufficient to impute importer knowledge of sales at LTFV.[21] In this preliminary determination, TPCO has a margin of 34.86 percent for CEP sales and 58.01 percent for EP sales. Changbao has a margin of zero percent for its sales, all of which were EP transactions.[22] Consistent with Department practice, we base the margin for the separate-rate respondents on the average of the margins calculated for the mandatory respondents, excluding any rates that are zero, *de minimis,* or based entirely on AFA.[23] Accordingly, because Changbao's preliminary margin was zero, we have preliminarily applied to the separate-rate companies a margin of 36.53 percent, based on TPCO's margin. The PRC Entity has a margin of 99.14 percent.[24] We find that the preliminary antidumping duty margin for Changbao is not sufficient to impute knowledge to its importers of sales at LTFV of OCTG from the PRC. However, we find that the preliminary margins for TPCO, the separate-rate companies and the PRC-entity are sufficient to impute such knowledge.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, consistent with section 733(e)(1)(A)(ii) of the Act, the Department normally will look to the preliminary injury determination of the ITC.[25] On June 10, 2009, the ITC issued its preliminary affirmative determination for OCTG from the PRC.[26] Accordingly, based on the above analysis, the Department finds that there is a reasonable basis to believe or suspect that the importers knew or should have known that there was likely to be material injury by reason of sales at LTFV of OCTG from the PRC from TPCO, the separate-rate companies, and the PRC entity.

In accordance with section 733(e)(1)(B) of the Act, the Department must determine whether there have been massive imports of the subject merchandise over a relatively short period. Pursuant to 19 CFR 351.206(h), we will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. As discussed above, the Department normally determines the comparison period for massive imports based on the filing date of the petition. Based on the April 8, 2009 filing date, we have determined that April 2009 is the month in which importers, exporters or producers knew or should have known an antidumping duty investigation was likely. Additionally, we have used a period of five months as the period for comparison in preliminarily determining whether imports of the subject merchandise have been massive. We believe that a five-month period is most appropriate as the basis for analysis because using five months captures all data available at this time, based on April 2007 as the beginning of the comparison period. Additionally, a five-month period properly reflects the ''relatively short period'' set forth in the statute for determining whether imports have been massive.[27] It is our practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.[28]

from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003).

[19] *See* TPCO's Monthly Shipment Data and Changbao's Monthly Shipment Data.

[20] *See* Volume IV of the April 8, 2008 Petition at 9 and Exhibit IV–3 at 6.

[21] *See, e.g., Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances,* 67 FR 6224, 6225 (February 11, 2002).

[22] *See* Memorandum to the File, ''Antidumping Investigation of Certain Oil Country Tubular Goods from the People's Republic of China, Critical Circumstances Data and Calculations for the Preliminary Determination,'' dated January 24, 2008 (''Critical Circumstances Calculation Memorandum''), at Attachments II and III.

[23] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006) (''PSF''), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007), see also the ''Separate Rates'' section.

[24] *Id.*

[25] *See, e.g., Lemon Juice from Argentina: Preliminary Determination of Sales at Less than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 72 FR 20820, 20828 (April 26, 2007).

[26] *See Investigation Nos. 701–TA–463 and 731–TA–1159 (Preliminary), Certain Oil Country Tubular Goods from China; Determinations, 74 FR 27559, June 10, 2009 (''ITC Preliminary Determination''*).

[27] *See* section 733(e)(1)(B) of the Act.

[28] *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India,* 69 FR 47111 (August 4, 2004) unchanged in the final determination, (*Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India,* 69 FR 76916 (December 23, 2004)); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (Apr. 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

Therefore, we have used all available data in our critical-circumstances analysis for the preliminary determination. In applying the five-month period, we used a base period of November 2008 through March 2009, and a comparison period of April 2009 through August 2009.

Mandatory Respondents

The Department used the shipment data of TPCO and Changbao to examine the relevant base and comparison periods as identified above. When we compared these companies' import data during the comparison period with the base period, we found that imports fell during the comparison period over the base period.[29] Therefore, because imports in the comparison period have not increased by at least 15 percent over imports in the base period, we do not consider them to be massive pursuant to section 351.206(h) of the Department's regulations.

Separate-Rate Applicants

For the separate-rate applicants, we did not request the monthly shipment information necessary to determine if there were massive imports. As the basis to measure whether massive imports existed for purposes of critical circumstances, we relied on the experience of the mandatory respondents receiving a separate rate. When we compared the weighted-average import data during the comparison period with the weighted average import data during the base period for the mandatory respondents, we found that the weighted-average volume of imports of OCTG in the comparison period did not have an increased volume of exports over the base period of greater than 15 percent.[30] In applying this result to the separate rate applicants, we do not find the imports of the separate-rate applicants to be massive pursuant to section 351.206(h) of the Department's regulations.

The PRC Entity

Because the PRC entity did not respond to our Q&V questionnaire, we were unable to obtain shipment data from the PRC entity for purposes of our critical-circumstances analysis and there is, therefore, no verifiable information on the record with respect to its export volumes. Section 776(a)(2) of the Act provides that:

If an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(I) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. When the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. Because the PRC entity did not respond to the Department's request for information, we find that the PRC entity withheld requested information and, thus, significantly impeded this proceeding. Therefore, we have preliminarily determined to use facts available, in accordance with section 776(a)(2)(A) and (C) of the Act in determining whether there were massive imports of merchandise produced by the PRC entity.

Section 776(b) of the Act provides that if the Department finds that the respondent ''has failed to cooperate by not acting to the best of its ability to comply with a request for information {the Department} may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' We have determined that, in not responding to the Department's questionnaires, the PRC entity has not acted to the best of its ability and an adverse inference is warranted.'' Thus, we have made an adverse inference that there were massive imports from the PRC entity over a relatively short period.

In this case, the HTS numbers listed in the scope of the investigation include both subject merchandise and non-subject merchandise, and thus, we were not able to distinguish the amounts of shipments accounted for by the mandatory and separate rate respondents from the amount of shipments accounted for by the PRC Entity with respect to subject merchandise.'' [31] Accordingly, we were not able to use the U.S. Census Bureau data to corroborate our adverse inference. However, as the SAA states, ''The fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference under subsection (b).'' [32] We will make a final determination concerning critical circumstances for all producers/exporters of subject merchandise from the PRC when we make our final dumping determination in this investigation.

Critical Circumstances Findings

Based on the above analysis, we preliminarily determine that critical circumstances do not exist for Changbao, TPCO or the separate-rate respondents. Further, we preliminarily determine that critical circumstances do exist with respect to imports of the PRC entity.

Separate Rate Applications

Between May 15, 2009, and July 7, 2009, we received timely-filed separate-rate applications (''SRA'') from 38 companies.

Product Characteristics & Questionnaires

In the *Initiation Notice,* the Department asked all parties in this investigation for comments on the appropriate product characteristics of OCTG to be reported in response to the Department's antidumping questionnaires. On May 18, 2009, we received comments from Petitioners and TPCO regarding product characteristics. On May 26, 2009, Petitioners provided rebuttal comments concerning the appropriate product characteristics.

On July 1, 2009, the Department issued its antidumping duty questionnaire to TPCO and Changbao. TPCO submitted its Section A response to the Department's questionnaire on July 30, 2009, and Sections C and D responses on August 20 and 24, 2009, respectively. Changbao submitted its Section A response to the Department's questionnaire on July 29, 2009, and Sections C and D responses on August 19, 2009. The Department issued several supplemental questionnaires to both Changbao and TPCO between August and October 2009. Both parties

[29] *See* Critical Circumstances Calculation Memorandum at Attachment I.

[30] *See* Critical Circumstances Calculation Memorandum at Attachment I.

[31] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in coils from Japan, Part II,* 64 FR 30574, 30585 (June 8, 1999).

[32] *See* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 870.

responded timely to those supplemental questionnaires.

Surrogate Country Comments

On July 31, 2009, the Department determined that India, the Philippines, Indonesia, Colombia, Thailand and Peru are countries comparable to the PRC in terms of economic development, and requested comments on surrogate country selection from the interested parties in this investigation.[33] On September 1, 2009, Petitioners submitted surrogate country comments stating that the Department should select India as a surrogate country and TPCO indicated that it did not object to the use of India as a surrogate country. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, *see* ''Surrogate Country'' section below.

Surrogate Value Comments

On September 11, 2009, TPCO and Changbao submitted surrogate value comments. On September 14, 2009, Petitioners submitted surrogate value comments. On September 18, 2009, Changbao submitted rebuttal comments to Petitioner's September 14, 2009 submission. On September 18, 2009, Petitioners submitted rebuttal comments to TPCO's September 11, 2009, surrogate value submission and rebuttal comments to TPCO and Changbao's September 11, 2009, surrogate value submissions.

Scope of Investigation

The merchandise covered by the investigation consists of certain oil country tubular goods (''OCTG''), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigation also covers OCTG coupling stock. Excluded from the scope of the investigation are casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise covered by the investigation is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the investigation may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of the investigation is dispositive.

Non-Market Economy Country

For purposes of initiation, Petitioners submitted LTFV analyses for the PRC as an NME. *See Initiation Notice,* 74 FR at 20674. The Department considers the PRC to be a NME country. *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. The Department has not revoked its determination that the PRC is an NME country, and no party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production (''FOPs'') valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the ''Normal Value'' section below.

The Department determined that India, the Philippines, Indonesia, Colombia, Thailand and Peru are countries comparable to the PRC in terms of economic development.[34] Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.[35] In their September 1, 2009, submission, Petitioners argued that the Department should select India as a surrogate country because it satisfies the statutory requirements for the selection of a surrogate country since it is at a level of economic development that is

[33] *See* Letter to All Interested Parties, ''Antidumping Duty Investigation of Oil Country Tubular Goods from the People's Republic of China: Request for Comments on the Selection of a Surrogate Country and Surrogate Values,'' dated August 14, 2009, attaching the Memorandum to Wendy J. Frankel, ''Request for a List of Surrogate Countries for an Investigation of Oil Country Tubular Goods (''OCTG'') from the People's Republic of China (''PRC''),'' dated July 31, 2009.

[34] *See* Memorandum to Wendy J. Frankel, ''Request for a List of Surrogate Countries for an Investigation of Oil Country Tubular Goods (''OCTG'') from the People's Republic of China (''PRC'') (''Office of Policy Surrogate Countries Memorandum''), dated July 31, 2009.

[35] *See id.*

comparable to the PRC, and is a significant producer of merchandise comparable to the merchandise under investigation. Petitioners also noted that the Department can readily value the major factors of production for subject merchandise using reliable, publicly available data from Indian sources.[36] TPCO stated that it did not object to Petitioners' request that the Department select India as the primary surrogate country for this investigation.[37] No other party provided comments on the record concerning the surrogate country.

We have determined that it is appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (1) It is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs.[38] Thus, we have calculated normal value (''NV'') using Indian prices when available and appropriate to the FOPs of the OCTG producers. We have obtained and relied upon publicly available information wherever possible.[39]

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[40]

Affiliations

TPCO

Based on the evidence on the record in this investigation, including information presented in TPCO's questionnaire responses, we preliminarily find that TPCO is affiliated with Companies A and B pursuant to section 771(33)(F) of the Act. The identity of these companies is business proprietary information (''BPI''); for further discussion on these companies, see Certain Oil Country Tubular Goods from the People's Republic of China: Tianjin Pipe International Economic and Trading Corporation Analysis Memorandum for the Preliminary Determination (November 4, 2009) (''TPCO Analysis Memo'')

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure and de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588* (May 6, 1991) (''*Sparklers''*), as further developed in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (*May 2, 1994*)* (''*Silicon Carbide* '').[41] However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

Between May 15, 2009, and July 7, 2009, we received timely-filed SRAs from 38 companies (hereinafter referred to as ''SR Applicants'').[42] However, one

[36] *See* letter from Petitioners, ''Oil Country Tubular Goods from the People's Republic of China: Surrogate Country Selection,'' dated September 1, 2009.

[37] *See* letter from TPCO, ''TPCO's Surrogate Country Comments: Certain Oil Country Tubular Goods (OCTG) from China,'' dated September 1, 2009.

[38] *See* letter from TPCO, ''TPCO's Surrogate Country Comments: Certain Oil Country Tubular Goods (OCTG) from China,'' dated September 1, 2009, *see also* letter from Petitioners, ''Certain Oil Country Tubular Goods from the People's Republic of China: Surrogate Values,'' dated September 11, 2009; letter from TPCO, ''TPCO's Surrogate Country Comments: Certain Oil Country Tubular Goods (OCTG) from China,'' dated September 11, 2009; letter from Changbao, ''Antidumping Investigation: Certain Oil Country Tubular Goods from the People's Republic of China (C–570–944)—Comments on Surrogate Values,'' dated September 11, 2009. In addition, *see also* letter from Maverick, ''Certain Oil Country Tubular Goods from the People's Republic of China: Reply to Respondents' Surrogate Value Submissions,'' dated September 18, 2009; letter from Petitioners, ''Selection of Surrogate Values in Certain Oil Country Tubular Goods from the People's Republic of China,'' dated September 18, 2009; and, letter from Changbao, ''Antidumping Investigation: Certain Oil Country Tubular Goods from the People's Republic of China (A–570–944)—Response to Petitioners' Comments Regarding Surrogate Values,'' dated September 18, 2009.

[39] *See* Memorandum to Wendy J. Frankel, ''Oil Country Tubular Goods from the People's Republic of China: Surrogate Value Memorandum'' (November 4, 2004) (''Surrogate Value Memorandum'').

[40] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[41] *See also* Policy Bulletin 05.1, which states: '' [w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.''

[42] The 38 separate-rate applicants are: (1) Angang Group Hong Kong Co., Ltd.; (2) Angang Steel Co., Ltd.; and Angang Group International Trade Corporation; (3) Anhui Tianda Oil Pipe Co., Ltd.; (4) Anshan Zhongyou Tipo Pipe & Tubing Co., Ltd.; (5) Baotou Steel International Economic and Trading Co., Ltd.; (6) Benxi Northern Steel Pipes Co., Ltd.; (7) Chengdu Wanghui Petroleum Pipe Co. Ltd.; (8) Dalipal Pipe Company; (9) Faray Petroleum Steel Pipe Co. Ltd.; (10) Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch; (11) Hengyang Steel Tube Group International Trading, Inc.; (12) Huludao Steel Pipe Industrial Co., Ltd.; (13) Jiangsu Chengde Steel Tube Share Co., Ltd.; (14) Jiangyin City Changjiang Steel Pipe Co., Ltd.; (15) Pangang Group Beihai Steel Pipe Corporation; (16) Pangang Group Chengdu Iron & Steel; (17) Qingdao Bonded Logistics Park Products International Trading Co., Ltd.; (18) Qiqihaer Bonded Logistics Park Products International Trading Co., Ltd.; (19) Shandong Dongbao Steel Pipe Co., Ltd.; (20) ShanDong HuaBao Steel Pipe Co., Ltd.; (21) Shandong Molong Petroleum Machinery Co., Ltd.; (22) Shanghai Metals & Minerals Import & Export Corp.; (23) Shanghai Zhongyou Tipo Steel Pipe Co., Ltd.; (24) Shengli Oil Field Freet Petroleum Equipment Co., Ltd.; (25) Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.; (26) Shengli Oilfield Highland Petroleum Equipment Co., Ltd.; (27) Shengli Oilfield Shengji Petroleum Equipment Co., Ltd.; (28) Tianjin Lifengyuanda Steel Group Co., Ltd.; (29) Tianjin Seamless Steel Pipe Plant; (30) Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.; (31) Wuxi Baoda Petroleum Special Pipe Manufacturing Co., Ltd.; (32) Wuxi Seamless Oil Pipe Co., Ltd.; (33) Wuxi Sp. Steel Tube Manufacturing Co., Ltd.; (34) Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd.; (35) Xigang Seamless Steel Tube Co., Ltd.; (36) Yangzhou Lontrin Steel Tube Co., Ltd.; (37) Zhejiang JianLi Enterprise Co., Ltd.; and (38) Shengli Oil Field Freet Import & Export Trade Co., Ltd. (which submitted a separate-rate application but subsequently discovered that shipments of subject merchandise were not made during the POI. Therefore, because this company had no shipments of subject

Continued

SR Applicant, Shengli Oil Field Freet Import & Export Trade Co., Ltd., did not have any shipments of the merchandise under investigation during the POI, and so is not eligible for consideration for a separate rate. The remaining SR Applicants have all stated that they are either joint ventures between Chinese and foreign companies, or are wholly Chinese-owned companies. Therefore, the Department must analyze whether these respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. The mandatory respondents and SR Applicants provided evidence demonstrating: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[43] *See* their respective separate rate applications, on file in the central records unit at the Department of Commerce, *see also* Changbao's July 29, 2009, Section A questionnaire response and TPCO's July 30, 2009, Section A questionnaire response.

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[44] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The mandatory respondents and the SR Applicants provided evidence demonstrating: (1) That the export prices are not set by, and are not subject to, the approval of a governmental agency; (2) they have authority to negotiate and sign contracts and other agreements; (3) they have autonomy from the government in making decisions regarding the selection of management; and (4) they retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses. *See* their respective separate rate applications, on file in the central records unit at the Department of Commerce, *see also* Changbao's July 29, 2009, Section A questionnaire response and TPCO's July 30, 2009, Section A questionnaire response.

The evidence placed on the record of this investigation by the mandatory respondents and 37 of the SR Applicants demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* As a result, we have preliminarily granted Changbao and TPCO and each of these 37 SR Applicants (hereinafter referred to as the ''Separate Rate Companies''), separate-rate status.

The PRC-Wide Entity

The Department has data that indicate there were more exporters of OCTG from the PRC than those indicated in the response to our request for Q&V information during the POI. *See Respondent Selection Memorandum.* We issued our request for Q&V information to 212 potential Chinese exporters of the merchandise under investigation, in addition to posting the Q&V questionnaire on the Department's website. While information on the record of this investigation indicates that there are other producers/exporters of OCTG in the PRC, we received only 43 timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under investigation during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 70 FR 77121, 77128 (December 29, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006).

Application of Adverse Facts Available and the PRC-Wide Rate

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our questionnaire requesting Q&V information. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available (''FA'') is appropriate to determine the PRC-wide rate. *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

merchandise during the POI, they are not eligible for a separate-rate).

[43] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR at 20589* (May 6, 1991).

[44] *See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585* (May 2, 1994); *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545* (May 8, 1995).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See SAA,* H.R. Rep. No. 103–316, 870 (1994); *see also Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000). We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available (''AFA''), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at Comment 1. As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 99.14 percent, the highest calculated rate from the petition. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the petition rates to determine an AFA rate is subject to the requirement to corroborate secondary information.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as FA, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' [45] The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value.[46] The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[47] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[48]

As AFA the Department has preliminarily selected the rate of 99.14 from the Petition.[49] Petitioners' methodology for calculating the EP and NV in the petition is discussed in the initiation notice.[50] To corroborate the AFA margin we have selected, we compared that margin to the margins we found for the respondents. We found that the margin of 99.14 percent has probative value because it is in the range of margins we found for the mandatory respondents. Accordingly, we find that the rate of 99.14 percent is corroborated within the meaning of section 776(c) of the Act.

Margin for the Separate-Rate Companies

Consistent with the Department's practice, we have established an average margin for the Separate-Rate Companies based on the rates we calculated for Changbao and TPCO (the mandatory respondents), excluding any rates that are zero, *de minimis,* or based entirely on AFA.[51] The Separate-Rate Companies are listed in the ''Suspension of Liquidation'' section of this notice.

Date of Sale

19 CFR 351.401(i) states that, ''[i]n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.'' In *Allied Tube,* the Court of International Trade (''CIT'') noted that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisf{y}' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.''' *Allied Tube & Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090 (CIT 2001) (''*Allied Tube*''). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube,* 132 F. Supp. 2d at 1090–1092. The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

On May 22, 2009, Petitioners submitted a letter to the Department alleging that U.S. distributors of Chinese OCTG testified before the ITC that there was a six-month lag between the order date and entry-date of the subject merchandise into the United States.[52] Further, Petitioners contended that the U.S. customers of Chinese OCTG were required to place a significant down payment on their orders. Moreover,

[45] *See* SAA at 870.

[46] *See id.*

[47] *See id.*

[48] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 62 FR 11825 (March 13, 1997).

[49] *See Notice of Initiation,* 74 FR at 20676.

[50] *See Notice of Initiation,* 72 FR at 43593.

[51] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006) (''PSF''), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007), *see also* the ''Separate Rates'' section.

[52] *See* Petitioners' Letter to the Department: Certain Oil Country Tubular Goods from the People's Republic of China: Request that the Department Collect Additional Data from the Respondents (May 22, 2009).

Petitioners claimed that the U.S. prices for OCTG dropped during the POI, and that raw material input costs for OCTG declined significantly as well. Petitioners argued that, as a result of the above, if respondents reported U.S. sales of subject merchandise on the basis of invoice date, the Department's standard NME methodology would compare U.S. sales whose prices were set six months prior to the POI with costs that were established during the POI. Thus, Petitioners requested that the Department direct respondents to report the following information in the questionnaire response and U.S. sales database: Sales of subject merchandise to the United States that had a contract or sale order date within the POI, and the dates of the contract and sale orders for these sales, and the contract and sale order dates for the U.S. sales that were shipped or invoiced during the POI.

Based on Petitioners' allegation, the Department issued a supplemental questionnaire on July 1, 2009, requesting the above information (''Date of Sale Questionnaire'').[53] The Department did not, however, require that the respondents submit the data associated with the above information in their U.S. sales database.

In their July 22, 2009, responses to the Date of Sale Questionnaire, both TPCO and Changbao argued that the invoice date is the earliest date at which terms of sale are finalized.[54]

On July 23, 2009, Petitioners submitted another letter to the Department which argued that respondents did not sufficiently describe how changes in quantity and price were established, and again requested that the Department require respondents to report: Each sale that has a contract or purchase order (''PO'') date within the POI; each sale that has an invoice during the POI; and, for CEP sales, each sale with an agreement made during the POI and also each sale with an invoice during the POI. The Department did not, however, issue another date of sale questionnaire.

TPCO reported the date of the commercial invoice to the first unaffiliated party as the date of sale for both CEP and EP sales. Changbao also reported the date of the commercial invoice to the first unaffiliated party as the date of sale for its EP sales. Upon examination of the information in the Date of Sale Questionnaires, and the respondents' Section C and supplemental Section C responses, the Department found no evidence contrary to TPCO's or Changbao's assertions that invoice date was the appropriate date of sale. Thus, the Department used invoice date as the date of sale for this preliminary determination.[55]

Fair Value Comparison

To determine whether sales of certain OCTG to the United States by TPCO and Changbao were made at less than fair value, we compared EP or CEP, as applicable, to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

Constructed Export Price

In accordance with section 772(b) of the Act, we based the U.S. price for certain of TPCO's sales on CEP because these sales were made by TPCO's U.S. affiliates,[56] Company A, and Company B. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States, foreign movement expenses, and U.S. movement expenses, including U.S. duties, U.S. warehousing, and inventory carrying cost. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: Credit expenses and other direct selling expenses. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values or actual expenses (where paid for in a market economy currency and performed by a market economy provider). For details regarding our CEP calculations, and for a complete discussion of the calculation of the U.S. price for TPCO, *see* TPCO Analysis Memo.

Export Price

In accordance with section 772(a) of the Act, we based the U.S. price for certain of TPCO's sales, and all of Changbao's sales, on EP because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation. In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act.

We calculated EP based on the packed cost and freight or delivered prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for the following movement expenses: Domestic inland freight, domestic brokerage and handling, international freight, and marine insurance. For details regarding our EP calculations, and for a complete discussion of the calculation of the U.S. price for TPCO and Changbao, *see* TPCO Analysis Memo and Certain Oil Country Tubular Goods from the People's Republic of China: Jiangsu Changbao Steel Tube Co., Ltd. Analysis Memorandum for the Preliminary Determination (November 4, 2000) (''Changbao Analysis Memo'').

In its October 19, 2009, Supplemental Section C response, Changbao reported certain sales to unaffiliated resellers in the PRC. This information was unsolicited by the Department. Changbao stated that it is not a party to the contracts between its Chinese customers and their U.S. customers, is not involved in negotiating the U.S. price or other terms of sale, and the unaffiliated reseller takes title to the merchandise before exporting to the United States and receives payment from the U.S. customer. Changbao further provided a purchase contract between itself and one of these unaffiliated PRC resellers.[57] Based upon the record evidence, we have determined that these are not Changbao's U.S. sales. Further, Changbao has not claimed that these are its U.S. sales. Accordingly, for the preliminary determination, we have excluded these sales from the margin calculation.

TPCO describes the customer for its EP sales, Company C, as an unaffiliated customer. However, record evidence indicates that Company C may be affiliated with TPCO. Because the record is not clear, we have determined to preliminarily treat these U.S. sales as EP sales and to include them in our margin calculation. However, we intend to further examine this issue after the preliminary determination to determine their appropriate treatment for purposes

[53] *See* Letter from the Department: Less-Than-Fair-Value Investigation of Certain Oil Country Tubular Goods (''OCTG'') from the People's Republic of China (''PRC''): Date of Sale Questionnaire (July 1, 2009) to TPCO, Changbao and Lifengyuanda.

[54] *See* TPCO Analysis Memo and Changbao Analysis Memo for a more thorough discussion of this issue involving BPI information.

[55] *See id.*

[56] The identity of these companies is business proprietary; for further discussion of these companies, *see* TPCO Analysis Memo.

[57] *See* Changbao's October 19, 2009, Supplemental Section C response at 1–3.

of the final determination in this investigation.

Normal Value

We compared NV to weighted-average EPs and CEPs in accordance with section 777A(d)(1) of the Act. Further, section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of an NME renders price comparisons and the calculation of production costs invalid under its normal methodologies.

The Department's questionnaire requires that the respondent provide information regarding the weighted-average FOPs across all of the company's plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology ensures that the Department's calculations are as accurate as possible.[58] The Department calculated the FOPs using the weighted-average factor values for all of the facilities involved in producing the subject merchandise for each exporter. The Department calculated NV for each matching control number (''CONNUM'') based on the factors of production reported from each of the exporters' suppliers and then averaged the supplier-specific NVs together, weighted by production quantity, to derive a single, weighted-average NV for each CONNUM exported by each exporter.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by TPCO and Changbao. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for TPCO and Changbao can be found in Certain Oil Country Tubular Goods from the People's Republic of China: Surrogate Value Memorandum for the Preliminary Determination (November 4, 2000) (''Surrogate Value Memorandum'') (November 4, 2009).

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for TPCO and Changbao's FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive. *See* Surrogate Value Memorandum. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index (''WPI'') as published in the International Financial Statistics of the International Monetary Fund.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7. Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758 (June 4, 2007) unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008). Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded

[58] *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China,* 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 19.

from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *See id.*

Additionally, TPCO reported that during the POI, it purchased certain inputs from a market economy supplier and paid for the inputs in a market economy currency. The Department has a rebuttable presumption that market economy input prices are the best available information for valuing an input when the total volume of the input purchased from all market economy sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. In these cases, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average market economy purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from market economy suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the market economy purchase price with an appropriate surrogate value (''SV'') according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption. When a firm has made market economy input purchases that may have been dumped or subsidized, are not *bona fide,* or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid market economy purchases meet the 33-percent threshold. *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717–18 (October 19, 2006). *See* TPCO Analysis Memo.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, *see Corrected 2007 Calculation of Expected Non-Market Economy Wages,* 73 FR 27795 (May 14, 2008), and *http://ia.ita.doc.gov/wages/index.html.* The source of these wage-rate data on the Import Administration's Web site is the Yearbook of Labour Statistics 2005, ILO (Geneva: 2007), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondents.

We valued truck freight expenses using a per-unit average rate calculated from data on the Infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India (''CEA'') in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated July 2006. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. Petitioners suggested that the Department rely on March 2009 CEA data.[59] However, we preliminarily find that we cannot rely on the suggested data as we are unable to separate duty rates from the March 2009 CEA data.

Because water is essential to the production process of the merchandise under consideration, the Department considers water to be a direct material input, not overhead, and thus valued water with a surrogate value according to our practice. *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China,* 68 FR 61395 (October 23, 2003), and accompanying Issues and Decision Memorandum at Comment 11. The Department valued water using data from the Maharashtra Industrial Development Corporation (*http://midcindia.org*) as it includes a wide range of industrial water tariffs. This source provides 378 industrial water rates within the Maharashtra province through June 2009: 189 of the water rates were for the ''inside industrial areas'' usage category and 189 of the water rates were for the ''outside industrial areas'' usage category.

We continued our recent practice to value brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, the Department averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department inflated the brokerage and handling rate using the appropriate WPI inflator. *See* Surrogate Value Memorandum.

To value marine insurance, the Department used data from RGJ Consultants (*http://www.rjgconsultants.com/*). This source provides information regarding the per-value rates of marine insurance of imports and exports to/from various countries.

We calculated factory overhead, selling general and administrative expenses (''SG&A''), and profit percentages for TPCO using the financial statements of Tata Steel Limited (''Tata'') as of March 31, 2009, because Tata is a producer of comparable merchandise, and is at a level of integration much more similar to TPCO's than the other surrogate company for whom we have usable financial statements: Oil Country Tubular Ltd. (''OCTL''). We used the financial statements of OCTL as of March 31, 2009, to value factory overhead, SG&A and profit for Changbao because OCTL, like Changbao, is a non-integrated producer of identical and comparable merchandise. Both financial statements are contemporaneous with the POI. The Department may consider other publicly available financial statements for the final determination, as appropriate.

Regarding surrogate values for steel billets, Petitioners argue that the Department should use HTS 7207.20.30 to value TPCO's and Changbao's reported steel billets. The HTS category subheading 7207.20.30 encompasses ''seamless tube'', semi-finished steel products, with a carbon content greater than or equal to 20 percent. According to the Petitioners, these steel billets, what Petitioners refer to as ''commodity grade'' steel billets, have more exacting physical and chemical requirements than standard steel billets. Petitioners argue that OCTG production requires the use of this premium steel billet (*e.g.,* with a carbon content greater than or equal to 20 percent) and that therefore, the appropriate HTS for TPCO and

[59] Available at *http://www.cea.nic.in/e&c/Estimated%20Average%20Rates%20of%20Electricity.pdf.*

Changbao's steel billets is 7207.20.30.[60] Petitioners also argue that 7207.20.30 is the appropriate HTS subheading as TPCO's and Changbao's subject merchandise is ''seamless OCTG'' which requires ''seamless tube'' steel billets.[61]

Changbao argues that the steel billets it uses to produce the subject merchandise are non-alloy and contain less than 25 percent carbon content. Changbao has provided technical specifications purporting to demonstrate this. Accordingly, Changbao argues that the proper HTS is 7224.90.91, as its steel billets are excluded from the HTS 7207.20.30 subheading and are, rather, comprised of the characteristics more appropriately encompassed by HTS subheading 7224.90.91.

TPCO, in its surrogate value submission, suggested 7207.20.90 as the appropriate HTS subheading for the steel billets purchased and used for producing its subject merchandise. Petitioners argue that, although TPCO's suggested HTS subheading encompasses the ''carbon content greater than or equal to 20 percent'' characteristic, it nonetheless falls into the ''other'' group and is thus less specific than 7207.20.30. Finally, Petitioners point out that both HTS subheadings suggested by TPCO and Changbao are basket category subheadings.[62]

We preliminarily determine to value both Changbao's and TPCO's billets with the HTS number proffered by each respondent, respectively (*i.e.,* HTS is 7224.90.91 for Changbao and HTS 7207.20.90 for TPCO). Changbao and TPCO are the parties with access to their respective technical specifications and mill test certifications, and so have access to the most specific information possible to correctly determine the surrogate value most specific to their own billets. Accordingly, we preliminarily determine to use TPCO and Changbao's respective HTS subheading suggestions, but intend to pursue this issue at verification.

Shorter Cost Averaging Periods

On May 22, 2009, Petitioners, using data from business proprietary sources, alleged that OCTG prices, and the cost of raw material inputs used to produce subject merchandise, decreased dramatically during the POI.[63] Petitioners claimed that in similar instances in other cases, the Department has used shorter cost-averaging periods when calculating normal value (*i.e.,* the Department calculated cost of production or constructed values on a quarterly basis for comparison to sales prices, rather than using a POI or period of review (POR) average).[64] Accordingly, Petitioners requested that the Department require respondents to report their material input usage rates on a monthly basis for both the POI and the six months preceding the POI. They also requested that the Department calculate normal value using monthly consumption periods and monthly surrogate values rather than a POI-average of inputs and surrogate values.

To date, the Department has not considered using shorter cost periods in an NME case. The Department has used shorter cost periods in market-economy (''ME'') cases where we determined that actual production costs changed significantly during the POI/POR, and where there was evidence of a linkage between the actual cost changes and the sales prices in a given POI/POR.[65] In an NME context, except in limited circumstances when inputs are purchased from market-economy suppliers, the Department calculates normal value using surrogate values in lieu of actual input costs. Thus, because the use of the shorter cost periods would not more accurately reflect experience of the respondent operating in the NME during the period under examination, we continue to base costs on POI-average surrogate values rather than the shorter cost periods.

Because it is not clear how the shorter cost averaging period methodology employed in ME cases can fit methodologically or analytically in an NME context, we preliminarily continue to base normal value on the POI average surrogate values and input consumption rates, rather than shorter cost periods, for this investigation. We invite parties to comment on these issues and on what facts warrant the use of shorter cost averaging periods in this case, for the final determination.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice,* 74 FR 20676. This practice is described in *Policy Bulletin 05.1,* available at *http://ia.ita.doc.gov/.*

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average margin
Jiangsu Changbao Steel Tube Co., Ltd	Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Steel Tube Co., Ltd.	0.00
Tianjin Pipe International Economic and Trading Corporation	Tianjin Pipe (Group) Corporation	36.53
Angang Group Hong Kong Co., Ltd	Angang Steel Co. Ltd	36.53
Angang Steel Co., Ltd., and Angang Group International Trade Corporation.	Angang Steel Co. Ltd	36.53
Anhui Tianda Oil Pipe Co., Ltd	Anhui Tianda Oil Pipe Co., Ltd	36.53
Anshan Zhongyou Tipo Pipe & Tubing Co., Ltd	Anshan Zhongyou Tipo Pipe & Tubing Co., Ltd	36.53
Baotou Steel International Economic and Trading Co., Ltd	Baotou Steel International Economic and Trading Co., Ltd	36.53

[60] *See* Petitioner's September 14, 2009, Surrogate Value Submission.

[61] *See* Petitioner's September 21, 2009, Surrogate Value Rebuttal Submission.

[62] *Id.*

[63] *See* Petitioners' Letter to the Department: Certain Oil Country Tubular Goods from the People's Republic of China: Request that the Department Collect Additional Data from the Respondents (May 22, 2009).

[64] *See* 19 CFR 351.414(d)(3): Time period over which weighted average is calculated. When applying the average-to-average method, the Secretary normally will calculate weighted averages for the entire period of investigation or review, as the case may be. However, when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation or review, the Secretary may calculate weighted averages for such shorter period as the Secretary deems appropriate.

[65] *See, e.g., Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review,* 73 FR 75398 (December 11, 2008) and accompanying Issues and Decision Memorandum at Comment 4.

Exporter	Producer	Weighted-average margin
Benxi Northern Steel Pipes Co., Ltd	Benxi Northern Steel Pipes Co., Ltd	36.53
Chengdu Wanghui Petroleum Pipe Co. Ltd	Chengdu Wanghui Petroleum Pipe Co. Ltd	36.53
Dalipal Pipe Company	Dalipal Pipe Company	36.53
Faray Petroleum Steel Pipe Co. Ltd	Faray Petroleum Steel Pipe Co. Ltd	36.53
Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch.	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch.	36.53
Hengyang Steel Tube Group International Trading, Inc	Hengyang Valin MPM Tube Co., Ltd.; Hengyang Valin Steel Tube Co., Ltd.	36.53
Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd.	Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd.	36.53
Jiangsu Chengde Steel Tube Share Co., Ltd	Jiangsu Chengde Steel Tube Share Co., Ltd	36.53
Jiangyin City Changjiang Steel Pipe Co., Ltd	Jiangyin City Changjiang Steel Pipe Co., Ltd	36.53
Pangang Group Beihai Steel Pipe Corporation	Pangang Group Beihai Steel Pipe Corporation	36.53
Pangang Group Chengdu Iron & Steel	Pangang Group Chengdu Iron & Steel	36.53
Qingdao Bonded Logistics Park Products International Trading Co., Ltd.	Shengli Oilfield Highland Petroleum Equipment Co., Ltd.; Shandong Continental Petroleum Equipment Co., Ltd.; Aofei Tele Dongying Import & Export Co., Ltd.; Highgrade Tubular Manufacturing (Tianjin) Co., Ltd.; Cangzhou City Baohai Petroleum Material Co., Ltd.	36.53
Qiqihaer Bonded Logistics Park Products International Trading Co., Ltd.	Qiqihaer Bonded Logistics Park Products International Trading Co., Ltd.	36.53
Shandong Dongbao Steel Pipe Co., Ltd	Shandong Dongbao Steel Pipe Co., Ltd	36.53
ShanDong HuaBao Steel Pipe Co., Ltd	ShanDong HuaBao Steel Pipe Co., Ltd	36.53
Shandong Molong Petroleum Machinery Co., Ltd	Shandong Molong Petroleum Machinery Co., Ltd	36.53
Shanghai Metals & Minerals Import & Export Corp./Shanghai Minmetals Materials & Products Corp.	Jiangsu Changbao Steel Pipe Co., Ltd.; Huludao Steel Pipe Industrial Co., Ltd.; Northeast Special Steel Group Qiqihaer Haoying Steel and Iron Co., Ltd.; Beijing Youlu Co., Ltd.	36.53
Shanghai Zhongyou Tipo Steel Pipe Co., Ltd	Shanghai Zhongyou Tipo Steel Pipe Co., Ltd	36.53
Shengli Oil Field Freet Petroleum Equipment Co., Ltd	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch; Faray Petroleum Steel Pipe Co., Ltd.; Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.	36.53
Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch; Tianda Oil Pipe Co., Ltd; Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.	36.53
Shengli Oilfield Highland Petroleum Equipment Co., Ltd	Tianjin Pipe Group Corp.; Goods & Materials Supply Dept. of Shengli Oilfield SinoPEC; Dagang Oilfield Group New Century Machinery Co. Ltd.; Tianjin Seamless Steel Pipe Plant; Baoshan Iron & Steel Co. Ltd.	36.53
Shengli Oilfield Shengji Petroleum Equipment Co., Ltd	Shengli Oilfield Shengji Petroleum Equipment Co., Ltd.	36.53
Tianjin Xingyuda Import and Export Co., Ltd. & Hong Kong Gallant Group Limited.	Tianjin Lifengyuanda Steel Group Co., Ltd	36.53
Tianjin Seamless Steel Pipe Plant	Tianjin Seamless Steel Pipe Plant	36.53
Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	36.53
Wuxi Baoda Petroleum Special Pipe Manufacturing Co., Ltd	Wuxi Baoda Petroleum Special Pipe Manufacturing Co., Ltd	36.53
Wuxi Seamless Oil Pipe Co., Ltd	Wuxi Seamless Oil Pipe Co., Ltd	36.53
Wuxi Sp. Steel Tube Manufacturing Co., Ltd	Wuxi Precese Special Steel Co., Ltd	36.53
Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd	Huai'an Zhenda Steel Tube Manufacturing Co., Ltd	36.53
Xigang Seamless Steel Tube Co., Ltd	Xigang Seamless Steel Tube Co., Ltd.; Wuxi Seamless Special Pipe Co., Ltd.	36.53
Yangzhou Lontrin Steel Tube Co., Ltd	Yangzhou Lontrin Steel Tube Co., Ltd	36.53
Zhejiang Jianli Co., Ltd. & Zhejiang Jianli Steel Tube Co., Ltd	Zhejiang Jianli Co., Ltd.; Zhejiang Jianli Steel Tube Co., Ltd	36.53
PRC-wide Entity *		99.14

* Shengli Oil Field Freet Import & Export Trade Co., Ltd. is part of the PRC-wide entity.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of subject merchandise exported by TPCO and produced by Tianjin Pipe (Group) Corporation, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above.

Additionally, as the Department has determined in its *Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210 (September 15, 2009) (''*CVD Prelim*'') that the merchandise under investigation, exported by TPCO,

benefitted from an export subsidy, we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the U.S. price for TPCO, as indicated above, minus the amount determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India*, 69 FR 67306, 67307 (November 17, 2007).

We will instruct CBP not to suspend liquidation or require a cash deposit or the posting of a bond for imports of OCTG from the PRC exported and produced by Changbao, because we have calculated a margin of zero percent for Changbao.

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of subject merchandise exported by the separate-rate respondents, in the exporter/producer combination identified above, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated above.

For the two separate-rate companies in this investigation that also participated as mandatory respondents in the CVD investigation (*i.e.*, Wuxi Seamless Oil Pipe Co., Ltd., and Zhejiang Jianli Co., Ltd. & Zhejiang Jianli Steel Tube Co., Ltd.), because it was determined in the *CVD Prelim.* that these companies did not benefit from any export subsidy, we will not make an adjustment to the antidumping duty rate of these companies for purposes of cash deposits.

For the remaining separate-rate companies, we will instruct CBP to adjust the dumping margin by the amount of export subsidies included in the All Other rate from the *CVD Prelim.*

Further, because we found critical circumstances with regard to the PRC-wide entity, we will instruct CBP to suspend liquidation of merchandise under consideration exported by the PRC-wide entity and entered or withdrawn from warehouse, for consumption commencing 90 days prior to the date of this preliminary determination, and we will instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry.

These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain OCTG, or sales (or the likelihood of sales) for importation, of the merchandise under investigation within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs and must be received no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309(c)(i) and (d). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: November 4, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–27574 Filed 11–16–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 48–2009

Foreign–Trade Zone 89 - Las Vegas, Nevada

Application for Expansion

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Nevada Development Authority, grantee of Foreign–Trade Zone 89, requesting authority to expand its zone to include a site in the City of North Las Vegas, Nevada. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 9, 2009.

FTZ 89 was approved by the Board on November 7, 1983 (Board Order 227, 48 FR 51665, 11/10/83) and expanded on December 4, 1989 (Board Order 452, 54 FR 50787, 12/11/89) and March 11, 1994 (Board Order 688, 59 FR 12893, 3/18/94). The general–purpose zone currently consists of six sites in the Las Vegas, Nevada area: *Site 1*: (23 acres) -- Las Vegas Convention Center, Clark County; *Site 3*: (two parcels, 317 acres and 120,000 sq. ft.) -- within the Hughes Airport Center Industrial Park, adjacent to McCarran International Airport; *Site 4*: (37 acres) -- North Las Vegas Business Center, North Las Vegas; *Site 5*: (516 acres) -- AMPAC Development Company - Gibson Business Park, Clark County; *Site 6*: (160 acres) -- Las Vegas International Air Cargo Center at McCarran International Airport, Clark County; and, *Site 7*: World Jewelry Center, Union Park Center, Las Vegas, Nevada.

The applicant is requesting authority to expand the zone to include a new site in the City of North Las Vegas (Clark County): Proposed Site 8 (365 acres) the City View Business Park located west of the intersection of Interstate 15 and State Road 604. The site will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 19, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 1, 2010).

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002 and in the ''Reading Room'' section of the Board's website, which is accessible via www.trade.gov/ftz. For further information contact Christopher Kemp at Christopher.Kemp@trade.gov or (202)482–0862.

Dated: November 9, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–27571 Filed 11–16–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–894)

Certain Tissue Paper Products From the People's Republic of China: Extension of Time Limit for Preliminary Results of 2008–2009 Administrative Review

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

EFFECTIVE DATE: November 17, 2009.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1766 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2009, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on certain tissue products from the People's Republic of China (PRC), covering the period March 1, 2008, through February 28, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (April 27, 2009). The preliminary results for this administrative review are currently due no later than December 1, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of an order for which a review is requested. 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 this deadline to a maximum of 365 days.

In this administrative review, the petitioner placed on the record in a timely manner a large amount of information alleging that the respondent, Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively referred to as ''Max Fortune''), has not reported (1) multiple affiliates involved in the production and/or sale of the subject merchandise exported to the United States during the POR; and (2) multiple unaffiliated suppliers of raw materials and converting services involved in the production of the subject merchandise exported to the United States during the POR.[1] Max Fortune subsequently placed a lengthy response submission on the record denying those allegations.[2] The Department requires additional time to review and analyze the data the petitioner and Max Fortune have placed on the record with regard to this issue. Furthermore, the Department requires additional time to obtain additional information from, and conduct verification of the questionnaire responses submitted by the other respondent in this case, Seaman Paper Asia Company Limited. Thus, it is not practicable to complete this review within the original time limit. Therefore, the Department is fully extending the time limit for completion of the preliminary results by 120 days to 365 days, in accordance with section 751(a)(3)(A) of the Act. The preliminary results are now due no later than March 31, 2010. The final results continue to be due 120 days after publication of the preliminary results.

We are issuing and publishing this notice in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: November 10, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–27576 Filed 11–16–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] *See* the petitioner's submission dated September 15, 2009.

[2] *See* the respondent's October 19, 2009, submission.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XS91

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, December 7–15, 2009, in Anchorage, AK.

DATES: The meetings will be held on December 7 through December 15, 2009. See **SUPPLEMENTARY INFORMATION** for specific dates and times. All meetings are open to the public, except executive sessions.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, AK

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. on Wednesday, December 9 continuing through Tuesday, December 15, 2009. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, December 7 and continue through Saturday, December 12. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, December 7 and continue through Wednesday,

December 9, 2009. The Ecosystem Committee will meet December 7, Enforcement Committee will meet December 7, and the Non-Target Committee will meet December 6, 2009.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

Reports:

1. Executive Director's Report

NMFS Management Report (including report on Catch Share Task Force, Arrowtooth MRA report, Chinook Salomon genetic sampling report)

Alaska Department of Fish & Game Report (including report on Halibut Charter logbook)

NOAA Office of Law Enforcement Report

U.S. Coast Guard Report

U.S. Fish & Wildlife Service Report

Protected Species Report (including 2009 Steller Sea Lion survey results).

2. Gulf of Alaska (GOA) Pacific Cod Allocation: Final action on Pacific cod sector split.

3. GOA Rockfish Program: Refine alternatives for analysis.

4. Groundfish Final Catch Specification: Approve 2010/11 specifications.

5. Salmon Bycatch: Final action on Salmon Bycatch Data Collection; Committee report/discussion paper on Bering Sea Aleutian Island Chum Salmon Bycatch; review and revise alternatives for analysis; Report on Rural Community Outreach Committee.

6. Amendment 80 Cooperatives: Initial review of Amendment 80 Cooperative Formation.

7. BSAI Crab Issues: Review progress BSAI crab amendment package/refine alternatives; discussion paper on BSAI Crab Western Aleutian Golden King Crab Emergency Rule; Review alternatives BSAI Snow/Tanner Crab Rebuilding plans.

8. Groundfish Management Issues: Review alternatives for Groundfish Annual Catch Limit requirements; discussion paper on Bristol Bay Trawl closure and walrus; discussion paper on Heigermeister Island Walrus protection; Aleutian Island Processing sideboards - Initial review (T).

9. Other Management Issues: Discuss Marine Protection Area nomination process and action as necessary; review Essential Fish Habitat 5-year evaluation/ Habitat Area of Particular Concern criteria; receive report on halibut deck sorting Exempted Fishing Permit; Community Quota Entity Permits from Recency action: report and action as necessary.

10. Staff Tasking: Review Committees and tasking.

11. Other Business.

The SSC agenda will include the following issues:

1. Groundfish Final Catch Specifications

2. Salmon Bycatch Data

3. Amendment 80 Cooperatives

4. Crab Rebuilding Plans

5. Groundfish Management Issues

6. Other Management Issues

The Advisory Panel will address most of the same agenda issues as the Council, except for #1 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: November 12, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–27577 Filed 11–16–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology; Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on December 9, 2009. The Board of Overseers is composed of eleven members prominent in the fields of quality, innovation, and performance management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology and from the Chair of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Report from the Judges' Panel, Baldrige Program (BNQP) Update, Baldrige Fellows Program, Baldrige Program Changes in 2010, and Recommendations for the NIST Director.

DATES: The meeting will convene December 9, 2009, at 8:30 a.m. and adjourn at 3 p.m. on December 9, 2009.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room A, Gaithersburg, Maryland 20899. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Diane Harrison no later than Monday, December 7, 2009, and she will provide you with instructions for admittance. Ms. Harrison's e-mail address is *diane.harrison@nist.gov* and her phone number is (301) 975–2361.

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.

Dated: November 10, 2009.

Patrick Gallagher,

Director.

[FR Doc. E9–27596 Filed 11–16–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Technology Innovation Program Advisory Board

AGENCY: National Institute of Standards and Technology; Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the Technology Innovation Program Advisory Board, National Institute of Standards and Technology (NIST) will meet Tuesday, December 8, 2009, from 8:30 a.m. to 3:15 p.m. The Technology Innovation Program (TIP) Advisory Board is composed of ten members appointed by the Director of NIST who are eminent in such fields as business, research, science and technology, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Technology Innovation Program, its organization, its budget,

and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include a TIP update, a discussion of state and regional partnerships, and a presentation on program evaluation at TIP. The agenda may change to accommodate Board business.

DATES: The meeting will convene Tuesday, December 8, 2009 at 8:30 a.m. and will adjourn at 3:15 p.m. on Tuesday, December 8, 2009.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Employees' Lounge, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Rene Cesaro, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4700, telephone number (301) 975–2162. Rene's e-mail address is *rene.cesaro@nist.gov.*

SUPPLEMENTARY INFORMATION: The agenda will include a TIP update, a discussion of state and regional partnerships, and a presentation on program evaluation at TIP. The agenda may change to accommodate Board business. The final agenda will be posted on the TIP Web site at: *http://www.nist.gov/tip/.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Board's affairs are invited to request a place on the agenda. On December 8, 2009, approximately one-half hour will be reserved for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about three minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the TIP Advisory Board, National Institute of Standards and Technology, 100 Bureau Drive, MS 4700, Gaithersburg, Maryland 20899–8610, via fax at (301) 975–4032, or electronically by e-mail to (*lorel.wisniewski@nist.gov*).

All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, email address and phone number to Rene Cesaro no later than Wednesday, December 1, and she will provide you with instructions for admittance. Ms. Cesaro's e-mail address is *rene.cesaro@nist.gov* and her phone number is (301) 975–2162.

Dated: November 12, 2009.

Patrick Gallagher,

Director.

[FR Doc. E9–27556 Filed 11–16–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee Meeting; Military Leadership Diversity Commission (MLDC); Correction

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Meeting notice; correction.

SUMMARY: The Office of the Secretary of Defense published a document in the **Federal Register** on October 29, 2009 (74 FR 55825), announcing a Military Leadership Diversity Commission (MLDC) meeting on November 17 and 18, 2009. That document contained the correct meeting dates (November 17 and 18), but the days of the week (Wednesday and Thursday) are incorrect and are thereby corrected in this notice. The times, meeting location, and agenda topics are also correct.

FOR FURTHER INFORMATION CONTACT: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail *Steven.Hady@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 29, 2009, in FR Doc. E9–26041 on pages 55825 and 55826, the following corrections are made:

On page 55825, in the third column, correct the **DATES** caption to indicate that the meeting will be held on Tuesday, November 17, 2009, and Wednesday, November 18, 2009:

DATES: The meeting will be held on Tuesday, November 17, 2009, from 8:30 a.m. to 3 p.m. and on Wednesday, November 18, 2009, from 8:30 a.m. to 6 p.m.

On page 55826, in the first column, correct the 1st and 17th lines under the heading ''Agenda'' to indicate that the meeting will be held on Tuesday and Wednesday:

Agenda

Tuesday, November 17, 2009 (1st line).

Wednesday, November 18, 2009 (17th line).

Dated: November 12, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–27538 Filed 11–16–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 17, 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 12, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Student Aid Report (SAR).

Frequency: Weekly; Monthly; Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 35,799,513.

Burden Hours: 6,993,273.

Abstract: The Free Application for Federal Student Aid (FAFSA) collects the data necessary to determine a student's eligibility for participation in the following federal student assistance programs identified in the Higher Education Act (HEA): The Federal Pell Grant Program; the Campus-Based Programs; the William D. Ford Federal Direct Loan Program; the Federal Family Education Loan Program; the Academic Competitiveness Grant; and the National Science and Mathematics Access to Retain Talent (SMART) Grant, and the Teacher Education Assistance for College and Higher Education (TEACH) Grant. The Student Aid Report (SAR) is the ouput document for the FAFSA. FAFSA applicants use the SAR to review and confirm the information provided on their FAFSA, as required by law.

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 4130. 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. E9–27601 Filed 11–16–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Undergraduate International Studies and Foreign Language Program; Notice inviting applications for new awards for fiscal year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.016A.

Dates: Applications Available: November 17, 2009.

Deadline for Transmittal of Applications: December 17, 2009.

Deadline for Intergovernmental Review: February 16, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Undergraduate International Studies and Foreign Language (UISFL) program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages.

Priorities: This notice contains one competitive preference priority and two invitational priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority is from the regulations for this program (34 CFR 658.35).

Competitive Preference Priority: For FY 2010, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets this priority.

This priority is:

Applications from institutions of higher education or combinations of these institutions that (a) require entering students to have successfully completed at least two years of secondary school foreign language instruction; (b) require each graduating student to earn two years of postsecondary credit in a foreign language or to have demonstrated equivalent competence in the foreign language; or (c) in the case of a two-year degree granting institution, offer two years of postsecondary credit in a foreign language.

Under this competition, we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2010, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1: Applications that, through collaborative efforts between colleges, departments, or schools of education and other colleges, departments, or schools of education within a single higher education institution or consortium of higher education institutions, propose projects that will strengthen instruction in foreign languages and international studies in teacher education programs that provide pre-service training for K–12 teachers in foreign languages and international studies.

Invitational Priority 2: Applications that propose programs or activities primarily focused on language instruction or applications that propose the development of area or international studies programs to include language instruction on any of the seventy-eight (78) priority languages listed below that were selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs): Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Program Authority: 20 U.S.C. 1124.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98 and 99.

(b) The regulations in 34 CFR parts 655 and 658.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

Areas of National Need: In accordance with section 601(c) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1121(c)(1), the Secretary has consulted with and received recommendations regarding national need for expertise in foreign languages and world regions from the head officials of a wide range of Federal agencies. The Secretary has taken these recommendations into account and a list of foreign languages and world regions identified by the Secretary as areas of national need may be found on the following Web sites:

http://www.ed.gov/about/offices/list/ope/policy.html and *http://www.ed.gov/programs/iegpsugisf/legislation.html*

Also included on these Web sites are the specific recommendations the Secretary received from Federal agencies.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $102,335,000 for the Title VI International Education and Foreign Language Studies Programs (also referred to as the International Domestic Programs) for FY 2010, of which we intend to allocate $2,105,000 for new awards under the UISFL program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: Single IHE: $50,000–$100,000. Consortia of IHEs/Organizations/Associations: $80,000–$160,000.

Estimated Average Size of Awards: Single IHE: $92,000. Consortia of IHEs/Organizations/Associations: $130,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for a single budget period of 12 months for a single IHE application, and $160,000 for a single budget period of 12 months for a consortia of IHEs/organization/association application. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Single IHE: Up to 24 months.

Consortia of IHEs/Organizations/Associations: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (1) IHEs; (2) Consortia of IHEs; (3) Partnerships between nonprofit educational organizations and IHEs; and (4) Public and private nonprofit agencies and organizations, including professional and scholarly associations.

2. *Cost Sharing or Matching:* This program has a matching requirement under section 604(a)(3) of the HEA, 20 U.S.C. 1124(a)(3), and the regulations for this program in 34 CFR 658.41. UISFL program grantees must provide matching funds in either of the following ways: (a) Cash contributions from private sector corporations or foundations equal to one-third of the total project costs; or (b) a combination of institutional and non-institutional cash or in-kind contributions including State and private sector corporation or foundation contributions, equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of Title III or under Title V of the HEA that have submitted an application that demonstrates a need for a waiver or reduction.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://e-grants.ed.gov.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.016A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] that addresses the selection criteria to no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, figures and graphs. These items may be single spaced. Charts, tables, figures, and graphs in the program narrative count toward the page limit.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); and Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. However, the page limit does apply to all of the application narrative section [Part III]. If you include any attachments or appendices not specifically requested, these items will be counted as part of the application narrative [Part III] for purposes of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: November 17, 2009.

Deadline for Transmittal of Applications: December 17, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application site (e-Application) accessible through the Department's e-Grants system. For information

(including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: February 16, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the UISFL program, CFDA number 84.016A, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Christine Corey, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. FAX: (202) 502–7859.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.016A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.016A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* For FY 2010, applications will be randomly divided and reviewed by separate panels of language and area studies experts. A rank order from highest to lowest score will be developed and used for funding purposes.

2. *Selection Criteria:* The selection criteria for this program are from 34 CFR 658.31 through 658.34. The following criteria are used to evaluate all applications: (a) Plan of operation (15 points); (b) Quality of key personnel (10 points); (c) Budget and cost effectiveness (10 points); (d) Adequacy of resources (5 points); and (e) Evaluation plan (20 points). The following additional criteria are applied to applications submitted by an IHE or a consortium of IHEs: (a) Commitment to international studies (10 points); (b) Elements of the proposed international studies program (10 points); and (c) Need for and prospective results of the proposed program (10 points). The following additional criterion is applied to applications from organizations and associations: Need for and potential impact of the proposed project in improving international studies and the study of modern foreign language at the undergraduate level (30 points).

3. *Application Requirements:* In addition to any other requirements outlined in the application package for this program, section 604(a)(7) of the HEA requires that each application must include—

(A) Evidence that the applicant has conducted extensive planning prior to submitting the application;

(B) An assurance that the faculty and administrators of all relevant departments and programs served by the applicant are involved in ongoing collaboration with regard to achieving the stated objectives of the application;

(C) An assurance that students at the applicant institutions, as appropriate, will have equal access to, and derive benefits from, the UISFL program;

(D) An assurance that each institution, combination or partnership will use the Federal assistance provided under the UISFL program to supplement and not supplant non-Federal funds the institution expends for programs to improve undergraduate instruction in international studies and foreign languages;

(E) A description of how the applicant will provide information to students regarding federally funded scholarship programs in related areas;

(F) An explanation of how the activities funded by the grant will reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs, where applicable; and

(G) A description of how the applicant will encourage service in areas of national need, as identified by the Secretary.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in

the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument International Resource Information System (IRIS) to complete the final report. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c).

4. *Performance Measures:* The objective for the UISFL program is to meet the Nation's security and economic needs through the development of a national capacity in foreign languages and area and international studies.

The Department will use the following UISFL performance measures to evaluate its success in meeting this objective:

Performance measure 1: Percentage of Undergraduate International Studies and Foreign Language Program projects judged to be successful by the program officer, based on a review of information provided in the annual performance reports.

Performance measure 2: Percentage of critical languages addressed/covered by foreign language major, minor, or certificate programs created or enhanced; or by language courses created or enhanced; or by faculty or instructor positions created with Undergraduate International Studies and Foreign Language or matching funds in the reporting period.

Efficiency measure: Cost per high quality, successfully-completed Undergraduate International Studies and Foreign Language project.

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for these measures. Reporting screens for institutions may be viewed at: *http://iris.ed.gov/iris/pdfs/uisfl.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Christine Corey, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6069, Washington, DC 20006–8521. Telephone: (202) 502–7629 or by e-mail: *christine.corey@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: November 12, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–27579 Filed 11–16–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information Graduate Assistance in Areas of National Need (GAANN); Notice Inviting Applications for New Awards For Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.200A.

Dates:

Applications Available: November 17, 2009.

Deadline for Transmittal of Applications: December 18, 2009.

Deadline for Intergovernmental Review: February 16, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides fellowships in areas of national need to assist graduate students with excellent academic records who demonstrate financial need and plan to pursue the highest degree available in their course of study at the institution.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 648.33(a) and Appendix to part 648—Academic Areas).

Absolute Priority: For FY 2010, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Areas of National Need: A project must provide fellowships in one or more of the following areas of national need: Biology, Chemistry, Computer and Information Sciences, Engineering, Mathematics, Nursing, Physics, and Educational Assessment, Evaluation, and Research.

Program Authority: 20 U.S.C. 1135.

Applicable Regulations: (a) The Education Department

General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 648.

II. Award Information

Type of Award: Discretionary grants redistributed as fellowships to individual fellows.

Estimated Available Funds: The Administration has requested $9,144,795 for new awards for this program for FY 2010. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $131,265—$262,530.

Estimated Average Size of Awards: $175,020.

Estimated Number of Awards: 52.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Stipend Level: The Secretary will determine the fellowship stipend for GAANN for the academic year 2010–2011 based on the level of support provided by the graduate fellowships of the National Science Foundation, as of February 1, 2010. However, the Secretary will adjust the amount, as necessary, so as not to exceed the

fellow's demonstrated level of financial need as calculated for purposes of the Federal Student Financial Aid Programs under Title IV, Part F, of the Higher Education Act of 1965, as amended.

Institutional Payment: The Secretary will determine the institutional payment for the academic year 2010–2011 by adjusting the previous academic year institutional payment, which is $13,755 per fellow, by the U.S. Department of Labor's Consumer Price Index for the 2009 calendar year.

III. Eligibility Information

1. *Eligible Applicants:* Academic departments of institutions of higher education that meet the requirements in 34 CFR 648.2.

2. *Cost Sharing or Matching:* An institution must provide, from non-Federal funds, an institutional matching contribution equal to at least 25 percent of the grant amount received (see 34 CFR 648.7).

3. *Other:* For requirements relating to selecting fellows, see 34 CFR 648.40.

IV. Application and Submission Information

1. *Address to Request Application Package:* Gary Thomas, U.S. Department of Education, 1990 K Street, NW., room 6016, Washington, DC 20006–8524. Telephone (202) 502–7767; or, by e-mail: *gary.thomas@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative, Part II of the application, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative, Part II, as follows:

• An application in a single discipline must be limited to the equivalent of no more than 40 pages.

• An inter-disciplinary application must be limited to the equivalent of no more than 40 pages. An inter-disciplinary application must request funding for a single proposed program of study that involves two or more academic disciplines.

• A multi-disciplinary application must be limited to the equivalent of no more than 40 pages for each academic department included in the proposal. A multi-disciplinary application must request funding for two or more academic departments in areas of national need designated as priorities by the Secretary that are independent and unrelated to one another.

• A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1'' margin.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs presented in the application narrative count toward the page limit.

• Use a font that is either 12-point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

• Appendices are limited to the following: Curriculum Vitae—no more than two pages per faculty member, a course listing, letters of support, a bibliography, and one additional optional appendix relevant to the support of the proposal, not to exceed five pages.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424); the Supplemental Information Form required by the Department of Education; Part III, the assurances and certifications; the GAANN Statutory Assurances Form, the GAANN Budget Spreadsheet(s) form; the one-page abstract or the appendices. The page limit also does not apply to the table of contents, if you include one. However, you must include all of the application narrative in Part II.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: November 17, 2009.

Deadline for Transmittal of Applications: December 18, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application system (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: February 16, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 648.64. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Graduate Assistance in Areas of National Need Program—CFDA number 84.200A must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks

before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, the GAANN Budget Spreadsheet(s), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper righthand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application, and you have initiated an electronic application for this competition; and

(2)(a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement and may submit your application in paper format if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Gary Thomas, U.S. Department of Education, 1990 K Street, NW., room 6016, Washington, DC 20006–8524. FAX: (202) 502–7859.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.200A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.200A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 648.31.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are in 34 CFR 648.32.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118 and 34 CFR 648.66. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grants-apply.html.* Grantees will be required to submit a supplement to the Final Performance Report two years after the expiration of their GAANN grant. The purpose of the supplement to the Final Performance Report is to identify and report the educational outcome of each GAANN Fellow.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following measures will be used by the Department in assessing the performance of the GAANN Program:

(1) The percentage of GAANN Fellows completing the terminal degree in the designated areas of national need;

(2) The percentage of GAANN Fellows from traditionally underrepresented groups enrolled in a terminal degree program in the designated areas of national need; and

(3) The median time to completion of Master's and Doctorate degrees for GAANN students.

If funded, you will be asked to collect and report data in your project's annual performance report (EDGAR, 34 CFR 75.590) on these measures and on steps taken toward improving performance on these outcomes. Consequently, applicants are advised to include these outcomes in conceptualizing the design, implementation, and evaluation of their proposed projects. Their measurement should be a part of the project evaluation plan, along with measures of your progress on the goals and objectives specific to your project.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Gary Thomas, U.S. Department of Education, Graduate Assistance in Areas of National Need Program, 1990 K Street, NW., room 6016, Washington, DC 20006–8524. Telephone: (202) 502–7767, or by e-mail: *gary.thomas@ed.gov.* If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: November 12, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–27581 Filed 11–16–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

State Fiscal Stabilization Fund Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice announcing deadline for submitting an application under Phase II of the State Fiscal Stabilization Fund (SFSF) program.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.394.

SUMMARY: Under the SFSF program, authorized in Title XIV of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law No. 111–5, the U.S. Department of Education (Department) is awarding Education Stabilization funds in two phases. In Phase I, the Department awarded each State a portion of its SFSF Education Stabilization funds on the basis of the information included in its Application for Initial Funding. The Department is awarding the remainder of each State's allocation based on the information that the State will provide in its Phase II application.

In this notice, we establish the deadline for submission of the Phase II SFSF applications.

Application Deadline: January 11, 2010, 4:30:00 p.m. Washington, DC time.

SUPPLEMENTARY INFORMATION: A State that is unable to meet the deadline established in this notice may request an extension of the deadline. Such an extension request must, at a minimum, explain why the State seeks an extension and indicate when the State proposes to submit its application. Requests for an extension should be submitted to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Submission of Applications:

A Governor must submit an electronic version of the State's application in .PDF (Portable Document) format to *PhaseIIapplication@ed.gov* by January 11, 2010, 4:30:00 p.m., Washington, DC time. A Governor also must mail the original and two copies of the application to: Dr. Joseph C. Conaty, Director, Academic Improvement and Teacher Quality Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E314, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mr. James Butler, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E108, Washington, DC 20202. *Telephone:* (202) 260–9737 or via *e-mail: state.fiscal.fund@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this notice in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access To This Document: You can view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, sections 14001–14013.

Dated: November 10, 2009.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E9–27517 Filed 11–16–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Letter From the Secretary of Energy Accepting Defense Nuclear Facilities Safety Board (Board) Recommendation 2009–1

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) is making available the November 3, 2009, Secretary's letter to the Board accepting the Board's recommendation 2009–1 regarding quantitative risk assessment at defense nuclear facilities.

ADDRESSES: U.S. Department of Energy, HS–1.1, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: DOE is making this letter available for public information and solicits comments from the public. Comments may be sent to the address above. The text of the document is below. It may also be viewed at: *http://www.hss.energy.gov/deprep/default.asp.*

Issued in Washington, DC, on November 10, 2009.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

November 3, 2009

The Honorable John E. Mansfield, Vice Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2941.

Dear Mr. Vice Chairman:

The Department of Energy (DOE) acknowledges receipt of the Defense Nuclear Facilities Safety Board (Board) Recommendation 2009–1, *Risk Assessment Methodologies at Defense Nuclear Facilities*, issued on July 30, 2009, and published in the Federal Register on August 12, 2009.

We appreciate the Board's insights on how DOE can better define and use quantitative risk assessment methodologies to support DOE's primary deterministic approach for ensuring nuclear safety. DOE accepts Board Recommendation 2009–1 and will implement it as described in the enclosed Implementation Plan.

I have assigned Mr. Andrew Wallo, III, Deputy Director, Office of Nuclear Safety, Quality Assurance and Environment, Office of Health, Safety and Security, to be the Department's Responsible Manager for developing the Implementation Plan. He can be reached at (202) 586–4996.

Sincerely,

Steven Chu

Enclosure.

[FR Doc. E9–27551 Filed 11–16–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the National Coal Council (NCC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday December 4, 2009; 9 a.m. to 12 p.m.

ADDRESSES: W Hotel, 515 15th Street NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Michael J. Ducker, U.S. Department of Energy; 4G–036/Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; *Telephone:* 202–586–7810.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To conduct an open meeting of the NCC and to provide a presentation on the new study conducted by the Council on carbon capture and storage technologies for use on coal-based electricity generation plants.

Agenda

- Welcome and Call to Order by NCC Chair Michael Mueller.
- Remarks by Secretary Stephen Chu, Department of Energy.
- Presentation by David Surber of the 25th Anniversary Video
- Presentation by Fred Palmer, NCC Coal Policy Committee Chairman, on the New Council Study.

- Council Business:
  - Finance Report by Committee Chairman Joe Hopf.
  - Secretary's Report by NCC Secretary Larry Grimes.
- Presentation by Thomas Kerr, International Energy Agency, on the IEA Carbon Capture and Storage Roadmap.
- Other Business.
- Adjourn.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any potential items on the agenda, you should contact Michael J. Ducker, 202–586–7810 or *Michael.Ducker@HQ.DOE.GOV* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The NCC will prepare meeting minutes within 45 days of the meeting. The minutes will be posted on the NCC Web site at *http://www.nationalcoalcouncil.org/.*

Issued at Washington, DC on November 9, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–27619 Filed 11–16–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S.-China Clean Energy Research Center (CERC)

AGENCY: Department of Energy.

ACTION: Notice of intent to issue Funding Opportunity Announcement and availability of Request for Information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) intends to issue a Funding Opportunity Announcement (FOA) in early January 2010 for management of parts of the U.S.-China Clean Energy Research Center (CERC).

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this Request for Information (RFI), please contact DOE at *CERC@hq.doe.gov* or call 202–586–5800. The RFI is also available on DOE's Web site at *http://www.energy.gov.*

SUPPLEMENTARY INFORMATION: This week, the U.S. Department of Energy (DOE), China's Ministry of Science and Technology, and China's National Energy Administration are signing the Protocol formally establishing the U.S.-China Clean Energy Research Center (CERC). Today, the DOE is issuing a RFI to solicit comments on a possible approach to implementing U.S. activities under CERC. After reviewing responses to this RFI, the U.S. DOE intends to issue a FOA in January 2010 for management of parts of the U.S.-China Clean Energy Research Center (CERC).

Dated: November 10, 2009.

Kristina Johnson,

Assistant Secretary, Department of Energy.

David Sandalow,

Under Secretary, Department of Energy.

[FR Doc. E9–27572 Filed 11–16–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–732–001]

Commission Information Collection Activities (FERC–732); Comment Request; Submitted For OMB Review

November 9, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to the **Federal Register** notice (74 FR 45434, 9/2/2009) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by December 17, 2009.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0140 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638. A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–732–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp.* To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and 2 copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–732–001.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: To implement section 1233 of the Energy Policy Act of 2005 (EPAct 2005) (which added new section 217 to the Federal Power Act (FPA)), the Commission requires each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of the Commission's guidelines. The reporting requirements of FERC–732 [1] (''Electric

[1] This information collection has been labeled ''FERC–913'', ''FERC–913/516'', and ''FERC–913 (Temporary)'' with a goal of incorporating it later into FERC–516 (OMB Control No. 1902–0096). In addition, in Order No. 681 (in Docket No. RM06–8, issued 7/20/06), the burden was listed as part of

Rate Schedules and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets,'' OMB Control Number 1902–0245) pertain to these long-term transmission rights and are described in 18 CFR part 42.

The FERC–732 regulations require that transmission organizations that are public utilities with one or more organized electricity markets either: (a) File tariff sheets making long-term firm transmission rights available that are consistent with each of the guidelines established by FERC, or (b) file an explanation describing how their existing tariffs already provide long-term firm transmission rights that are consistent with the guidelines. In addition, each transmission organization is required to make its transmission planning and expansion procedures and plans publicly available.

FERC–732 enables the Commission to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the FPA, the Department of Energy Organization Act (DOE Act), and EPAct 2005.

Action: The Commission is requesting a three-year extension of the current expiration date for the FERC–732, with no changes to the reporting requirements.

Burden Statement: The public reporting burden for this collection is estimated to be as follows:

FERC–732 [1]	Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
	(1)	(2)	(3)	(1) × (2) × (3)
New Transmission Organizations with Organized Electricity Markets—filing requirement	1	1	1,180	1,180
Existing & New Transmission Organizations with Organized Markets—making plans & procedures available to public	6	1	2	12
Total annual estimate				1,192

Any transmission organization approved by the Commission for operation after January 29, 2007, that has one or more organized electricity markets (administered either by it or by another entity), will be required to comply with the FERC–732 reporting requirements. Although it is difficult to predict whether the Commission will receive an application for, and approve, a transmission organization in the foreseeable future, the regulations, reporting requirements, and burden of FERC–732 merit continued renewal of the OMB (Office of Management and Budget) clearance. As a result, we are including a 'placeholder' estimate of 1 respondent and 1 response annually for the filing requirement. In addition, each existing transmission organization subject to Part 42 must make its transmission planning and expansion procedures and plans publicly available (under 18 CFR 42.1(c)(4)) for an estimated burden of 2 hours per respondent.

The estimated total cost to respondents is $71,491.35 [1,192 hours divided by 2,080 hours [2] per year, times $124,750 [3] equals $71,491.35]. The estimated cost per respondent is $70,771.63 for new transmission organizations, and $119.95 for existing transmission organizations.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27472 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

FERC–516. OMB approved the new reporting requirements on 1/24/07 and assigned OMB Control No. 1902–0236 (rather than including it in FERC–516).

On 9/28/07 (in ICR Nos. 200610–1902–002 and 200709–1902–008), OMB approved transfer from OMB Control No. 1902–0236 to OMB Control No. 1902–0245. However, OMB Control No. 1902–0245 does not indicate a FERC collection number. To eliminate some of the confusion, we have assigned these requirements a new FERC collection number, FERC–732. The new collection number does not affect the regulatory requirements or burden.

In the future, FERC plans to incorporate the FERC–732 reporting requirements and related burden into the FERC–516. However, FERC–516 is currently the subject of OMB review, so the Commission will track these requirements (and the related burden hours) separately under FERC–732. FERC–516 is not a subject of this Notice.

[2] Number of hours an employee works each year.

[3] The Bureau of Labor Statistics, Department of Labor Occupational Handbook ('May 2008 National Occupational Employment and Wage Estimates [United States],' at *http://www.bls.gov/oes/2008/may/oes_nat.htm#b23–0000*) shows the mean annual salary for a lawyer is $124,750, or $59.98 per hour.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–730–000]

Commission Information Collection Activities (Ferc-730); Comment Request; Extension

November 10, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

DATES: Comments in consideration of the collection of information are due January 22, 2010.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC10–730–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp*. First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original and two (2) paper copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at: *http://www.ferc.gov/docs-filing/elibrary.asp*, by searching on Docket No. IC10–730. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone, toll-free, at: (866) 208–3676, or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: The FERC–730, ''Report of Transmission Investment Activity,'' (OMB Control No. 1902–0239) is filed by public utilities that have been granted incentive rate treatment for specific electric transmission projects. Filing requirements are specified in 18 CFR 35.35(h). Actual and planned transmission investments, and related project data for the most recent calendar year and the subsequent five years, must be reported annually beginning with the calendar year that the Commission granted the incentive rates.

Congress enacted section 1241 of the Energy Policy Act of 2005 (EPAct 2005), adding a new section 219 to the Federal Power Act (FPA), to promote the operation, maintenance and enhancement of electric transmission infrastructure.[1] Congress aimed to benefit consumers by ensuring reliability and/or reducing the cost of delivered power through reducing transmission congestion. In response to EPAct 2005, in Docket No. RM06–4, the Commission amended its regulations to allow for these incentive-based, (including performance-based), rate treatments.

Through Docket No. RM06–4, the Commission amended its regulations in 18 CFR 35.35 to identify the incentive ratemaking treatments allowed under FPA section 219. Incentives are required to be tailored to the type of transmission investments being made, and each applicant must demonstrate that its proposal meets the requirements of FPA section 219.

The Commission needs the information filed under FERC–730 to provide a basis for determining the effectiveness of the new rules and regulations and to provide an accurate assessment of the state of the industry with respect to transmission investment.

Action: The Commission is requesting a three-year extension of the current FERC–730 reporting requirements, with no change.

Burden Statement: The estimated, annual public reporting burden for FERC–730 follows.[2]

FERC information collection	Annual number of respondents	Average number of reponses per respondent	Average burden hours per response	Total annual burden hours
	(1)	(2)	(3)	(1)x(2)x(3)
FERC–730	20	1	30	600

The total estimated annual cost burden to respondents is $37,008.75 (600 hours/2,080 hours[3] per year, times $128,297[4] equals $37,008.75).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for

[1] Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594, 315 and 1283 (2005).

[2] The number of expected annual responses was overestimated in the Final Rule in Docket No. RM06–4. The figures here represent a significant reduction in the number of estimated annual responses (20 responses, rather than the previous estimate of 200 responses), and the corresponding associated estimates for total industry burden and cost.

[3] Number of hours an employee works each year.

[4] Average annual salary per employee.

information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27562 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13011–001]

Shelbyville Hydro LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

November 9, 2009.

a. *Type of Filing:* Notice of Intent to File License Application and Commencing Licensing Proceeding.

b. *Project No.:* 13011–001.

c. *Dated Filed:* September 8, 2009.

d. *Submitted By:* Shelbyville Hydro LLC.

e. *Name of Project:* Lake Shelbyville Dam Hydroelectric Project.

f. *Location:* At the Corps of Engineers' Lake Shelbyville Dam on the Kaskaskia River in Shelby County, Illinois.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Brent Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, Idaho 83442 at (208) 745–0834 or e-mail at *brent.smith@symbioticsenergy.com* or Corrine Servis, at (208) 745–0834 or e-mail *corrine.servis@symbioticsenergy.com*.

i. *FERC Contact:* John Baummer, *john.baummer@ferc.gov*, (202) 502–6837.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Shelbyville Hydro LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act.

m. Shelbyville Hydro LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission pursuant to 18 CFR 5.5 of the Commission's regulations. The Commission will issue the Scoping Document for the proposed Lake Shelbyville Dam Hydroelectric Project on or about November 9, 2009.

n. A copy of the PAD and the scoping document are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD filed September 8, 2009 and Scoping Document, as well as study requests. All comments on the PAD and Scoping Document, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and Scoping Document, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Lake Shelbyville Dam Hydroelectric Project) and number (P–13011–001), and bear the heading Comments on Pre-Application Document, Study Requests, Comments on Scoping Document, Request for Cooperating Agency Status, or Communications to and from Commission Staff. Any individual or entity interested in submitting study requests, commenting on the PAD or Scoping Document, and any agency requesting cooperating status must do so by January 6, 2010.

Comments on the PAD and Scoping Document, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the e-filing link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization

concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Thursday, December 3, 2009.
Time: 7 p.m. (CST).
Location: Lions Community Building, North 9th Street, Forest Park, Shelbyville, IL 62565.
Phone: (217) 774–5531

Daytime Scoping Meeting

Date: Friday, December 4, 2009.
Time: 9 a.m. (CST).
Location: Same location.

The scoping document, which outlines the issues to be addressed in the environmental document, will be mailed to the individuals and entities on the Commission's mailing list. Copies of the scoping document will be available at the scoping meetings, and may be viewed on the Web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Depending on the extent of comments received, a revised Scoping Document may or may not be issued.

Site Visit (Environmental Site Review)

Shelbyville Hydro LLC will conduct a tour of the proposed project site at 2 p.m. on Thursday December 3, 2009. All participants should meet in the parking lot of the Spillway Access Area off route 16 at the Lake Shelbyville Dam. Anyone with questions about the site visit should contact Ms. Corrine Servis of Symbiotics, LLC at (208) 745–0834 or e-mail *corrine.servis@symbioticsenergy.com* on or before November 25, 2009.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Present a proposed list of issues to be addressed in the EA; (2) Review and discuss existing conditions and resource agency management objectives; (3) Review and discuss existing information and identify preliminary information and study needs; (4) Review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) Discuss requests by any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and the scoping document are included in item n of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27471 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI10–2–000]

Grouse Creek Ranch; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

November 10, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.
b. *Docket No:* DI10–2–000.
c. *Date Filed:* October 28, 2009.
d. *Applicant:* Grouse Creek Ranch.
e. *Name of Project:* Grouse Creek Ranch Hydroelectric Project.
f. *Location:* The proposed Grouse Creek Ranch Hydroelectric Project will be located on an irrigation conduit that uses water from the Imnaha River, near the town of Imnaha in Wallowa County, Oregon, affecting T. 2 S, R. 48 E, Willamette Meridian.
g. *Filed Pursuant to:* section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).
h. *Applicant Contact:* Ben Henson, Renewable Energy Solutions LLC, P.O. Box 156, Enterprise OR 97842; *telephone:* (541) 577–3003; *e-mail:* Docket No. DI10–2–000*www.mporter33@juno.com.*
i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or e-mail address: *henry.ecton@ferc.gov.*
j. *Deadline for filing comments, protests, and/or motions:* December 11, 2009.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket number (DI10–2–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Grouse Creek Ranch Hydropower Project will include: (1) A 15-inch diameter, 3-mile-long pvc pipe, conveying water from the Imnaha River for irrigation purposes; (2) a 7-kW Pelton Wheel turbine/generator; (3) a tailrace discharging into the existing irrigation conduit which returns the water to the Imnaha River; and (4) appurtenant facilities. The proposed project will be connected to an interstate grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Locations of the Application: Copies of this filing are on file with the Commission and are available for public inspection. This filing may 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOlineSupport@ferc.gov;* for TTY, call (202) 502–8659. A copy is also

available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27564 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 9, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–15–000.

Applicants: West Georgia Generating Company, L.L.C, DeSoto County Generating Company, LLC, Broadway Gen Funding, LLC, Southern Power Company.

Description: West Georgia Generating Co, LLC *et al.* (Joint *Applicants*) submits the joint application for authorization under Section 203 of the Federal Power Act and Request for Expedited and Privileged Treatment.

Filed Date: 11/02/2009.

Accession Number: 20091105–0154.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4109–005; ER01–1178–006; ER03–175–009; ER03–394–007; ER03–427–007; ER04–170–009; ER07–265–012; ER08–100–011; ER09–1453–001; ER99–3426–011.

Applicants: El Dorado Energy, LLC; Sempra Generation; Termoelectrica U.S. LLC; Elk Hills Power, LLC; Mesquite Power, LLC; MxEnergy Electric Inc.; Sempra Energy Solutions LLC; Sempra Energy Trading LLC; Gateway Energy Services Corporation; San Diego Gas & Electric Company.

Description: Notice of Non-Material Changes in Status of Sempra Energy *et al.*

Filed Date: 11/02/2009.

Accession Number: 20091102–5143.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER01–3121–021; ER02–2085–016; ER02–417–020; ER02–418–020; ER03–1326–019; ER03–296–023; ER03–416–023; ER03–951–023; ER04–94–020; ER05–1146–020; ER05–1262–022; ER05–332–020; ER05–365–020; ER05–481–021; ER06–1093–018; ER06–200–019; ER07–1378–012; ER07–195–015; ER07–242–014; ER07–254–013; ER07–287–013; ER07–460–010; ER08–387–010; ER08–912–007; ER08–933–007; ER09–1284–002; ER09–1285–001; ER09–1723–001; ER09–279–003; ER09–281–002; ER09–282–003; ER09–30–004; ER09–31–004; ER09–32–005; ER09–382–003.

Applicants: Klamath Energy LLC; Northern Iowa Windpower LLC; Phoenix Wind Power LLC; Klamath Generation LLC; Colorado Green Holdings, LLC; Flying Cloud Power Partners, LLC; Klondike Wind Power LLC; Moraine Wind LLC; Mountain View Power Partners III, LLC; Shiloh I Wind Project LLC; Flat Rock Windpower LLC; Klondike Wind Power II LLC; Elk River Windfarm LLC; Trimont Wind I LLC; Flat Rock Windpower II LLC; Big Horn Wind Project LLC; Providence Heights Wind, LLC; Locust Ridge Wind Farm, LLC; MinnDakota Wind LLC; Casselman Windpower, LLC; Klondike Wind Power III LLC; Dillon Wind LLC; Atlantic Renewables Projects II LLC; Iberdrola Renewables MBR Sellers; Lempster Wind, LLC; Rugby Wind, LLC; Streator-Cayuga Ridge Wind Power, LLC; Dry Lake Wind Power, LLC; Buffalo Ridge I LLC; Pebble Springs Wind, LLC; Moraine Wind II LLC; Elm Creek Wind, LLC; Farmers City Wind, LLC; Barton Windpower LLC; Hay Canyon Wind LLC.

Description: Quarterly Report pursuant to 18 C.F.R. 35.42(d) of Iberdrola Renewables MBR Sellers.

Filed Date: 10/30/2009.

Accession Number: 20091030–5109.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER03–879–007; ER03–880–007; ER03–882–007.

Applicants: D.E. Shaw Plasma Trading, LLC, D.E. Shaw & Co. Energy, LLC, D.E. Shaw Plasma Power, LLC.

Description: Notification of Change in Status of D.E. Shaw Plasma Trading, LLC, D.E. Shaw & Co. Energy, LLC and D.E. Shaw Plasma Power, LLC .

Filed Date: 10/30/2009.

Accession Number: 20091030–5104.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER04–947–008; ER08–1297–004; ER02–2559–010; ER01–1071–015; ER02–669–009; ER02–2018–010; ER01–2074–009; ER08–1293–004; ER08–1294–004; ER05–222–006; ER00–2391–010; ER98–2494–013; ER97–3359–015; ER06–9–010; ER09–902–002; ER05–487–006; ER04–127–007; ER03–34–014; ER98–3511–013; ER02–1903–011; ER99–2917–011; ER06–1261–009; ER03–179–008; ER03–1104–011; ER03–1105–011; ER03–1332–005; ER09–138–002; ER08–197–008; ER03–1333–006; ER03–1103–006; ER01–838–009; ER03–1025–005; ER02–2120–007; ER05–714–004; ER01–1972–009; ER98–2076–017; ER03–155–009; ER03–623–009; ER09–1462–001; ER08–250–005; ER07–1157–005; ER04–290–005; ER02–256–002; ER09–988–003; ER09–832–002; ER09–989–003; ER09–990–002; ER05–236–007; ER04–187–007; ER09–1297–001; ER07–174–009; ER08–1296–004; ER07–875–004; ER02–2166–009; ER09–901–002; ER01–2139–013; ER03–1375–006; ER08–1300–004; ER09–900–002; ER00–3068–009; ER98–3563–013; ER9803564–014.

Applicants: POSDEF Power Company, LP; Ashtabula Wind, LLC; Backbone Mountain Windpower, LLC; Badger Windpower LLC; Bayswater Peaking Facility, LLC; Blythe Energy, LLC; Calhoun Power Company, LLC; Crystal Lake Wind, LLC; Crystal Lake Wind II, LLC; Diablo Winds, LLC; Doswell Limited Partnership; ESI Vansycle Partners, LP; Florida Power & Light Company; FPL Energy Burleigh County

Wind, LLC; FPL Energy Cabazon Wind, LLC; FPL Energy Cowboy Wind, LLC; FPL Energy Green Power Wind, LLC; FPL Energy Hancock County Wind, LLC; FPLE Maine Hydro, LLC; FPL Energy Marcus Hook, L.P.; FPL Energy MH50, LP; FPL Energy Mower County, LLC; FPL Energy New Mexico Wind, LLC; FPL Energy North Dakota Wind, LLC; FPL Energy North Dakota Wind, LLC; FPL Energy Oklahoma Wind, LLC; FPL Energy Oliver Wind I, LLC; FPL Energy Oliver Wind II, LLC; FPL Energy Sooner Wind, LLC; FPL Energy South Dakota Wind, LLC; FPL Energy Vansycle LLC; FPL Energy Wyman LLC; FPL Energy Wyoming, LLC; FPLE Rhode Island State Energy, LP; Gexa Energy LLC; Gray County Wind Energy, LLC; Hawkeye Power Partners, LLC; High Winds, LLC; Jamaica Bay Peaking Facility, LLC; Lake Benton Power Partners II, LLC; Langdon Wind, LLC; Logan Wind Energy LLC; Meyersdale Windpower, LLC; Mill Run Windpower, LLC; NextEra Energy Duane Arnold, LLC; NextEra Energy Power Marketing, LLC; NextEra Energy Point Beach, LLC; NextEra Energy SeaBrook, LLC; Northeast Energy Associates, LP; North Jersey Energy Associates, a L.P.; Northern Colorado Wind Energy, LLC; Osceola Windpower, LLC; Osceola Windpower II, LLC; Peetz Table Wind Energy, LLC; Pennsylvania Windfarms, Inc.; Sky River, LLC; Somerset Windpower, LLC; Waymart Wind Farm L.P.; Story Wind, LLC; Victory Garden Phase IV, LLC; FPL Energy Cape, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC.

Description: FPL Companies Site Control 2009 Third Quarterly Report.

Filed Date: 10/30/2009.

Accession Number: 20091030–5191.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER05–1469–003; ER01–2317–009; ER07–415–004; ER08–1418–002; ER09–1061–001; ER97–324–016; ER97–3834–022; ER98–3026–012; ER97–3834–022.

Applicants: DTE East China, LLC; Metro Energy, LLC; DTE Pontiac North, LLC; DTE Stoneman, LLC; Woodland Biomass Power Ltd.; Detroit Edison Company; DTE Energy Trading, Inc.; DTE Edison America, Inc.; DTE River Rouge No. 1, LLC.

Description: Quarterly Report of The Detroit Edison Company Pursuant to 18 C.F.R. Sec. 35.42(d).

Filed Date: 11/02/2009.

Accession Number: 20091102–5177.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER07–412–003; ER09–1099–002.

Applicants: Empire Generating Co, LLC, ECP Energy I, LLC.

Description: Notice of Non-Material Change in Status of Empire Generating Co, LLC and ECP Energy I, LLC.

Filed Date: 10/30/2009.

Accession Number: 20091030–5192.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER08–1404–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest ISO submits Notice of Cancellation pursuant to the requirements of Order No 614.

Filed Date: 11/02/2009.

Accession Number: 20091103–0168.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER09–1286–003.

Applicants: Elizabethtown Energy, LLC.

Description: Notice of Non-Material Change in Status of Elizabethtown Energy, LLC.

Filed Date: 11/05/2009.

Accession Number: 20091105–5109.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER09–1287–003.

Applicants: Lumberton Energy, LLC.

Description: Notice of Non-Material Change in Status of Lumberton Energy, LLC.

Filed Date: 11/05/2009.

Accession Number: 20091105–5118.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER09–1655–002.

Applicants: Fowler Ridge II Wind Farm LLC.

Description: Fowler Ridge II Wind Farm, LLC submits application seeking acceptance of its proposed FERC Electric Tariff, Original Volume 1.

Filed Date: 11/05/2009.

Accession Number: 20091106–0088.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER09–1688–001.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corp submits executed Large Generator Interconnection Agreement.

Filed Date: 11/05/2009.

Accession Number: 20091105–0134.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10–202–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits a service agreement wholesale distribution service and interconnection agreement with Shelter Cove Resort Improvement District No. 1 etc.

Filed Date: 11/02/2009.

Accession Number: 20091103–0060.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–209–000.

Applicants: Commonwealth Edison Company, Commonwealth Edison Co. of Indiana, Inc.

Description: Commonwealth Edison Company submits Original Sheet No. 1 to FERC Electric Tariff, Original Volume No. 7.

Filed Date: 11/03/2009.

Accession Number: 20091104–0033.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: ER10–212–000.

Applicants: High Sierra Power Marketing, LLC.

Description: High Sierra Power Marketing, LLC submits Notice of Cancellation of its market based rate tariff, FERC Electric Tariff, Original Volume 1, effective 11/5/09.

Filed Date: 11/04/2009.

Accession Number: 20091105–0166.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: ER10–213–000.

Applicants: Sierra Power Asset Marketing, LLC.

Description: Sierra Power Asset Marketing, LLC submits Notice of Cancellation of its market based rate tariff, FERC Electric Tariff, Original Volume 1, effective 11/5/09.

Filed Date: 11/04/2009.

Accession Number: 20091105–0165.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: ER10–214–000.

Applicants: Xcel Energy Services Inc.

Description: Southwestern Public Service Company submits proposed Notice of Cancellation of the Interconnection Agreement with West Texas Municipal Power Agency.

Filed Date: 11/04/2009.

Accession Number: 20091105–0164.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: ER10–215–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Transmission Interconnection Agreement with West Texas Municipal Power Agency.

Filed Date: 11/04/2009.

Accession Number: 20091105–0163.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: ER10–216–000.

Applicants: Entergy Services, Inc.

Description: Entergy Louisiana, LLC *et al* submits Second Revised Service Agreement 453, which is a revised and

amended interconnection and operating agreement.

Filed Date: 11/04/2009.

Accession Number: 20091105–0162.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: ER10–218–000.

Applicants: Sierra Pacific Power Company.

Description: Sierra Pacific Power Company submits a non conforming long term Transmission Service Agreement.

Filed Date: 11/05/2009.

Accession Number: 20091105–0135.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10–219–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, as agent for Alabama Power Company *et al* submits an amendment to the network integration transmission service agreement with PowerSouth Energy Cooperative.

Filed Date: 11/05/2009.

Accession Number: 20091105–0136.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10–220–000.

Applicants: Xcel Energy Services Inc.

Description: Northern States Power Company submits proposed Notice of Cancellation of the Electric Service Agreement etc.

Filed Date: 11/05/2009.

Accession Number: 20091105–0138.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10–221–000.

Applicants: ISO New England Inc.

Description: Western Massachusetts Electric Company *et al* submits notice canceling the Standard Large Generator Interconnection Agreement etc.

Filed Date: 11/05/2009.

Accession Number: 20091105–0137.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10–222–000.

Applicants: Westar Energy, Inc.

Description: Kansas Gas and Electric Company submits Notice of Cancellation of a Generating Municipal Electric Service Agreement.

Filed Date: 11/05/2009.

Accession Number: 20091105–0139.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10–223–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Large Generator Interconnection Agreement.

Filed Date: 11/05/2009.

Accession Number: 20091105–0140.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: ER10–229–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power Company, Schedule 20A Service Providers *et al* submits amendments to Schedule 20A of Section II of the ISO New England, Inc Transmission, Markets and Services Tariff.

Filed Date: 11/06/2009.

Accession Number: 20091106–0108.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–8–000.

Applicants: Alliant Energy Corporate Services, Inc.

Description: Interstate Power and Light Company Application for authorization to issue securities and request for waiver of competitive bidding requirements.

Filed Date: 10/30/2009.

Accession Number: 20091030–5176.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH08–19–000.

Applicants: ITC Holdings Corp.

Description: FERC–65B Joint Waiver Notification of ITC Holdings Corp., *et al.*

Filed Date: 11/06/2009.

Accession Number: 20091106–5139.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27480 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 5, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–13–000.

Applicants: PacifiCorp.

Description: Application of PacifiCorp for Approval of Acquisition of Jurisdictional Asset under Section 203 of the FPA.

Filed Date: 10/30/2009.

Accession Number: 20091030–5103.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–421–021; ER98–4055–018; ER01–1337–013; ER05–1375–003; ER07–188–008; ER07–189–007; ER07–190–007; ER07–191–008; ER09–655–001; ER99–2774–018; ER08–1069–001; ER08–771–002; ER09–

1605–002; ER03–1212–012; ER10–80–001.

Applicants: CinCap IV, LLC; CinCap V, LLC; Cinergy Capital & Trading, Inc.; Cinergy Power Investments, Inc.; Duke Energy Carolinas, LLC; Duke Energy Indiana, Inc.; Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; Duke Energy Retail Sales, LLC; Duke Energy Trading and Marketing, LLC; Happy Jack Windpower, LLC; North Allegheny Wind, LLC; Silver Sage Windpower, LLC; St. Paul Cogeneration, LLC; Three Buttes Windpower, LLC.

Description: Duke Energy Corp submits Change in Status.

Filed Date: 10/30/2009.

Accession Number: 20091104–0003.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER99–2161–010; ER99–3000–009; ER02–1572–008; ER02–1571–008; ER99–1115–013; ER99–1116–013; ER00–2810–008; ER99–4359–007; ER99–4358–007; ER99–2168–010; ER98–1127–013; ER07–649–003; ER09–1300–001; ER09–1301–001; ER99–2162–010; ER00–2807–008; ER00–2809–008; ER98–1796–012; ER07–1406–004; ER00–1259–010; ER99–4355–007; ER99–4356–007; ER00–3160–011; ER99–4357–007; ER00–2313–009; ER02–2032–007; ER97–4281–021; ER02–1396–007; ER02–1412–007; ER00–3718–009; ER99–3637–008; ER07–486–004; ER99–1712–010; ER00–2808–009; ER00–3160–012.

Applicants: Arthur Kill Power LLC; Astoria Gas Turbine Power LLC; Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; Cabrillo Power I LLC; Cabrillo Power II LLC; Conemaugh Power LLC; Connecticut Jet Power LLC; Devon Power LLC; Dunkirk Power LLC; El Segundo Power, LLC; EL Segundo Power II LLC; GenConn Devon, LLC; GenConn Middletown LLC; Huntley Power LLC; Indian River Power LLC; Keystone Power LLC; Long Beach Generation LLC; Long Beach Peakers LLC; Louisiana Generating LLC; Middletown Power LLC; Montville Power LLC; NEO Freehold-Gen LLC; Norwalk Power LLC; NRG Energy Center Paxton LLC; NRG New Jersey Energy Sales LLC; NRG Power Marketing LLC; NRG Rockford LLC; NRG Rockford II LLC; NRG Sterlington Power LLC; Oswego Harbor Power LLC; Saguaro Power Company, A Limited Partnership; Somerset Power LLC; Vienna Power LLC.

Description: Report of NRG Energy, Inc.

Filed Date: 10/30/2009.

Accession Number: 20091030–5173.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER02–1052–012; ER07–1000–004; ER96–1947–026.

Applicants: Las Vegas Power Company, LLC, LS Power Marketing, LLC, West Georgia Generating Company, LLC.

Description: Quarterly Report for the Third Quarter of 2009 of LS Power Marketing, LLC, *et al.*

Filed Date: 10/30/2009.

Accession Number: 20091030–5115.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER02–1695–007; ER02–2309–006.

Applicants: Cabazon Wind Partners, LLC, Whitewater Hill Wind Partners, LLC.

Description: Cabazon Wind Partners, LLC, *et al.* Notice of Change in Status Sites for New Generation Capacity Development.

Filed Date: 10/30/2009.

Accession Number: 20091030–5117.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER06–220–003; ER09–1677–002; ER06–686–003; ER06–215–003; ER96–2652–058; ER99–4228–011; ER99–4229–011; ER99–4231–010; ER99–852–012; ER08–589–003; ER08–1397–001; ER99–666–008; ER08–293–003; ER06–222–003; ER09–712–001; ER06–225–003; ER07–1138–002; ER06–223–003; ER08–297–003; ER06–736–001; ER99–3693–007; ER08–650–001–ER08–692–001; ER05–1389–004; ER06–221–003; ER07–645–001; ER02–2263–009; ER05–1282–003; ER06–224–003; ER08–337–004; ER07–301–001; ER01–2217–007; ER08–931–003.

Applicants: Bendwind, LLC, Big Sky Wind, LLC, DeGreeff DP, LLC, DeGreeffpa, LLC, CL Power Sales Eight, LLC, CP Power Sales Nineteen, LLC, CP Power Sales Seventeen, LLC, CP Power Sales Twenty, LLC, Edison Mission Marketing & Trading, Inc., Edison Mission Solutions, LLC, Elkhorn Ridge Wind, LLC, EME Homer City Generation, L.P., Forward Windpower, LLC, Groen Wind, LLC, High Lonesome Mesa, LLC, Hillcrest Wind, LLC, Jeffers Wind 20, LLC, Larswind, LLC, Lookout Windpower, LLC, Midwaysunset Cogeneration CO, Midwest Generation, LLC, Mountain Wind Power, LLC, Mountain Wind Power II, LLC, San Juan Mesa Wind Project, LLC, Sierra Wind, LLC, Sleeping Bear, LLC, Southern California Edison Company, Storm Lake Power Partners I LLC, Sunrise Power Company, LLC; TAIR Windfarm, LLC; Walnut Creek Energy, LLC; Watson Cogeneration Company; Wildorado Wind, LLC.

Description: Edison International submits Notice of Change in Status.

Filed Date: 10/30/2009.

Accession Number: 20091104–0002.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER06–455–002.

Applicants: Duquesne Power, LLC.

Description: Duquesne Power, LLC submits First Revised Sheet 1 et al. to Rate Schedule FERC No 1.

Filed Date: 10/26/2009.

Accession Number: 20091027–0006.

Comment Date: 5 p.m. Eastern Time on Monday, November 16, 2009.

Docket Numbers: ER07–496–002; ER00–1372–005.

Applicants: Alcoa Power Generating Inc., Alcoa Power Marketing LLC.

Description: Alcoa Power Generating Inc. and Alcoa Power Marketing LLC's Amendment to Updated Market Power Analysis for Continued Market-Based Rate Authority.

Filed Date: 10/30/2009.

Accession Number: 20091030–5146.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER07–758–018.

Applicants: Inland Empire Energy Center, LLC.

Description: Inland Empire Energy Center, LLC. Notice of Non-Material Change in Status.

Filed Date: 10/30/2009.

Accession Number: 20091030–5174.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER08–378–002; ER09–560–001.

Applicants: Covanta Delano, Inc.; Covanta Maine, LLC.

Description: Covanta Delano, Inc et al. submits Second Revised Sheet 1 et al. to No 1 FERC Electric Tariff, Revised Volume 1.

Filed Date: 10/20/2009.

Accession Number: 20091026–0017.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: ER08–609–002.

Applicants: Endure Energy, LLC.

Description: Notification of Change in Status of Endure Energy, LLC.

Filed Date: 10/30/2009.

Accession Number: 20091030–5158.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER08–656–006.

Applicants: Shell Energy North America (U.S.), L.P.

Description: Shell Energy North America (U.S.), L.P. Notice of Change in Status Sites for New Generation Capacity Development.

Filed Date: 10/30/2009.

Accession Number: 20091030–5118.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER08–1226–004; ER09–1320–001; ER03–1284–008; ER05–1202–008; ER09–1321–002; ER08–1225–005; ER05–1262–023; ER06–1093–019; ER07–407–007; ER06–1122–006; ER09–1323–002; ER09–1322–002; ER09–1481–001; ER07–522–006; ER08–1111–005; ER08–1227–004; ER09–1482–001; ER07–342–005; ER08–1228–003.

Applicants: High Trail Wind Farm, LLC, Blue Canyon Windpower II LLC, Old Trail Wind Farm, LLC, Telocaset Wind Power Partners, LLC, High Prairie Wind Farm II, LLC, Cloud County Wind Farm, LLC, Pioneer Prairie Wind Farm I, LLC, Sagebrush Power Partners, LLC, Arlington Wind Power Project LLC, Flat Rock Windpower LLC, Flat Rock Windpower II LLC, Rail Splitter Wind Farm, LLC, Blue Canyon Windpower LLC, Wheat Field Wind Power Project LLC, Lost Lakes Wind Farm LLC, Blue Canyon Windpower V LLC, Meadow Lake Wind Farm II LLC, Blackstone Wind Farm LLC, Meadow Lakes Wind Farm LLC.

Description: Notice of Non-Material Change in Status of Arlington Wind Power Project LLC, *et al.*

Filed Date: 10/30/2009.

Accession Number: 20091030–5132.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER08–1442–002; ER08–1323–003; ER09–1655–001; ER08–1382–001; ER08–1392–002.

Applicants: Fowler Ridge Wind Farm LLC, Flat Ridge Wind Energy, LLC, Fowler Ridge III Wind Farm LLC, Fowler Ridge II Wind Farm LLC.

Description: Report on Sites for New Generation Capacity Development.

Filed Date: 10/30/2009.

Accession Number: 20091030–5157.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER09–635–002.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits amendment to the Southern Operating Companies' Open Access Transmission Tariff.

Filed Date: 10/20/2009.

Accession Number: 20091027–0012.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: ER09–641–001.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits amendment to a network operating agreement associated with a network integration transmission service agreement by and between PowerSouth Energy Cooperative and Southern Companies.

Filed Date: 10/20/2009.

Accession Number: 20091027–0011.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: ER09–1381–001.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits Substitute Original Sheet No 2B to FERC Electric Tariff, Second Revised Volume 1.

Filed Date: 10/19/2009.

Accession Number: 20091026–0018.

Comment Date: 5 p.m. Eastern Time on Monday, November 09, 2009.

Docket Numbers: ER09–1546–001.

Applicants: ISO New England Inc. & New England Power Pool.

Description: ISO New England, Inc submits 3rd Revised Sheet 7442 to FERC Electric Tariff 3 for Section III. A. 10 of Appendix A to Market Rule 1, Standard Market Design etc.

Filed Date: 10/30/2009.

Accession Number: 20091103–0171.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER09–1655–001.

Applicants: Fowler Ridge Wind Farm LLC, Flat Ridge Wind Energy, LLC, Fowler Ridge III Wind Farm LLC, Fowler Ridge II Wind Farm LLC.

Description: Report on Sites for New Generation Capacity Development.

Filed Date: 10/30/2009.

Accession Number: 20091030–5157.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER09–172–006; ER09–173–006; ER09–174–004; ER06–1355–006; ER09–1400–002; ER09–1549–002.

Applicants: Evergreen Wind Power, LLC, Canandaigua Power Partners, LLC, Evergreen Wind Power V, LLC, Canandaigua Power Partners II, LLC, Milford Wind Corridor Phase I, LLC, First Wind Energy Marketing, LLC.

Description: Report on Sites for New Generation Development.

Filed Date: 10/30/2009.

Accession Number: 20091030–5159.

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: ER10–115–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits amended and restated facilities construction agreement among the Midwest ISO, et al.

Filed Date: 10/27/2009.

Accession Number: 20091028–0012.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 17, 2009.

Docket Numbers: ER10–160–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Transmission Owner Tariff Construction Work in Progress Rate Filing.

Filed Date: 10/30/2009.

Accession Number: 20091102–0178.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–204–000.

Applicants: FSE Blythe 1, LLC.

Description: FSE Blythe 1, LLC submits application for order accepting initial market based rate tariffs, certain waivers and blanket approvals, and granting of Category 1 Status.

Filed Date: 10/30/2009.

Accession Number: 20091103–0110.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–205–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co submits the First Amended and Restated Partial Requirements Service Agreement.

Filed Date: 10/30/2009.

Accession Number: 20091102–0182.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27482 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

November 5, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–14–000.

Applicants: Chandler Wind Partners, LLC, Foote Creek II, LLC, Foote Creek IV, LLC, Ridge Crest Wind Partners, LLC, Oak Creek Wind Power, LLC, Terra-Gen VG Wind, LLC, Terra-Gen 251 Wind, LLC, Foote Creek III, LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Chandler Wind Partners, LLC, *et al.*

Filed Date: 11/03/2009.

Accession Number: 20091103–5097.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: EC10–16–000.

Applicants: Milford Wind Corridor Phase I, LLC, Milford Wind Corridor Phase II, LLC, Milford Wind Corridor Phase III, LLC, Milford Wind Corridor Phase IV, LLC, Milford Wind Corridor Phase V, LLC, Milford Gen Lead, LLC.

Description: Application of Milford Wind Corridor LLC for Authorization under Section 203 of the Federal Power Act and Request for Waivers, Confidential Treatment and Expedited Consideration.

Filed Date: 10/30/2009.

Accession Number: 20091030–5179.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–6–000.

Applicants: Crystal Lake Wind III, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Crystal Lake Wind III, LLC.

Filed Date: 11/05/2009.

Accession Number: 20091105–5067.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Docket Numbers: EG10–7–000.

Applicants: Garden Wind, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Garden Wind, LLC.

Filed Date: 11/05/2009.

Accession Number: 20091105–5068.

Comment Date: 5 p.m. Eastern Time on Friday, November 27, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3502–010.

Applicants: Berkshire Power Company, LLC.

Description: Berkshire Power Company, LLC Order No. 697–C Quarterly Filing of EIF Entities.

Filed Date: 11/02/2009.

Accession Number: 20091102–5175.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER01–1527–014; ER01–1529–014.

Applicants: Nevada Power Company; Sierra Pacific Power Company.

Description: Nevada Power Company et al. notifies the Commission of a nonmaterial change in status resulting from the facts described in the application.

Filed Date: 11/02/2009.

Accession Number: 20091103–0170.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER01–2544–007; ER01–2543–007; ER01–2545–007; ER01–2546–007; ER01–2547–007; ER03–1182–008; ER06–1331–005;

Applicants: CalPeak Power LLC, Commonwealth Chesapeake Company, LLC, Tyr Energy, LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—El Cajon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Border LLC, Fox Energy Company, LLC

Description: Notice of Non-Material Change in Status of Sites for New Generation Capacity Development of CalPeak Power LLC, *et al.*

Filed Date: 10/30/2009

Accession Number: 20091030–5092.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER01–3103–020.

Applicants: Astoria Energy LLC, Astoria Energy II LLC.

Description: Astoria Energy I & II Submits 697–C Report.

Filed Date: 11/02/2009.

Accession Number: 20091102–5154.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER02–25–010; ER08–1236–004; ER00–3751–008.

Applicants: Troy Energy, LLC; IPA Trading, LLC; ANP FUNDING I, LLC.

Description: Amendment to Updated Market Power Analysis of Troy Energy, LLC, *et al.*

Filed Date: 11/03/2009.

Accession Number: 20091103–5107.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: ER03–1284–007; ER08–1225–004; ER05–1202–7.

Applicants: Blue Canyon Windpower II LLC, Cloud County Wind Farm, LLC, Blue Canyon Windpower LLC.

Description: Supplement to Notice of Non-Material Change in Status of Blue Canyon Windpower LLC, *et al.*

Filed Date: 11/03/2009.

Accession Number: 20091103–5106.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: ER05–717–013; ER05–721–013; ER06–1334–010; ER06–230–010; ER07–277–009; ER07–810–008; ER08–1172–007; ER08–237–008; ER09–1339–003; ER09–1341–003; ER09–1342–003; ER09–429–004; ER09–430–004; ER09–946–003; ER99–2341–016; ER09–1340–003; ER04–374–014;

Applicants: Spring Canyon Energy LLC, Judith Gap Energy LLC, Invenergy TN LLC, Wolverine Creek Energy LLC, Grays Harbor Energy LLC, Forward Energy LLC, Grand Ridge Energy LLC, Willow Creek Energy LLC, Sheldon Energy LLC, Hardee Power Partners Limited, Spindle Hill Energy LLC; Invergy Cannon Falls LLC; Beech Ridge Energy, LLC; Grand Ridge Energy, II LLC; Grand Ridge Energy, III LLC; Grand Ridge Energy IV LLC; Grand Ridge Energy Energy V LLC.

Description: Spring Canyon Energy, LLC's et al. submits for filing with the Commission this notice of change of facts.

Filed Date: 10/30/2009.

Accession Number: 20091104–0004.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER06–560–005.

Applicants: Credit Suisse Energy LLC.

Description: Notice of Non-Material Change in Status of Credit Suisse Energy LLC.

Filed Date: 11/02/2009.

Accession Number: 20091102–5142.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER06–1407–005; ER06–1408–005; ER06–1409–005; ER06–1413–005; ER08–577–006; ER08–578–006; ER08–579–007; ER08–1443–003.

Applicants: Noble Wethersfield Windpark, LLC, Noble Chateaugay Windpark, LLC, Noble Bellmont Windpark, LLC, Noble Ellenburg Windpark, LLC, Noble Bliss Windpark, LLC, Noble Clinton Windpark I, LLC, Noble Altona Windpark, LLC, Noble Great Plains Windpark, LLC.

Description: Quarterly Report for the third quarter of 2009 under Order 697 of Noble Bliss Windpark, LLC, *et al.*

Filed Date: 10/30/2009.

Accession Number: 20091030–5181

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER07–758–018.

Applicants: Inland Empire Energy Center, LLC.

Description: Inland Empire Energy Center, LLC Notice of Non-Material Change in Status.

Filed Date: 10/30/2009.

Accession Number: 20091030–5174.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER08–401–002; ER08–1385–001; ER09–1429–002; ER99–2287–005.

Applicants: Black Hills Power, Inc., Black Hills/Colorado Electric Utility Co., Cheyenne Light Fuel & Power Company, Black Hills Wyoming, LLC.

Description: Report on Sites for New Generation Development.

Filed Date: 10/30/2009.

Accession Number: 20091030–5178.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER08–1317–003.

Applicants: California Independent System Operator Corporation.

Description: Q3 Quarterly Report on Progress in Processing Interconnection Requests of the California Independent System Operator Corporation.

Filed Date: 10/30/2009

Accession Number: 20091030–5185.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER08–1419–004.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Second Substitute Original Sheet 300C.03 *et al.* to FERC Electric Tariff, Fifth Revised Volume 1.

Filed Date: 11/02/2009.

Accession Number: 20091103–0169.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER09–1555–000.

Applicants: Wisconsin Power and Light Company.

Description: Response to Data Request of Alliant Energy Corporate Services, Inc.

Filed Date: 10/30/2009.

Accession Number: 20091030–5055.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 10, 2009.

Docket Numbers: ER09–1729–000

Applicants: Conectiv Mid Merit, LLC.

Description: Conectiv Mid Merit, LLC submits Amendment to its Application.

Filed Date: 11/04/2009.

Accession Number: 20091105–0186.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: ER10–117–000.

Applicants: North American Power and Gas, LLC.

Description: North American Power and Gas, LLC submits petition for acceptance of initial tariff, FERC Electric Tariff, Original Volume 1, waivers and blanket authority.

Filed Date: 11/02/2009.

Accession Number: 20091104–0001.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–47–001

Applicants: Geodyne Energy, L.L.C.

Description: Geodyne Energy, LLC submits amended filing of the Petition for Acceptance of Rate Schedule, Waivers and Blanket Authority submitted 10/15/09.

Filed Date: 11/02/2009.

Accession Number: 20091103–0167

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–159–000.

Applicants: Public Service Electric and Gas Company.

Description: Public Service Electric and Gas Co submits a request for incentive rate treatment for the Branchburg-Roseland-Hudson 500kv Transmission Project.

Filed Date: 10/30/2009.

Accession Number: 20091102–0187.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–162–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits for acceptance Notice of Cancellation of Rate Schedule FERC No 136, Interconnection Agreement etc.

Filed Date: 10/30/2009.

Accession Number: 20091103–0059

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–174–000.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits annual filing of revised accruals for post-retirement benefits other than pensions.

Filed Date: 10/30/2009.

Accession Number: 20091102–0120.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–182–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits Sixth Revised Sheet No. 37 *et al.* to FERC Electric Tariff, Sixth Revised Volume 1, to be effective January 1, 2010.

Filed Date: 11/02/2009.

Accession Number: 20091102–0166.

Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–188–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits filing to extend the current Grid Management Charge until 12/31/10 etc.

Filed Date: 10/30/2009.

Accession Number: 20091103–0041.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–189–000.

Applicants: Niagara Mohawk Power Corporation.

Description: National Grid submits interconnection agreement dated 10/20/92 between Niagara Mohawk Power Corporation and Selkirk Cogen Partners, LP.

Filed Date: 10/30/2009.

Accession Number: 20091103–0042.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–190–000.

Applicants: Midwest Independent Transmission System Operator. Inc., ALLETE, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits revised tariff sheets with proposed revisions to Attachment O etc.

Filed Date: 10/30/2009.

Accession Number: 20091103–0043.

Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–192–000.
Applicants: Public Service Company of Colorado.
Description: Public Service Company of Colorado submits changes in base rates applicable to service to the Black Hills/Colorado Electric Utility Company, LP, *et al.*
Filed Date: 10/30/2009.
Accession Number: 20091104–0137.
Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–193–000.
Applicants: Public Service Company of New Hampshire.
Description: Northeast Utilities Service Company submits Second Revised Rate Schedule FERC No 104.
Filed Date: 11/02/2009.
Accession Number: 20091103–010.1
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–195–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits Network Integration Transmission Service Agreement with Public Service Company of Oklahoma etc.
Filed Date: 11/02/2009.
Accession Number: 20091103–0102.
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–196–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits Network Integration Transmission Service Agreement.
Filed Date: 11/02/2009.
Accession Number: 20091103–0103.
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–197–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits Network Integration Transmission Service Agreement.
Filed Date: 11/02/2009.
Accession Number: 20091103–0104.
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–198–000.
Applicants: Indiana Michigan Power Company.
Description: Appalachian Power Company *et al.* submits Notice of Cancellation to terminate the Transmission and Unit Power Supply Agreement with Carolina Power & Light Company.
Filed Date: 11/02/2009.
Accession Number: 20091103–0105.
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–199–000.
Applicants: Central Maine Power Company.
Description: Central Maine Power Company submits an unexecuted service agreement for Local Network Transmission Service with Kennebunk Light & Power District.
Filed Date: 11/02/2009.
Accession Number: 20091103–0106.
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–200–000.
Applicants: Central Maine Power Company.
Description: Central Maine Power Company submit petitions to terminate rate schedule FERC No. 113.
Filed Date: 11/02/2009.
Accession Number: 20091103–0107.
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–201–000.
Applicants: Xcel Energy Services Inc.
Description: Southwestern Public Service Company submits proposed Notice of Cancellation of the Network Integration Transmission Service Agreement *et al.*
Filed Date: 11/02/2009.
Accession Number: 20091103–0108.
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–202–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits a service agreement wholesale distribution service and interconnection agreement with Shelter Cove Resort Improvement District No. 1 etc.
Filed Date: 11/02/2009.
Accession Number: 20091103–0060.
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: ER10–206–000.
Applicants: Mississippi Power Company.
Description: Mississippi Power Company submits Amendment 13 to FERC Electric Rate Schedule No. 108.
Filed Date: 11/03/2009.
Accession Number: 20091104–0005.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: ER10–207–000; ER10–208–000.
Applicants: Southwestern Electric Power Company.
Description: American Electric Power submits the Amended and Restated Power Supply Agreement between SWEPCO and Northeast Texas Electric Cooperative, Inc. dated 11/2/09 *et al.*
Filed Date: 11/03/2009.
Accession Number: 20091104–0007.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 24, 2009.

Docket Numbers: ER10–211–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company Submits Proposed Grid Management Charge for 2010.
Filed Date: 10/30/2009.
Accession Number: 20091030–5188.
Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Docket Numbers: ER10–215–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an executed Transmission Interconnection Agreement with West Texas Municipal Power Agency.
Filed Date: 11/04/2009.
Accession Number: 20091105–0163.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Docket Numbers: ER10–216–000.
Applicants: Entergy Services, Inc.
Description: Entergy Louisiana, LLC *et al.* submits Second Revised Service Agreement 453, which is a revised and amended interconnection and operating agreement.
Filed Date: 11/04/2009.
Accession Number: 20091105–0162.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 25, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–61–002.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits revisions to Attachment O of its Open Access Transmission Tariff pursuant to Order 890 and 890–A.
Filed Date: 11/02/2009.
Accession Number: 20091103–0172.
Comment Date: 5 p.m. Eastern Time on Monday, November 23, 2009.

Docket Numbers: OA10–2–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits Notification Filing pursuant to Sections 19.9 and 32.5 of its Energy Markets and Open Access Transmission Tariff pursuant to Order Nos. 890, 890–A, and 890–B.
Filed Date: 10/30/2009.
Accession Number: 20091104–0171.
Comment Date: 5 p.m. Eastern Time on Friday, November 20, 2009.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM10–2–001.
Applicants: The Detroit Edison Company.
Description: Supplement to the Application for Authorization to

Terminate the Obligation of The Detroit Edison Company to Purchase Power From Qualified Facilities Over Twenty Megawatts on a Service Territory-Wide Basis.

Filed Date: 11/05/2009.

Accession Number: 20091105–5049.

Comment Date: 5 p.m. Eastern Time on Thursday, December 3, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27481 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR10–2–000]

Flint Hills Resources, LP, Complainant, v. Mid-America Pipeline Company, LLC, Respondent; Notice of Complaint

November 9, 2009.

Take notice that on November 5, 2009, Flint Hills Resources, LP (FHR) filed a formal complaint against Mid-America Pipeline Company, LLC (MAPL) pursuant to Rule 206 of the Rules of Practice and Procedure of the Commission, 18 CFR 385.206; the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2 and sections 1(5), 8, 9, 13, 15 and 16 of the Interstate Commerce Act, 49 U.S.C. App. §§ 1(5), 8, 9, 13, 15 and 16 (1988). FHR challenges the justness and reasonableness of rate for transporting butane, isobutane, natural gasoline, naphtha and refinery grade butane on MAPL's Northern interstate pipeline system and seeks the prescription of new just and reasonable rates and reparations and refunds, with interest for the unjust and unreasonable rates that MAPL has charged FHR in the past for such shipments.

FHR certifies that copies of the complaint were served on the contacts for MAPL.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 25, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27478 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–12–000]

Commonwealth Edison Company; Commonwealth Edison Company of Indiana, Inc.; Notice of Filing

November 9, 2009.

Take notice that on November 3, 2009, pursuant to Rule 207 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2008), Commonwealth Edison Company, on behalf of itself and its wholly-owned subsidiary, Commonwealth Edison Company of Indiana, Inc., filed a Petition for Declaratory Order requiring the Midwest Independent Transmission System Operator to recognize the assignment of Section 4.8 transmission credits and allow the Ameren Entities to take service under Schedule 10–A of the MISO Open Access Transmission Tariff until earlier of the date they exhaust the purchased credits or December 15, 2013.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 24, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27479 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–10–000]

City of Vernon, CA; Notice of Filing

November 9, 2009.

Take notice that on October 30, 2009, the City of Vernon, California, pursuant to the terms and conditions of its Transmission Owner Tariff filed with the Commission, the requirements of the California Independent System Operator Corporation Electric Tariff, and Ordering Paragraph (C) of the Commission's September 11, 2009 Order (*City of Vernon, California,* 128 FERC ¶ 61, 235 (2009)), filed annual revision to its Transmission Revenue Balancing Account Adjustment and the Transmission Revenue Requirement to be effective in calendar year 2010.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 20, 2009.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27475 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–149–000]

Elk City Wind, LLC; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 10, 2009.

This is a supplemental notice in the above-referenced proceeding of Elk City Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 30, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27563 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–204–000]

FSE Blythe I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 9, 2009.

This is a supplemental notice in the above-referenced proceeding of FSE Blythe I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is November 30, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27473 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP10–30–000]

Texas Eastern Transmission, LP; Notice of Technical Conference

November 9, 2009.

In *Texas Eastern Transmission, LP,* 129 FERC ¶ 61,088, at Ordering Paragraph (B) (2009), the Commission directed that a technical conference be held to address issues raised by Texas Eastern Transmission, LP's proposed gas quality and interchangeability specifications, in the above-captioned proceeding.

Take notice that a technical conference will be held on Tuesday, December 8, 2009, at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons and staff are permitted to attend. For further information please contact David Maranville at (202) 502–6351 or e-mail *David.Maranville@ferc.gov.*

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27477 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

November 12, 2009.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 19, 2009, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda: **Note:** Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

953RD—MEETING

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters—FERC Strategic Plan.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Winter Energy Market Assessment.
	Electric	
E–1	ER09–636–000	Entergy Services, Inc.

953RD—MEETING—Continued

Item No.	Docket No.	Company
E–2	ER09–1048–000, ER06–615–018, ER06–615–037.	California Independent System Operator Corporation.
E–3	ER09–1050–000, ER09–748–000, ER09–1192–000.	Southwest Power Pool, Inc.
E–4	ER09–1051–000	ISO New England Inc. and New England Power Pool.
E–5	ER09–1142–000	New York Independent System Operator, Inc.
E–6	RM08–19–000, RM08–19–001, RM09–5–000, RM06–16–005.	Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk-Power System
E–7	RM05–5–013	Standards for Business Practices and Communication Protocols for Public Utilities.
E–8	OMITTED.	
E–9	RM05–17–005, RM05–25–005	Preventing Undue Discrimination and Preference in Transmission Service.
E–10	OMITTED.	
E–11	OMITTED.	
E–12	ER10–32–000	California Independent System Operator Corporation.
E–13	ER09–1681–000	California Independent System Operator Corporation.
E–14	OMITTED.	
E–15	ER08–1178–001, ER08–1178–002, EL08–88–001, EL08–88–002.	California Independent System Operator Corporation.
E–16	ER06–456–006, ER06–954–002, ER06–1271–001, ER07–424–000, EL07–57–000.	PJM Interconnection, L.L.C.
E–17	ER09–262–003	Southwest Power Pool, Inc.
E–18	ER09–1762–000	Westar Energy, Inc.
E–19	ER08–733–000	Pacific Gas and Electric Company.
E–20	EL09–73–000	*Californians for Renewable Energy, Inc.* v. *Pacific Gas & Electric Company and California Energy Commission*.
E–21	OMITTED.	
E–22	EL00–95–184	*San Diego Gas & Electric Company* v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange*.
E–23	EC08–59–002	Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, L.P.
E–24	EC08–117–001	Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, L.P.
E–25	ER99–2311–012	Carolina Power & Light Company.
	ER97–2846–015	Florida Power Corporation.
	ER07–188–007	Duke Energy Carolinas, LLC.
	ER91–569–045	Entergy Services, Inc.
	ER02–862–012	Entergy Power Ventures, LP.
	ER01–666–012	EWO Marketing, LP.
	ER91–569–047	Entergy Power, Inc.
	ER94–1188–046	LG&E Energy Marketing Inc.
	ER99–1623–015	Louisville Gas & Electric Company.
	ER98–4540–015	Kentucky Utilities Company.
	ER96–1085–014	South Carolina Electric & Gas Company.
	ER96–780–023	Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Power Company
	ER99–2342–013	Tampa Electric Company.
	AD10–2–000	Guidance on Simultaneous Transmission Import Limit Studies.
E–26	EL08–77–001	Central Maine Power Company; Maine Public Service Company.
E–27	ER09–1618–000	Montana Alberta Tie Ltd. MATL LLP.
E–28	EC08–87–001	Entegra Power Group LLC., Gila River Power, L.P., Union Power Partners, L.P., Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, L.P.
E–29	EL09–31–000	Sun Edison LLC.
E–30	EL09–74–000	Green Energy Express LLC.
E–31	EL09–70–000	Milford Wind Corridor, LLC.
E–32	EL09–77–000	JD Wind 1, LLC., JD Wind 2, LLC., JD Wind 3, LLC., JD Wind 4, LLC., JD Wind 5, LLC., JD Wind 6, LLC.
	Gas	
G–1	PR09–31–000	The Dow Chemical Company., Dow Pipeline Company, Dow Hydrocarbons and Resources LLC.
G–2	RM96–1–036	Standards for Business Practices for Interstate Natural Gas Pipelines.

953RD—MEETING—Continued

Item No.	Docket No.	Company
	Hydro	
H–1	P–2438–095	Seneca Falls Power Corporation.
H–2	P–13351–001	Marseilles Land and Water Company.
	P–13176–001	Marseilles Land and Water Company.
	P–13231–001	Marseilles Land and Water Company.
	P–13159–001	City of Marseilles, Illinois.
	P–13230–002	City of Marseilles, Illinois.
	P–13394–001	City of Marseilles, Illinois.
H–3	EL09–55–001, P–2100–171	*County of Butte, California* v. *California Department of Water Resources.*
H–4	EL06–91–004, P–12252–031	*Albany Engineering Corporation* v. *Hudson River-Black River Regulating District.*
H–5	P–2169–095	Alcoa Power Generating Inc.
	Certificates	
C–1	OMITTED.	
C–2	CP09–17–000, AC08–161–000	Florida Gas Transmission Company, LLC.
C–3	CP09–68–000	Texas Eastern Transmission, LP.
C–4	CP09–461–000	Florida Gas Transmission Company, LLC.
C–5	CP09–415–000	Northwest Pipeline GP.
C–6	CP09–60–002	Dominion Cove Point LNG, LP.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Web cast. The Capitol Connection provides technical support for the free Web casts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E9–27689 Filed 11–13–09; 4:15 pm]

BILLING CODE 6717 P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[CP10–12–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization

November 9, 2009.

Take notice that on October 29, 2009, Florida Gas Transmission Company, LLC (Florida Gas), filed in Docket No. CP10–12–000, a prior notice request pursuant to Sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA), for authorization to replace, upgrade, and relocate sections of its St. Petersburg and Clearwater South Latersals, and Block Valve 24–10, located in Pinellas County, Florida, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Florida Gas and proposes to perform these activities under its blanket certificate issued November 10, 1982, in Docket No. CP82–553–000 [21 FERC ¶ 62,235 (1982)].

Specifically, FGT proposes to relocate approximately 2.6 miles of existing 10- and 12-inch sections of the St. Petersburg Lateral, including upgrading a portion of the 10-inch section to a 12-inch section; relocate, upgrade and replace BV 24–10; and relocate approximately 444-feet of an existing 4-inch section of the Clearwater South Lateral, all of which are located in Pinellas County, Florida. The FGT pipeline modifications are required to accommodate Florida Department of Transportation (''FDOT'') road improvement projects. FGT estimates the cost of construction to be $19.5 million.

The filing may 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application may be directed to Stephen Veatch, Senior Director of Certificates & Tariffs, Florida Gas Transmission Company, LLC, 5444 Westheimer Road, Houston, Texas, 77056, or call (713) 989–2024, or fax (713) 989–1158, or by e-mail *stephen.veatch@SUG.com*.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu

of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (*http://www.ferc.gov*) under the ''e-Filing'' link. 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–27476 Filed 11–16–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8981–9]

Agency Information Collection Activities, OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2249.01; Tier 1 Screening of Certain Chemicals Under the Endocrine Disruptor Screening Program (EDSP); 40 CFR 169.2(k); was approved on 10/02/2009; OMB Number 2070–0176; expires on 10/31/2012; Approved with change.

EPA ICR Number 0575.12; Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies; 40 CFR part 716; was approved on 10/02/2009; OMB Number 2070–0004; expires on 10/31/2012; Approved without change.

EPA ICR Number 0916.13; Consolidated Emissions Reporting (Renewal); 40 CFR part 51, subparts A, C and G; was approved on 10/08/2009; OMB Number 2060–0088; expires on 10/31/2012; Approved without change.

EPA ICR Number 2184.03; Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule (Renewal); 40 CFR part 51 and 40 CFR part 96; was approved on 10/08/2009; OMB Number 2060–0584; expires on 10/31/2010; Approved without change.

EPA ICR Number 1952.04; NESHAP for Metal Furniture Surface Coating; 40 CFR part 63, subpart A and 40 CFR part 63, subpart RRRR; was approved on 10/08/2009; OMB Number 2060–0518; expires on 10/31/2012; Approved without change.

EPA ICR Number 2152.04; Clean Air Interstate Rule to Reduce Interstate Transport of Fine Particle Matter and Ozone (Change); 40 CFR part 51 and 40 CFR part 96; was approved on 10/08/2009; OMB Number 2060–0570; expires on 02/29/2012; Approved without change.

EPA ICR Number 1587.10; State Operating Permit Regulations; 40 CFR part 70; was approved on 10/19/2009; OMB Number 2060–0243; expires on 04/30/2012; Approved without change.

EPA ICR Number 1713.09; Federal Operating Permit Regulations; 40 CFR part 71; was approved on 10/19/2009; OMB Number 2060–0336; expires on 04/30/2012; Approved without change.

EPA ICR Number 1230.26; Prevention of Significant Deterioration and Non-Attainment New Source Review (Final Rule for Flexible Air Permits); 40 CFR 51.160–51.166; 40 CFR part 51, Appendix S; 40 CFR 52.21–52.24; was approved on 10/19/2009; OMB Number 2060–0003; expires on 04/30/2012; Approved without change.

EPA ICR Number 2332.02; NESHAP for Aluminium, Copper, and Other Non-Ferrous Foundries (Final Rule); 40 CFR part 63, subpart A and 40 CFR part 63, subpart ZZZZZZ; was approved on 10/29/2009; OMB Number 2060–0630; expires on 10/31/2012; Approved without change.

EPA ICR Number 1711.12; Voluntary Customer Service Satisfaction Surveys (Renewal); was approved on 10/21/2009; OMB Number 2090–0019; expires on 10/31/2012; Approved with change.

EPA ICR Number 1813.07; Information Collection Request for Proposed Regional Haze Regulations (Renewal); 40 CFR part 51; was approved on 10/30/2009; OMB Number 2060–0421; expires on 10/31/2012; Approved with change.

Comment Filed

EPA ICR Number 2341.01; Product Noise Labelling of Hearing Protection Devices (Proposed Rule for Reporting of Test Data Reports); in 40 CFR part 211, subpart B; OMB filed comment on 10/18/2009.

Short Term Extensions of Expiration Date

EPA ICR Number 2177.04; Standards of Performance for Stationary Combustion Turbines; 40 CFR part 60, subpart KKKK; OMB Number 2060–0582; expires on 12/31/2009; a short term extension was approved on 10/30/2009.

Dated: November 5, 2009.

John Moses, Director,

Collections Strategies Division.

[FR Doc. E9–27616 Filed 11–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2004–0008; FRL–8981–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (Renewal); EPA ICR No. 1487.10, OMB Control No. 2050–0179

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 17, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2004–0008, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by email to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Yogi, Office of Solid Waste and Emergency Response, Assessment and Remediation Division, (5204 P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 347–8835; fax number: (703) 603–9112; e-mail address: *yogi.david@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 17, 2009 (74 FR 28693), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2004–0008, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–9744.

Use EPA's electronic docket and comment system at www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Cooperative Agreements and Superfund State Contracts for Superfund Response Actions (Renewal).

ICR numbers: EPA ICR No. 1487.10, OMB Control No. 2050–0179.

ICR Status: This ICR is scheduled to expire on December 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR authorizes the collection of information under 40 CFR part 35, subpart O, which establishes the administrative requirements for cooperative agreements funded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for State, federally-recognized Indian tribal governments, intertribal consortiums, and political subdivision response actions. This regulation also codifies the administrative requirements for Superfund State Contracts for non-State lead remedial responses. This regulation includes only those provisions mandated by CERCLA, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management under this regulation. The information is collected from applicants and/or recipients of EPA assistance and is used to make awards, pay recipients, and collect information on how federal funds are being utilized. EPA requires this information to meet its federal stewardship responsibilities. Recipient responses are required to obtain a benefit (federal funds) under 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' and under 40 CFR part 35, ''State and Local Assistance.''

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State; Local; or Tribal governments.

Estimated Number of Respondents: 568.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 4,189.

Estimated Total Annual Cost: $128,466.67, includes no costs for annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 884 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease reflects a decrease in the estimated number of respondents from the previous ICR.

Dated: November 9, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–27618 Filed 11–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2009–0827; FRL–8980–6]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grant Funding Guidance for State and Tribal Response Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will begin to accept requests, from December 1, 2009 through January 31, 2010, for grants to supplement State and Tribal Response Programs. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with state and tribal officials in developing this guidance.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and a public record. Another goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program.

This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response capacity.

For fiscal year 2010, EPA will consider funding requests up to a maximum of $1.5 million per state or tribe. Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out these grants.

DATES: This action is effective as of December 1, 2009. EPA expects to make non-competitive grant awards to states and tribes which apply during fiscal year 2010.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters can be located at *www.epa.gov/brownfields.*

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields and Land Revitalization; (202) 566–2777.

SUPPLEMENTARY INFORMATION:

Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive $50 million grant program to establish and enhance state [1] and tribal [2] response programs. Generally, these response programs address the assessment, cleanup, and redevelopment of brownfields sites and other sites with actual or perceived contamination. Section 128(a) cooperative agreements are awarded and administered by EPA's regional offices. This document provides guidance that will enable states and tribes to apply for and use Fiscal Year 2010 section 128(a) funds.[3]

Requests for funding will be accepted from December 1, 2009 through January 31, 2010. Requests received after January 31, 2010 will not be considered for FY 2010 funding. Information required to be submitted with the funding request is on pages 27–32. States or tribes that do not submit the request in the appropriate manner may forfeit their ability to request funds. First time requestors are strongly encouraged to contact their Regional Brownfields Coordinator (*see* page 34) prior to submitting their funding request.

Requests submitted by the January 31, 2010 request deadline are preliminary; final cooperative agreement work plans and budgets will be negotiated with the regional offices once final allocation determinations are made. As in prior years, EPA will place special emphasis on reviewing a cooperative agreement recipient's use of prior section 128(a) funding in making allocation decisions.

States and tribes requesting funds are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their final cooperative agreement package. For more information, please go to *www.grants.gov.*

The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Program cooperative agreements is 66.817. This grant program is eligible to be included in state and tribal Performance Partnership Grants, with the exception of funds used to capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State or Tribal response program.

I. Background

State and tribal response programs oversee assessment and cleanup activities at the majority of brownfields sites across the country. The depth and breadth of state and tribal response programs vary. Some focus on CERCLA related activities, while others are multi-faceted, for example, addressing sites regulated by both CERCLA and the Resource Conservation and Recovery Act (RCRA). Many state programs also offer accompanying financial incentive programs to spur cleanup and redevelopment. In passing section 128(a) [4], Congress recognized the accomplishments of state and tribal response programs in cleaning up and redeveloping brownfields sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with states and tribes.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and a ''public record.'' The secondary goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response program's capacity.

Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out section 128(a) cooperative agreements.

II. Eligibility For Funding

To be eligible for funding under CERCLA section 128(a), a state or tribe must:

—demonstrate that its response program includes, or is taking reasonable steps to include, the four elements of a response program, described below; *or* be a party to voluntary response program Memorandum of Agreement (VRP MOA) [5] with EPA;

and

—maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year, see CERCLA section 128(b)(1)(C).

III. Matching Funds/Cost-Share

States and tribes are *not* required to provide matching funds for cooperative agreements awarded under section 128(a), with the exception of the section 128(a) funds a state or tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA section 104(k)(3).

IV. The Four Elements—Section 128(A)

Section 128(a) recipients that do not have a VRP MOA with EPA must demonstrate that their response program includes, or is taking reasonable steps to include, the four elements. Achievement of the four elements should be viewed as a priority. Section 128(a) authorizes funding for activities necessary to establish and enhance the four elements and to establish and maintain the public record requirement.

Generally, the four elements are:

(1) Timely survey and inventory of brownfields sites in state or tribal land. EPA's goal in funding activities under this element is to enable the state or tribe to establish or enhance a system or process that will provide a reasonable

[1] The term ''state'' is defined in this document as defined in CERCLA section 101(27).

[2] The term ''Indian tribe'' is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the **Federal Register** Notice at 67 FR 67181, Nov. 4, 2002, are also eligible for funding under CERCLA section 128(a).

[3] The Agency may waive any provision of this guidance that is not required by statute, regulation, Executive Order or overriding Agency policies.

[4] Section 128(a) was added to CERCLA in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfield Amendments).

[5] The legislative history of the Brownfields Amendments indicates that Congress intended to encourage states and tribes to enter into MOAs for their voluntary response programs. States or tribes that are parties to VRP MOAs and that maintain and make available a public record are automatically eligible for Section 128(a) funding.

estimate of the number, likely locations, and the general characteristics of brownfields sites in their state or tribal lands.

EPA recognizes the varied scope of state and tribal response programs and will not require states and tribes to develop a ''list'' of brownfields sites. However, at a minimum, the state or tribe should develop and/or maintain a system or process that can provide a reasonable estimate of the number, likely location, and general characteristics of brownfields sites within their state or tribal lands.

Given funding limitations, EPA will negotiate work plans with states and tribes to achieve this goal efficiently and effectively, and within a realistic time frame. For example, many of EPA's Brownfields Assessment cooperative agreement recipients conduct inventories of brownfields sites in their communities or jurisdictions. EPA encourages states and tribes to work with these cooperative agreement recipients to obtain the information that they have gathered and include it in their survey and inventory.

(2) Oversight and enforcement authorities or other mechanisms and resources. EPA's goal in funding activities under this element is to have state and tribal response programs that include oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that:

—a response action will protect human health and the environment and be conducted in accordance with applicable federal and state law; and

—the necessary response activities are completed if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance or long-term monitoring activities).

(3) Mechanisms and resources to provide meaningful opportunities for public participation[6]. EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms and resources for meaningful public participation, at the local level, including, *at a minimum:*

—Public access to documents and related materials that a state, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

—Prior notice and opportunity for public comment on cleanup plans and site activity; and

—A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.

(4) Mechanisms for approval of a cleanup plan and verification and certification that cleanup is complete. EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete, including a requirement for certification or similar documentation from the state, the tribe, or a licensed site professional to the person conducting the response action that the response action is complete. Written approval by a state or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

V. Public Record Requirement

In order to be eligible for section 128(a) funding, states and tribes (including those with MOAs) must establish and maintain a public record system, described below, in order to receive funds. Specifically, under section 128(b)(1)(C), states and tribes must:

—Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;

—Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and

—Identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy.

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

A. Distinguishing the ''survey and inventory'' element from the ''public record.'' It is important to note that the public record requirement differs from the ''timely survey and inventory'' element described in the ''Four Elements'' section above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the ''timely survey and inventory'' element, described above, refers to a general approach to identifying brownfields sites.

B. Making the public record easily accessible. EPA's goal is to enable states and tribes to make the public record and other information, such as information from the ''survey and inventory'' element, easily accessible. For this reason, EPA will allow states and tribes to use section 128(a) funding to make the public record, as well as other information, such as information from the ''survey and inventory'' element, available to the public via the internet or other means. For example, the Agency would support funding state and tribal efforts to include detailed location information in the public record such as the street address and latitude and longitude information for each site.[7]

In an effort to reduce cooperative agreement reporting requirements and increase public access to the public record, EPA encourages states and tribes to place their public record on the internet. If a state or tribe places the public record on the internet, maintains the substantive requirements of the public record, and provides EPA with the link to that site, EPA will, for purposes of cooperative agreement funding only, deem the public record reporting requirement met.

C. Long-term maintenance of the public record. EPA encourages states and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls, in their work plans.[8]

[6] States and tribes establishing this element may find useful information on public participation on EPA's community involvement Web site at http://www.epa.gov/superfund/community/policies.htm.

[7] For further information on latitude and longitude information, please see EPA's data standards Web site available at *http://iaspub.epa.gov/sor_internet/registry/datastds/findadatastandard/epaapproved/latitudelongitude*

[8] States and tribes may find useful information on institutional controls on EPA's institutional controls Web site at http://www.epa.gov/superfund/policy/ic/index.htm

VI. Use Of Funding

A. Overview

Section 128(a)(1)(B) describes the eligible uses of cooperative agreement funds by states and tribes. In general, a state or tribe may use a cooperative agreement to ''establish or enhance'' their response programs, including elements of the response program that include activities related to responses at brownfields sites with petroleum contamination. Eligible activities include, but are not limited to, the following:

—Develop legislation, regulations, procedures, ordinances, guidance, etc. that would establish or enhance the administrative and legal structure of their response programs;
—Establish and maintain the required public record described above. EPA considers activities related to maintaining and monitoring institutional controls to be eligible costs under section 128(a);
—Conduct limited site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements. In addition to the requirement per CERCLA section 128(a)(2)(C)(ii) to obtain public comment on cleanup plans and site activities, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies. EPA will not provide section 128(a) funds solely for assessment or cleanup of specific brownfields sites; site specific activities must be an incidental part of an overall section 128(a) work plan that includes funding for other activities that establish or enhance the four elements;
—Capitalize a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and cooperative agreement terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20 percent match on the amount of section 128(a) funds used for the RLF, a prohibition on using EPA cooperative agreement funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply; or
—Purchase environmental insurance or develop a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program.

B. Uses Related to ''Establishing'' a State or Tribal Response Program

Under CERCLA section 128(a), ''establish'' includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For example, a state or tribal response program may use section 128(a) funds to develop regulations, ordinances, procedures, or guidance. For more developed state or tribal response programs, ''establish'' may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA section 128(b)(1)(C).

C. Uses Related to ''Enhancing'' a State or Tribal Response Program

Under CERCLA section 128(a), ''enhance'' is related to activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under a state or tribal response program.

The exact ''enhancement'' uses that may be allowable depend upon the work plan negotiated between the EPA regional office and the state or tribe. For example, regional offices and states or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. It may also include developing better coordination and understanding of other state response programs, e.g., RCRA or USTs. As another example, states and tribal response programs enhancement activities can include outreach to local communities to increase their awareness and knowledge regarding the importance of monitoring engineering and institutional controls. Other ''enhancement'' uses may be allowable as well.

D. Uses Related to Site-Specific Activities

States and tribes may use section 128(a) funds for activities that improve state or tribal capacity to increase the number of sites at which response actions are conducted under the state or tribal response program.

Eligible uses of funds include, but are not limited to, site-specific activities such as:

—Conducting assessments or cleanups at *brownfields* sites (see next section for additional information);
—oversight of response action;
—technical assistance to federal brownfields cooperative agreement recipients;
—development and/or review of site-specific quality assurance project plans (QAPPs);
—preparation and submission of Property Profile Forms; and
—auditing site cleanups to verify the completion of the cleanup.

E. Uses Related to Site-Specific Assessment and Cleanup Activities

Site-specific assessment and cleanup activities should establish and/or enhance the response program and be tied to the four elements. In addition to the requirement per CERCLA section 128(a)(2)(C)(ii) to obtain public comment on cleanup plans and site activities, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies. EPA will not provide section 128(a) funds solely for assessment or cleanup of specific brownfields sites; site-specific activities must be an incidental part of an overall section 128(a) work plan that includes funding for other activities that establish or enhance the four elements. Site-specific assessments and cleanups must comply with all applicable federal and state laws and are subject to the following restrictions:

—Section 128(a) funds can only be used for assessments or cleanups at sites that meet the definition of a brownfields site at CERCLA section 101(39);
—Absent EPA approval, no more than $200,000 per site can be funded for assessments with section 128(a) funds, and no more than $200,000 per site can be funded for cleanups with section 128(a) funds; and
—Absent EPA approval, the state/tribe may not use funds awarded under this agreement to assess and clean up sites owned or operated by the recipient.

Assessments and cleanups cannot be conducted at sites where the state/tribe is a potentially responsible party pursuant to CERCLA section 107, except:

—at brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or

—when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

Subgrants cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted, except:

—at brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or

—when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

F. Costs Incurred for Activities at ''Non-brownfields'' Sites

Costs incurred for activities at non-brownfields sites, e.g., oversight, may be eligible and allowable if such activities are included in the state's or tribe's work plan. For example, auditing completed site cleanups in jurisdictions where states or tribes use licensed site professionals, to verify that sites have been properly cleaned up, may be an eligible cost under section 128(a). These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the state's or tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the state or tribe. *However, assessment and cleanup activities may only be conducted on eligible brownfields sites, as defined in CERCLA section 101(39).*

G. Uses Related to Site-Specific Activities at Petroleum Brownfields Sites

States and tribes may use section 128(a) funds for activities that establish and enhance their response programs, even if their response programs address petroleum contamination. Also, the costs of site-specific activities, such as site assessments or cleanup at petroleum contaminated brownfields sites, defined at CERCLA section 101(39)(D)(ii)(II), are eligible and are allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3).

VII. General Programmatic Guidelines for Section 128(A) Grant Funding Requests

Funding authorized under CERCLA section 128(a) is awarded through a cooperative agreement [9] with a state or tribe. The program is administered under the general EPA grant and cooperative agreement regulations for states, tribes, and local governments found in the Code of Federal Regulations at 40 CFR part 31. Under these regulations, the cooperative agreement recipient for section 128(a) grant program is the government to which a cooperative agreement is awarded and which is accountable for the use of the funds provided. The cooperative agreement recipient is the entire legal entity even if only a particular component of the entity is designated in the cooperative agreement award document.

A. One application per state or tribe. Subject to the availability of funds, EPA regional offices will negotiate and enter into section 128(a) cooperative agreements with eligible and interested states or tribes. *EPA will accept only one application from each eligible state or tribe.*

B. Define the State or Tribal Response Program. States and tribes must define in their work plan the ''section 128(a) response program(s)'' to which the funds will be applied, and may designate a component of the state or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

C. Separate cooperative agreements for the capitalization of RLFs using section 128(a) funds. If a portion of the section 128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to section 104(k)(3), two separate cooperative agreements must be awarded, i.e., one for the RLF and one for non-RLF uses. States and tribes may, however, submit one initial request for funding, delineating the RLF as a proposed use. Section 128(a) funds used to capitalize an RLF are not eligible for inclusion into a Performance Partnership Grant (PPG).

D. Authority to Manage a Revolving Loan Fund Program. If a state or tribe chooses to use its secton 128(a) funds to capitalize a revolving loan fund program, the state or tribe must have the authority to manage the program, e.g., issue loans. If the agency/department listed as the point of contact for the section 128(a) cooperative agreement does not have this authority, it must be able to demonstrate that another state or tribal agency does have the authority to manage the RLF and is willing to do so.

E. Section 128(a) cooperative agreements are eligible for inclusion in the Performance Partnership Grant. States and tribes may include section 128(a) cooperative agreements in their PPG. 69 FR 51,756 (2004). Section 128(a) funds used to capitalize an RLF or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program are not eligible for inclusion in the PPG.

F. Project Period. EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's cooperative agreement policies. Each cooperative agreement must have an annual budget period tied to an annual work plan.

G. Demonstrating the Four Elements. As part of the annual work plan negotiation process, states or tribes that do *not* have VRP MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described above. EPA will not fund, in future years, state or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, or on EPA's review of the state or tribal response program.

H. Establishing and Maintaining the Public Record. Prior to funding a state's or tribe's annual work plan, EPA regional offices will verify and document that a public record, as

[9] A cooperative agreement is an assistance agreement to a state or a tribe that includes substantial involvement of EPA regional enforcement and program staff during performance of activities described in the cooperative agreement work plan. Examples of this involvement include technical assistance and collaboration on program development and site-specific activities.

described above, exists and is being maintained [10].

• *States or tribes that received initial funding prior to FY09:* Requests for FY10 funds will *not* be accepted from states or tribes that fail to demonstrate, by the January 31, 2010 request deadline, that they established and are maintaining a public record. (Note, this would potentially impact any state or tribe that had a term and condition placed on their FY09 cooperative agreement that prohibited drawdown of FY09 funds prior to meeting public record requirement.) States or tribes in this situation will not be prevented from drawing down their prior year funds, once the public record requirement is met, but will be restricted from applying for FY10 funding.

• *States or Tribes that received initial funding in FY09:* by the time of the actual FY10 award, the state or tribe must demonstrate that they established and maintained the public record (those states and tribes that do not meet this requirement will have a term and condition placed on their FY10 cooperative agreement that prevents the drawdown of FY10 funds until the public record requirement is met).

• *Recipients receiving funds for the first time in FY10:* these recipients have one year to meet this requirement and may utilize the section 128(a) cooperative agreement funds to do so.

I. Demonstration of Significant Utilization of Prior Years' Funding

During the allocation process, EPA headquarters places significant emphasis on the utilization of prior years' funding. When submitting your request for FY10 funds, the following information must be submitted:

—For those states and tribes with Superfund VCP Core or Targeted Brownfields Assessment cooperative agreements awarded under CERCLA section 104(d), you must provide, by agreement number, the amount of funds that have not been requested for reimbursement (i.e., those funds that remain in EPA's Financial Data Warehouse) and must provide a detailed explanation and justification for why such funds should not be considered in the funding allocation process.

—For those states and tribes that received FY03, FY04, FY05, FY06, FY07 and/or FY08 section 128(a) funds, you must provide the amount of FY03, FY04, FY05, FY06, FY07 and/or FY08 funds that have not been requested for reimbursement (i.e, those funds that remain in EPA's Financial Data Warehouse). These funds will be considered in the funding allocation process.

Note: EPA Regional staff will review EPA's Financial Database Warehouse to confirm the amount of outstanding funds reported. *It is strongly recommended that you work with your regional counterpart to determine the amount of funds ''outstanding.''*

J. Demonstration of Need To Receive Funds Above the FY09 Funding Distribution

Due to the limited amount of funding available, recipients must demonstrate a *specific need* when requesting an amount above the amount allocated to the state or tribe in FY09.

K. Allocation System and Process for Distribution of Funds

EPA regional offices will work with interested states and tribes to develop their preliminary work plans and funding requests. Final cooperative agreement work plans and budgets will be negotiated with the regional office once final allocation determinations are made.

For Fiscal Year 2010, EPA will consider funding requests up to a maximum of $1.5 million per state or tribe. This limit may be changed in future years based on appropriation amounts and demand for funding.

EPA will target funding of at least $3 million per year for tribal response programs. If this funding is not used, it will be carried over and added to at least $3 million in the next fiscal year. It is expected that the funding demand from tribes will increase through the life of this cooperative agreement program and this funding allocation system should ensure that adequate funding for tribal response programs is available in future years.

After the January 31, 2010 request deadline, regional offices will submit summaries of state and tribal requests to EPA headquarters. Before submitting requests to EPA headquarters, regional offices may take into account additional factors when determining recommended allocation amounts. Such factors include, but are not limited to, the depth and breadth of the state or tribal program; scope of the perceived need for the funding, e.g., size of state or tribal jurisdiction or the proposed work plan balanced against capacity of the program, amount of prior funding, and funds remaining from prior years, etc.

After receipt of the regional recommendations, EPA headquarters will consolidate requests and allocate funds accordingly.

VIII. Information To Be Submitted With the Funding Request

States and tribes requesting section 128(a) FY10 funds *must submit the following information,* as applicable, to their regional contact on or before January 31, 2010 (regions may request additional information, as needed):

—For those states and tribes with prior Superfund VCP Core or Targeted Brownfields Assessment funding awarded under CERCLA section 104(d), provide, by agreement number, the amount of funds that have not been requested for reimbursement (*i.e.,* those funds that remain in EPA's Financial Data Warehouse). EPA will take into account these funds in the allocation process.

—For those states and tribes that received FY08 or prior section 128(a) funds, you must provide the amount of FY03, FY04, FY05, FY06 and/or FY07 funds that have not been requested for reimbursement (i.e., those funds that remain in EPA's Financial Data Warehouse). EPA will take into account these funds in the allocation process.

All states and tribes requesting FY10 funds must submit a summary of the planned use of the funds with associated dollar amounts. Please provide the request in the following format:

Funding use	FY09 awarded	FY10 requested	Summary of intended use (Example uses)
Establish or Enhance the four elements:	$XX,XXX	$XX,XXX	
1. Timely survey and inventory of brownfields sites;	.....	.....	• Inventory and prioritize brownfields sites.
2. Oversight and enforcement authorities or other mechanisms;	.....	.....	• Develop/enhance ordinances, regulations, procedures for response programs.

[10] For purposes of cooperative agreement funding, the state's or tribe's public record applies to that state's or tribe's response program(s) that utilized the Section 128(a) funding.

Funding use	FY09 awarded	FY10 requested	Summary of intended use (Example uses)
3. Mechanisms and resources to provide meaningful opportunities for public participation; and	.....	.....	• Develop a community involvement process. • Fund an outreach coordinator. • Issue public notices of site activities.
4. Mechanisms or approval of a cleanup plan and verification and certification that cleanup is complete.	.....	.....	• Review cleanup plans and verify completed actions.
Establish and Maintain the Public Record	$XX,XXX	$XX,XXX	• Maintain public record. • Create Web site for public record. • Disseminate public information on how to access the public record.
Enhance the Response Program	$XX,XXX	$XX,XXX	• Provide oversight of site assessments and cleanups. • Attend training and conferences on brownfields cleanup technologies & other brownfields topics. • Update and enhance program management activities. • Negotiate/oversee contracts for response programs. • Enhance program management & tracking systems. • Prepare Property Profile Forms/input data into ACRES database.
Site-specific Activities (amount requested should be incidental to the workplan, e.g., less than half of the total funding requested).	$XX,XXX	$XX,XXX	• Develop QAPPs. • Perform site assessments and cleanups. • Prepare Property Profile Forms/input data into ACRES database for these sites.
Environmental Insurance	$XX,XXX	$XX,XXX	• Review potential uses of environmental insurance.
Revolving Loan Fund	$XX,XXX	$XX,XXX	• Create a cleanup revolving loan fund.
Total Funding	$XXX,XXX	$XXX,XXX	Performance Partnership Grant? Yes ☐ No ☐

For those states and tribes requesting amounts above their FY09 allocation, a separate explanation of the specific need(s) and the increased amount that triggered the request for that need(s) must be provided in the format below:

Explanation of request(s) for funding above FY09 award	Amount	One time [11] request or recurring?	Explanation/anticipated outcome
Establish or Enhance the four elements: 1. Timely survey and inventory of brownfields sites; 2. Oversight and enforcement authorities or other mechanisms; 3. Mechanisms and resources to provide meaningful opportunities for public participation; and/or 4. Mechanisms or approval of a cleanup plan and verification and certification that cleanup is complete..	$XX,XXX	One Time ☐ Recurring ☐	Explanation of need: Anticipated Outcome:
Establish and Maintain the Public Record	$XX,XXX	One Time ☐ Recurring ☐	Explanation of need: Anticipated Outcome:
Enhance the Response Program	$XX,XXX	One Time ☐ Recurring ☐	Explanation of need: Anticipated Outcome:
Site-specific Activities (amount requested should be incidental to the workplan, e.g., less than half of the total funding requested).	$XX,XXX	One Time ☐ Recurring ☐	Explanation of need: Anticipated Outcome:
Environmental Insurance	$XX,XXX	One Time ☐ Recurring ☐	Explanation of need: Anticipated Outcome:
Revolving Loan Fund	$XX,XXX	One Time ☐ Recurring ☐	Explanation of need: Anticipated Outcome:
Total Increase Requested	$XX,XXX		

Reporting of Program Activity Levels

States and tribes must report, by January 31, 2010, a summary of the *previous federal fiscal year's* work (October 1, 2008 through September 30, 2009). The following information must be submitted to your regional project officer (if no activity occurred in the particular category, indicate ''N/A''):

- Number of properties enrolled in the response program supported by the CERCLA section 128(a) funding.
- Number of properties that received a ''No Further Action'' (NFA)

[11] A one time request is not likely to repeat whereas a recurring charge is likely to periodically occur again.

documentation or a Certificate of Completion (COC) or equivalent, AND have all required institutional controls in place.

• Number of properties that received an NFA or COC or equivalent and do NOT have all required institutional controls in place.

• Total number of acres associated with properties in the second bullet above.

• (OPTIONAL) Number of properties where assistance was provided, but the property was NOT enrolled in the response program.

IX. Terms and Reporting

Cooperative agreements for state and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities.

A. Progress Reports. In accordance with 40 CFR 31.40, state and tribes must provide progress reports as provided in the terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) cooperative agreement. As a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state's or tribe's accomplishments and environmental outputs associated with the approved budget and workplan and should provide an accounting of section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four elements of the state's or tribe's response program. All recipients must provide information relating to establishing or, if already established, maintaining the public record. *Depending upon the activities included in the state's or tribe's work plan,* an EPA regional office may request that a progress report include:

—*Information related to the public record.* All recipients must report information related to establishing or, if already established, maintaining the public record, described above. States and tribes can refer to an already existing public record, e.g., Web site or other public database to meet this requirement. For the purposes of cooperative agreement funding only, and depending upon the activities included in the state or tribe's work plan, this *may* include:

A list of sites at which response actions have been completed including:

• Date the response action was completed.

• Site name.

• Name of owner at time of cleanup, if known.

• Location of the site (street address, and latitude and longitude).

• Whether an institutional control is in place.

• Explain the type of institutional control in place (e.g., deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.).

• Nature of the contamination at the site (e.g., hazardous substances, contaminants, or pollutants, petroleum contamination, etc.).

• Size of the site in acres.

A list of sites planned to be addressed by the state or tribal response program including:

• Site name and the name of owner at time of cleanup, if known

• Location of the site (street address, and latitude and longitude)

• To the extent known, whether an institutional control is in place

• Explain the type of the institutional control in place (*e.g.*, deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.)

• To the extent known, the nature of the contamination at the site (*e.g.*, hazardous substances, contaminants, or pollutants, petroleum contamination, etc.)

• Size of the site in acres

—*Reporting environmental insurance.* Recipients with work plans that include funding for *environmental insurance* must report:

• Number and description of insurance policies purchased (*e.g.,* type of coverage provided; dollar limits of coverage; any buffers or deductibles; category and identity of insured persons; premium; first dollar or umbrella; site specific or blanket; occurrence or claims made, etc.)

• The number of sites covered by the insurance

• The amount of funds spent on environmental insurance (*e.g.,* amount dedicated to insurance program, or to insurance premiums)

• The amount of claims paid by insurers to policy holders

—*Reporting for site-specific assessment or cleanup activities.* Recipients with work plans that include funding for *brownfields site assessment or cleanup* must input information required by the OMB-approved Property Profile Form (PPF) into the Assessment Cleanup and Redevelopment Exchange System (ACRES) database for each site assessment and cleanup.

—*Reporting for other site-specific activities.* Recipients with work plans that include funding for *other site-specific related activities* must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:

• Number and frequency of oversight audits of licensed site professional certified cleanups

• Number and frequency of state/tribal oversight audits conducted

• Number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities

• Number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities

—*Reporting for RLF uses.* Recipients with work plans that include funding for Revolving Loan Fund (RLF) must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF cooperative agreements.

—*Reporting for Non-MOA states and tribes.* All recipients *without* a VRP MOA must report activities related to establishing or enhancing the four elements of the state's or tribe's response program. For each element state/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual state/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element *may* include:

• a narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at sites. For example:

○ legal authorities and mechanisms (*e.g.*, statutes, regulations, orders, agreements);

○ policies and procedures to implement legal authorities; and other mechanisms;

• a description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at sites as a result of the cooperative agreement;

• a narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that:

○ a response action will protect human health and the environment; and

be conducted in accordance with applicable federal and state law; and if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and

• a narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfields site.

Where applicable, EPA may require states/tribes to report specific performance measures related to the four elements which can be aggregated for national reporting to Congress.

The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow states or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to states and tribes.

REGIONAL BROWNFIELDS COORDINATORS

Region	States	Address and phone number
EPA Region 1, Diane Kelley	CT, ME, MA, NH, RI, VT.	One Congress Street, Suite 1100 Boston, MA 02114–2023 Phone (617) 918–1424 Fax (617) 918–1291
EPA Region 2, Alison Devine	NJ, NY, PR, VI	290 Broadway, 18th Floor New York, NY 10007 Phone (212) 637–4158 Fax (212) 637–4360
EPA Region 3, Tom Stolle	DE, DC, MD, PA, VA, WV.	1650 Arch Street Mail Code 3HS51 Philadelphia, Pennsylvania 19103 Phone (215) 814–3129 Fax (215) 814–5518
EPA Region 4, Mike Norman	AL, FL, GA, KY, MS, NC, SC, TN.	Atlanta Federal Center 61 Forsyth Street, S.W, 10TH FL Atlanta, GA 30303–8960 Phone (404) 562–8792 Fax (404) 562–8439
EPA Region 5, Deborah Orr	IL, IN, MI, MN, OH, WI.	77 West Jackson Boulevard Mail Code SE–4J Chicago, Illinois 60604–3507 Phone (312) 886–7576 Fax (312) 886–7190
EPA Region 6, Monica Chapa Smith	AR, LA, NM, OK, TX.	First Interstate Bank Tower at Fountain Place 1445 Ross Avenue, Suite 1200 (6SF–VB) Dallas, Texas 75202–2733 Phone (214) 665–6780 Fax (214) 665–6660
EPA Region 7, Susan Klein	IA, KS, MO, NE	901 N. 5th Street Kansas City, Kansas 66101 Phone (913) 551–7786 Fax (913) 551–8688
EPA Region 8, Dan Heffernan	CO, MT, ND, SD, UT, WY.	1595 Wynkoop Street (EPR–B) Denver, CO 80202–1129 Phone (303) 312–7074 Fax (303) 312–6065
EPA Region 9, Noemi Emeric-Ford	AZ, CA, HI, NV, AS, GU.	600 Wilshire Blvd, Suite 1460 Mail Code SFD–1 Los Angeles, California 90017 Phone (213) 244–1821 Fax (213) 244–1850
EPA Region 10, Susan Morales	AK, ID, OR, WA	1200 Sixth Avenue, Suite 900 Mailstop: ECL–112 Seattle, Washington 98101 Phone (206) 553–7299 Fax (206) 553–0124

Statutory and Executive Order Reviews: Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this grant action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. Although this action does not generally create new binding legal requirements, where it does, such requirements do not substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). Although this grant action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999), EPA consulted with states in the development of these grant guidelines. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Since this grant action, when finalized, will contain legally binding requirements, it is subject to the Congressional Review Act, and EPA will

submit its final action in its report to Congress under the Act.

Dated: November 5, 2009.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response.

[FR Doc. E9–27568 Filed 11–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0430; FRL–8977–8]

Final Notice of Data Availability Concerning Compliance Supplement Pool Allowance Allocations Under the Clean Air Interstate Rule Federal Implementation Plan.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability (NODA).

SUMMARY: EPA is administering—under the Clean Air Interstate Rule (CAIR) Federal Implementation Plans (FIPs)—the CAIR NO_X Annual Trading Program Compliance Supplement Pool (CAIR CSP) for the States of Delaware, Louisiana, Maryland, Pennsylvania, and Wisconsin. The CAIR FIPs require the Administrator to determine by order the CAIR CSP allowance allocations for units in these States whose owners and operators requested and qualify for these allocations and to provide the public with the opportunity to object to the determinations of allocations and denials of allocations. On August 6, 2009, EPA issued a NODA setting forth such determinations in the **Federal Register** and provided an opportunity for submission of objections. Through the NODA issued today, EPA is making available to the public the Agency's determinations, after considering all objections, of CAIR CSP allowance allocations and denials of such allocations under the FIPs, as well as the data upon which the allocations and denials of allocations were based.

DATES: Under § 97.143(d)(5), EPA must record, by January 1, 2010, the CSP allowance allocations, consistent with this NODA, in the compliance accounts of units whose owners and operators successfully applied for a CSP allowance allocation under the CAIR FIPs.

Docket: EPA established a docket for this action at *http://www.regulations.gov* under docket ID No. EPA–HQ–OAR–2009–0430. All documents in the docket (including documents showing EPA's determinations of CAIR CSP allowance allocations and denials of allocations and the data upon which the allocations and denial of allocations were based) are listed in the *http://www.regulations.gov* index. Docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Robert L. Miller, EPA Headquarters, CAMD (6204J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9077, and e-mail *miller.robertl@epa.gov.*

SUPPLEMENTARY INFORMATION:

For more background and information regarding the purpose of the NODA, requirements for requesting and receiving CAIR CSP allowances under the CAIR FIPs, procedures for allocating such allowances, the application by EPA of requirements to individual CSP allocation requests, and the interpretation the data upon which CSP allocations and denial of allocations were based, *see* the August 6, 2009 NODA (74 FR 39315, Aug. 6, 2009).

EPA received one objection to the determinations and data in the August 6, 2009 NODA. EPA responded to the objection in a written response in which EPA denied the objection (*See* Document ID EPA–HQ–OAR–2009–0430–0006). For the reasons set forth in the August 6, 2009 NODA, the NODA, and the response to the objection, EPA adopts the CSP allocations set forth in the August 6, 2009 NODA.

EPA is not requesting objections to the data provided in this final NODA. This action constitutes a final action for determining the CAIR CSP allowance allocations under § 97.143 and the CAIR FIPs.

Dated: October 27, 2009.

Edward Callahan,

Acting Director, Office of Atmospheric Programs.

[FR Doc. E9–27614 Filed 11–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8981–6]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Newburyport, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Town of Newburyport, Massachusetts (''Town'') for the purchase of a foreign manufactured rotary sludge dewatering press. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The Town's proposed wastewater treatment facility improvements will include replacement of the existing belt filter presses for sludge generated at the plant. Based upon information submitted by the Town and its consultants, it was determined that two 4-channel rotary press sludge dewatering units, manufactured by Fournier Industries of Quebec, Canada, will meet the Town's design and performance specifications. The Acting Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Town, through its consulting engineers, has provided sufficient documentation to support their request. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of two 4-channel rotary press sludge dewatering units, manufactured by Fournier Industries, by the Town, as specified in its August 13, 2009 request, as part of the improvements to the wastewater treatment facility.

DATES: *Effective Date:* November 3, 2009.

FOR FURTHER INFORMATION CONTACT: Mark Spinale, Environmental Engineer, (617) 918–1547, or Katie Connors,

Environmental Engineer, (617) 918–1658, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, One Congress Street, CMU, Boston, MA 02114.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Sections 1605(b)(2) of Public Law 111–5, Buy American requirements, to the Town of Newburyport (''Town''), Massachusetts for the purchase of two 4-channel rotary press sludge dewatering units, manufactured by Fournier Industries of Quebec, Canada. It has been determined that this rotary press meets the Town's technical specifications for design and performance of a sludge dewatering unit as part of its wastewater treatment plant improvement project. Based on the information provided by the applicant, there are no domestically manufactured rotary sludge presses that at this time meet the specific design criteria established for this unit in the Town's project.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The Town has requested a waiver from the Buy American Provision for the purchase of the foreign made rotary press sludge dewatering units as part of its wastewater treatment plant improvement project. The purchase of the new rotary sludge presses is intended to replace the existing belt filter presses at the wastewater treatment plant. The cost of the overall upgrade and replacement of the Town's wastewater treatment plant is estimated at $24.4 million, of which the cost of the two foreign made rotary sludge press units is $660,000.

The key selection criteria established by the Town and its consulting engineers for the sludge dewatering equipment include:

- Maintain dry cake solids between 18% and 20% by weight.
- Reduce odors and improve working conditions for operators by minimizing exposure to odorous and hazardous gases released from the sludge as well as exposure to bio-aerosols and pathogens. To achieve this goal, enclosed dewatering equipment is required.
- Allow for automatic adjustment for variation in feed solids concentrations and sludge mix ratios to provide consistent and optimum cake solids.
- Allow for unattended, automatic operation.
- Allow for backup capacity during periods of equipment failure and routine maintenance.

As part of the review of potentially viable sludge dewatering units, three technologies were evaluated by the Town and their consultants: (1) Belt filter press, (2) centrifuge system; and (3) screw/rotary press. Of the three technologies, it was determined that the rotary sludge press is the preferred technology because it ranked the highest in terms of meeting the key criteria highlighted above. In particular, the rotary press manufactured by Fournier Industries was identified as a technically and economically feasible unit meeting all of the selection criteria established as part of the design requirements. The Fournier Rotary Press is the preferred technology for installation at the Town's wastewater treatment plant because of the following advantages:

- High cake solids concentration.
- Low odor emissions due to the enclosed design.
- Provides for continuous operation and has the flexibility to increase capacity based on influent flow.
- Low maintenance due to the slow rotational speed, requiring minimal operator attention.
- Low energy requirements resulting in low operation and maintenance costs.
- Each channel is an independent self-contained modular unit which can be interchanged with other same model rotary presses.
- Low noise and vibration output due to low operations speeds.
- Compact size resulting in smaller building and room footprint requirements.
- Filtration elements within each channel are of a non-clogging design which does not require washwater during operation.

The technical memorandum prepared by the Town's consulting engineers indicates that of the other manufacturers that have similar dewatering units, only the Fournier Industries Rotary Press achieves the design criteria established for this project. The project specifications stipulate that the rotary press be capable of meeting the following criteria:

- *Design Load:* 9,000 dry lb/d.
- *Design Load:* 200 dry lb/h/channel.
- *Inlet Percent Solids:* 2–3.5%.
- *Primary Sludge/WAS ratio:* 70/30.
- *Anticipated Dry Cake Solids:* 18–28%.

Based on the review of available information, there is only one domestic manufacturer of similar rotary type presses for municipal sludge. However, this manufacturer only produces 1 and 2 channel rotary fan presses and currently cannot meet the design specifications required for this proposed project. One of the biggest design constraints is available space for the sludge dewatering equipment. The existing wastewater treatment plant is located near residential homes on an extremely small piece of land. The domestic alternative can only provide one or two channel rotary press units and would therefore require at least four 2-channel units to meet the specifications and match the production of two 4-channel Fournier Rotary Presses. Further, the use of additional domestic units will result in a larger footprint as opposed to the footprint of the two foreign made rotary presses. For these reasons, the Fournier Industries Rotary Sludge Presses are the only units at the present time that are acceptable in terms of meeting the design specifications and the space constraints of this project.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' '' (''Memorandum''), defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The same Memorandum defines ''satisfactory quality'' as ''the quality of steel, iron or manufactured good specified in the project plans and designs.''

The Town has requested a waiver of the ARRA Buy American provisions on the basis of unavailability of a U.S. manufactured product that will meet the design and performance criteria specified for the sludge dewatering unit. The evaluation of all of the submitted documentation by EPA's technical review team supports the Town's claim

that at this time no domestic manufacturer can provide a suitable rotary sludge dewatering press which meets the specifications for this unit. Based on the information available, and to the best of our knowledge, there do not appear to be other rotary press sludge dewatering units manufactured in the United States that are available at this time to meet the Town's design specifications and performance requirements for this unit.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already ''shovel ready'' by requiring SRF eligible recipients such as the Town to revise their design standards and specifications. The imposition of ARRA Buy American requirements in this case would result in unreasonable delay for this project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the Town established both a proper basis to specify the particular good required and that this manufactured good was not available from a producer in the United States able to meet the design specifications for the proposed project. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a producer in the United States, the Town is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the purchase of the two specified Fournier Industries 4-channel rotary press sludge dewatering units documented in Town's waiver request submittal dated August 13, 2009 as part of its wastewater treatment plant improvements. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Dated: November 3, 2009.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1—New England.

[FR Doc. E9–27617 Filed 11–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8982–3]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Town of Greensboro, Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Acting Regional Administrator of EPA Region III is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Town of Greensboro for the purchase of a moving bed biological reactor (Geo-Reactor®) containment drum, which is a major component of the Geo-Reactor® wastewater treatment process, for retrofit installation into an existing Rotating Biological Contactor (RBC) basin at its Wastewater Treatment Plant (WWTP). Greensboro indicates that the Geo-Reactor® treatment process is necessary to achieve the wastewater treatment levels required by the National Pollutant Discharge Elimination System (NPDES) permits issued for this WWTP. The Geo-Reactor® containment drum under consideration is manufactured by a company located in Canada and no United States manufacturer produces an alternative that meets Greensboro's justified technical specifications, including retrofit capacity. This is a project specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on the specific project circumstances. The Acting Regional Administrator is making this determination based on the review and recommendations of the EPA Region III, Water Protection Division, Office of Infrastructure and Assistance. Greensboro has provided sufficient documentation to support its request.

The Assistant Administrator of the EPA's Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of a Geo-Reactor® containment drum for the proposed replacement and retrofit project being implemented by Greensboro.

DATES: *Effective Date:* November 5, 2009

FOR FURTHER INFORMATION CONTACT: Robert Chominski, Deputy Associate Director, (215) 814–2162, or David McAdams, Environmental Engineer, (215) 814–5764, Office of Infrastructure & Assistance (OIA), Water Protection Division, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(b)(2) of Public Law 111–5, Buy American requirements to the Town of Greensboro for the acquisition of a Geo-Reactor® containment drum manufactured by Jebco Industries, located in Canada, for Parkson Corporation. Greensboro has been unable to find an American made moving bed biological reactor manufacturer to meet its specific wastewater requirements.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided if EPA determines that (1) Applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

Greensboro's waiver request is to allow the purchase of a Geo-Reactor® containment drum for use in improvements to its existing WWTP. This project will upgrade its existing WWTP by replacing an existing RBC treatment unit with a new Geo-Reactor®

treatment unit. The containment drum is an integral component of the Geo-Reactor® treatment process because it holds the plastic media which supports the attached biological biomass. The plastic media consists of irregular shaped pieces which are designed to maximize the surface area and prevent pieces from interlocking with each other. The plastic media will provide approximately 150,000 square feet of surface area for the attached biological biomass. The containment drum is specifically designed to fit within the existing RBC basin. The process utilizes the rotational design of the RBC process by having the containment drum rotate slowly. The plastic media pieces are raised out of the wastewater and tumble back as the drum reaches its apex. The movement aids the transfer of oxygen to the biomass and the sloughing off of excess biomass from the media. The Geo-Reactor® treatment process combines the requisite biological media surface area within the confines of the existing RBC basin.

After an engineering analysis of alternate treatment processes, Greensboro determined the Geo-Reactor® treatment process to be the most environmentally sound and cost effective solution, and in January 2008 completed the installation of a Geo-Reactor® treatment unit in one of Greensboro's two RBC basins. This proposal to procure and retrofit a second such Geo-Reactor® treatment unit would also enable Greensboro to provide necessary treatment redundancy and standardize its operation, maintenance, and spare parts functions for this equipment. The Geo-Reactor® is a waste water treatment process which is designed to meet the effluent requirements of the waste load allocation under the NPDES permit. In addition, in anticipation of procuring the Geo-Reactor® treatment process, Greensboro has already incorporated specific technical design requirements for installation of the Geo-Reactor® containment drum within the existing RBC basin at their WWTP, including specific geometry and configuration. To require Greensboro to redesign its project would cause an unacceptable delay to the initiation of construction.

Greensboro has provided information to the EPA demonstrating that there are no moving bed biological reactors manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specification. Greensboro surveyed ten moving bed biological reactors manufacturers as part of its market research to locate domestic manufacturers of moving bed biological reactors for WWTPs. It was unable to locate any acceptable domestic manufacturers because those U.S.-based manufacturers with biological treatment technologies similar to the Geo-Reactor® system were not capable of providing the required 150,000 square feet of biological media surface area as a retrofit within the confines of the existing RBC basin.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the ''American Recovery and Reinvestment Act of 2009'' (''EPA Memorandum''), defines reasonably available quantity as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' Greensboro has incorporated specific technical design requirements which are justified by legitimate, performance and regulatory compliance objectives, as well as the applicant's prior experience with and investment in this technology, for the retrofit installation of a Geo-Reactor® treatment process, which includes the containment drum, at its WWTP.

The purpose of the ARRA is to stimulate economic recovery in part by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring communities, such as Greensboro, to revise their standards and specifications, institute a new bidding process, and potentially choose a more costly, less efficient project. The imposition of ARRA Buy American requirements on such projects otherwise eligible for State Revolving Fund assistance would result in unreasonable delay and thus displace the ''shovel ready'' status for this project. To further delay construction is in direct conflict with a fundamental economic purpose of the ARRA, which is to create or retain jobs.

Based on additional research conducted by EPA's Office of Infrastructure and Assistance (OIA) in Region III, there does not appear to be another moving bed biological reactor manufactured domestically that would meet Greensboro's technical specification. EPA's national contractor prepared a technical assessment report dated October 8, 2009 based on the waiver request submitted. The report determined that the waiver request submittal was complete, that adequate technical information was provided, and that there were no significant weaknesses in the justification provided. The report confirmed the waiver applicant's claim that there are no American-made moving bed biological reactors that met the media surface area requirement within the confines of an existing RBC basin.

The OIA has reviewed this waiver request and to the best of our knowledge at the time of review has determined that the supporting documentation provided by Greensboro is sufficient to meet the criteria listed under Section 1605(b), OMB's regulations at 2 CFR 176.60–176.170, and in the April 28, 2009 EPA Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The basis for this project waiver is the authorization provided in Section 1605(b)(2). Due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet Greensboro's justified technical specifications, a waiver from the Buy American requirement is justified.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the Town of Greensboro is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of a Geo-Reactor® containment drum using ARRA funds as specified in Greensboro's request of July 28, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers ''based on a finding under subsection (b).''

Authority: Public Law 111–5, section 1605.

Dated: November 5, 2009.

William C. Early,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. E9–27613 Filed 11–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8980–3]

Public Water System Supervision Program Revision for the State of Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval.

SUMMARY: Notice is hereby given that the State of Arkansas is revising its approved Public Water System Supervision Program adopting new regulations for the Lead and Copper Rule (LCR) Short-Term Regulatory Revisions and Clarifications, promulgated and published in the **Federal Register** at 72 FR 57782 on October 10, 2007. Arkansas has adopted the LCR Short-Term Regulatory Revisions and Clarifications to strengthen the implementation of the LCR for more effective protection of public health by reducing exposure to lead in drinking water. EPA has determined that the proposed program revision submitted by Arkansas for the LCR Short-Term Regulatory Revisions and Clarifications are no less stringent than the corresponding federal regulations. Therefore, EPA proposes to approve these program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by December 17, 2009 to the Regional Administrator at the EPA Region 6 address shown below. Requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 17, 2009, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on December 17, 2009. Any request for a public hearing shall include the following information: the name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Arkansas Department of Health, Division of Engineering, 4815 West Markham, Little Rock, Arkansas 72205; and the EPA Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Amy Camacho, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–7175, or *camacho.amy@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR Parts 141 and 142 of the National Primary Drinking Water Regulations.

Dated: October 28, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–27603 Filed 11–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8977–1]

New York State Prohibition of Marine Discharges of Vessel Sewage; Receipt of Petition and Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: Notice is hereby given that a petition has been received from the State of New York requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency—Region 2, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the South Shore Estuary Reserve (SSER), New York. The waters of the proposed No Discharge Zone (NDZ) fall within the jurisdictions of the Town of Southampton, the Town of Brookhaven, the Town of Islip, the Town of Babylon, the Town of Oyster Bay and the Town of Hempstead. The entities submitted an application prepared by the Peconic Baykeeper for the designation of a Vessel Waste No Discharge Zone. New York State Department of Environmental Conservation certified the need for greater protection of the water quality.

EPA published a tentative affirmative determination on July 6, 2009 in the **Federal Register**. Public comments were solicited for 30 days and the comment period ended on August 5, 2009. EPA Region 2 received a total of twenty five (26) comments via letter (14) and e-mail (12). The comment tally was twenty three (23) in favor and three (3) are questioning or opposing the NDZ designation. This **Federal Register** document will address all comments submitted in response to the July 6, 2009 (Volume 74 Number 127), **Federal Register** document.

EPA received letters from the following individuals:

1. Douglas R. Lemaitre, 4207 Oak Beach, Oak Beach, NY 11702
2. Ann Cestare, 77 Bayview Ave. West Lindenhurst, NY 11757
3. Charles K McDermott, 3740 Somerset Dr. Seaford, NY 11783
4. Stephen D. Walsh, 47 Eatondale Avenue, Blue Point, NY 11715
5. Virginia Matney, 112 Eldorado St. Atlantic Beach, NY 11509
6. Diana C. Teta, PhD 771 S. Country Road, E Patchogue, NY 11772
7. Mara Dias, Water Quality Coordinator, Surfrider Foundation, P.O. Box 6010, San Clemente, CA 92674
8. Adrienne Esposito, Citizens Campaign, 225A Main St. Farmingdale, NY 11735
9. Maureen Dolan Murphy, South Shore Reserve Council, 300 Woodcleft Avenue, Freeport, New York, NY 11520
10. Lawrence A. Merryman, Great South Bay Audubon Society, P.O. Box 267 Sayville, NY 11782
11. Jennifer Skilbred, Environmental Advocate, Group for the East End, P.O. Box 1792, Southold, NY 11971
12. Kenneth Blum, Meridian Shipping Co., In. 147–20 181 St. Jamaica, NY 11413
13. Jean Weltner, 629 Miller Ave. Freeport, NY 11520–6312
14. Joe Zysman, Fire Island Wildeness Committee, 325 Beaverdam Road, Brookhaven, NY 11719

EPA received e-mails from the following individuals:

1. Flori Grottoli 2. Frank Marinaccio 3. Frank Peter 4. Arthur H. Kopelman, PhD Coastal Research and Education Society of Long Island 5. Marty O'Connell, South Bay Cruising Club/ Babylon Yacht Club 6. Mike Burns, *www.ECwindfest.com* 7. Theodore Drossos, 47 Division Avenue, East Islip, NY 11730 8. William Hasback, Acting Shellfisheries Head, NYSDEC—Bureau of Marine Resources, 205 N. Belle Mead Road, East Setauket, NY 11733 9. Della Bucher, Harborfields P.L. 10. Kevin McAllister, Peconic Baykeeper, Inc. 10 Old Country Road, P.O. Box 893, Quogue, NY 11959. 11. Sue Montana, 34 River Road, Sayville, NY 11782 12. Bryan McLoughlin

Three (3) commenters are questioning or opposing the NDZ designation.

1. *Comment:* One commenter stated that the pollution near the shore comes from leaching septic tanks, fertilizer, and road runoff. The boater uses his boat for a limited time during the season and stated that what is needed is another sewer district.

EPA Response: This comment is beyond the scope of this action in which EPA finds adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the South Shore Estuary Reserve (SSER), New York. EPA has point and nonpoint source control programs that address pollution from leaching septic tanks, fertilizer, and road runoff.

2. *Comment:* The commenter asked why EPA was picking on boaters when many beaches are closed due to storm water runoff and not from overboard discharge.

EPA's Response: Regarding the comment of ''pick on the boaters'' Section 312(f)(3) of the Clean Water Act allows States to prohibit the discharge of sewage, whether treated or untreated, from vessels for the greater protection and enhancement of water quality. New York State has exercised its option to support the petition put forth by the Peconic Baykeeper. EPA's role is to determine whether adequate facilities, for the safe and sanitary removal and treatment of the sewage, are reasonably available. We have found the facilities in the proposed areas are reasonably available and recommend finalizing our determination. Sometimes beaches are closed due to high bacterial counts from storm water or other sources. However, it should be noted the intent of NDZ designation for the SSER is to protect the whole SSER ecosystem not just beaches.

3. *Comment:* One commenter stated that his vessel is equipped with a Lectrasan Marine Sewage Treatment System and produces cleaner treated effluent than the publicly owned treatment works (POTWs). The commenter asked whether it would be acceptable for the boat to discharge overboard in the NDZ.

Response: EPA has classified the Lectra/San unit as a Type I MSD. For Type I MSDs the effluent produced must not have a fecal bacterial count greater than 1,000 per 100 milliliters and have no visible floating solids. Due to the deficiencies in treatment (not 100% free of pathogens), vessels using Lectra/San units are not permitted to discharge in No-Discharge Zones. Once a NDZ is established, vessels cannot discharge treated or untreated sewage into the waterbody (40 CFR 140.4).

Twenty three (23) commenters expressed strong support for the establishment of a NDZ for SSER and commented that this Final Determination was an important step in protecting the water quality of the SSER and its marine resources. These commenters raised questions and concerns regarding outreach, education, enforcement, pump out facilities, water quality improvements, and legislative issues. These comments are addressed below in general subject categories.

Adequate Pumpout Facilities

4. *Comment:* Many commenters expressed concerns about the adequacy of existing pumpout facilities in the Great South Bay, including the total number of facilities and the conditions and availability of the pumpouts. In addition, a few commenters stated that there should be more operable pump out facilities (Town of Babylon especially). One commenter expressed the funding concern for increased numbers of pump out facilities if needed.

EPA Response: The criterion established by the Clean Vessel Act regarding the adequate number of pumpouts per vessel population is one pumpout per 300 to 600 vessels. All areas of the SSER meet or exceed this criterion, therefore, EPA has determined that there is an adequate number of pumpouts. A number of pumpout boats operate in the SSER area and are available for boaters' convenience. EPA recognizes the importance of adequate pumpouts to service the boating activity within a given waterbody. There are a sufficient number of pumpouts to service the Great South Bay. The Towns of Brookhaven and Islip provide mobile pumpout boats that operate in the Great South Bay (four boats total) and can be hailed on channel 73. Environmental/stakeholder organizations such as Peconic Baykeeper and the South Bay Cruising Club have been encouraging the Town of Babylon to bring a pumpout boat on-line. State agencies are contacted regarding inoperable or inaccessible pumpouts for their assistance in expeditious resolution of the matter. EPA will continue to refer complaints about non-operational pumpouts to the appropriate State and local authorities if such complaints are received.

5. *Comment:* One commenter stated that the depth of the waters adjacent to the pump-out facilities are not deep enough to allow sailboats with a draft over four feet to access them.

EPA Response: There are boats that may require greater depth for pumpout. They have the option to use any of the four pumpout boats in Islip and Brookhaven. Boaters can also anchor off in the area and call out for service.

6. *Comment:* One commenter suggested that boaters need to see more convenient and reasonable priced pumpout stations.

Response: As stated in the Response to Comment 4, EPA has determined that there is an adequate number of pumpouts. Among all the available pumpout stations the service charge varies mostly from free of charge to $5 per service. EPA believes this is more than reasonable.

7. *Comment:* One commenter expressed concerns regarding where the pumpout waste goes and the capacity of these facilities.

EPA Response: Sanitary waste water removed from pump out is generally transported to municipal wastewater treatment plants. In a few instances, the waste pumped out from vessels is pumped directly into onsite septic systems.

Other Sources of Pollution in the (Great South Bay) GSB Area

8. *Comment:* One commenter stated that the water quality has degraded year by year, that the Babylon Sewage treatment plant does not remove the nitrogen, and not only has the water turned brown but it smells bad. There is an uncertified shellfish area near the Fire Island Inlet which has been closed by NYSDEC apparently due to impairment related sewage discharge and the commenter asked how EPA plans to correct this condition.

EPA Response: This comment is beyond the scope of this action. However, EPA agrees that uncertified shellfish designation is potentially due to stormwater and other nonpoint sources including vessel waste. The Babylon facility whose treatment train does not include nitrogen removal is an ocean discharge and should not affect SSER water quality. Questions related to the shellfish designations in the Great South Shore Reserve should be directed to the NYSDEC.

9. *Comment:* One commenter asked how the Babylon Sewage Treatment Plant neutralizes the waste water before it is discharged in the water.

EPA Response: The Babylon (Bergen Point) facility is a secondary wastewater treatment plant. Secondary treatment standards are established by EPA for publicly owned treatment works (POTWs) and reflect the performance of secondary wastewater treatment plants. These technology-based regulations

apply to all municipal wastewater treatment plants and represent the minimum level of effluent quality attainable by secondary treatment, as reflected in terms of 5-day biochemical oxygen demand (BOD5) and total suspended solids (TSS) removal. The Babylon facility does not discharge into the Great South Bay. An extensive pipeline crosses the GSB and extends a considerable distance out into the Atlantic Ocean where the effluent discharged. The NYSDEC should be contacted for detailed information regarding the Babylon facility.

Enforcement

10. *Comment:* One commenter expressed concerns that older boats are not equipped with holding tanks and potentially contribute sewage to the bay while anchored overnight. There are house boats and barges where people live year round, that instead of pumping out and trucking away, they may be pumping it directly into bayside canals.

EPA Response: Boats with Type I or Type II Marine Sanitation Devices (MSDs) but without holding tanks are prohibited from using these MSDs in a NDZ. Compliance in an NDZ requires that at the time of boarding by a bona-fide law enforcement officer the vessel is incapable of discharging. One does not have to be caught in the act of discharging to be in violation of the law.

11. *Comment:* One commenter suggested a potential concern was that there was insufficient state or local resources for enforcement of a NDZ and possible resistance to the NDZ designation by local government and boat owners due to lack of understanding of the benefits. In addition, the commenter asked if funds are available for additional staffing.

EPA Response: According to the SSER Comprehensive Management Plan, published in 2001, to reduce impairments and to improve water quality, Federal, State, and local governments are undertaking a heavily funded and comprehensive program to reduce or eliminate all point and nonpoint sources of pollution and to forestall or reverse a pattern of water quality impairments throughout the region. The Management Plan lays out a strategy for enforcement, cooperation, funding and staffing among the federal, state, local and non-governmental organizations (NGOs).

12. *Comment:* One commenter suggested that each individual boat should be declared a point source and required to get a permit. Another commenter suggested that all boats with bathrooms should be required to have boat inspection similar to car inspections that would require boats to have the opening under the boat sealed before passing inspection. They also commented that mariners that install toilets that discharge into the waterways should be fined as well.

EPA Response: The Clean Water Act does not authorize EPA to require NPDES permits from vessels beyond what is currently regulated by the vacatur of the vessel exclusion (i.e., which resulted in EPA developing the ''Vessel General Permit''). The Vessel General Permit (VGP) regulates discharges incidental to the normal operation of vessels operating in a capacity as a means of transportation. Recreational vessels as defined in section 502(25) of the Clean Water Act are not subject to this permit. In addition, with the exception of ballast water discharges, non-recreational vessels less than 79 feet (24.08 meters) in length, and all commercial fishing vessels, regardless of length, are not subject to this permit. Currently in the SSER there are commercial transportation vessels which are required to obtain and comply with the VGP permit. Recreational boats in the SSER are not required to have NPDES permit coverage at this time. With regard to the boat inspection, New York State enforcement of NDZs are captured under the New York State Navigation Law. Under Article 3, Section 33(e), paragraph 4 ''any vessel being operated upon waters of the state that have been designated as a vessel waste NDZ may be boarded and inspected by the department or health department or any lawfully designated agents or inspectors thereof * * *.'' All certified peace officers are agents of the state. This means a bona-fide law enforcement officer (State, County, Village police, including bay constables, Harbor Masters, etc.) can enforce the law. Therefore, EPA believes that the enforcement of the NDZ is sufficient and therefore, no need to add requirements such as a permit or inspection for boaters.

Public Education

13. *Comment:* Several commenters suggested public education to promote awareness and cooperation of people polluting waters. One commenter suggested that it is important to engage boaters in conversations about the importance of properly disposing of sewage from their boats and the benefits of a NDZ. As boating continues to increase in popularity, one commenter suggested a strategy to provide voluntary environmental programs and education to support a NDZ and other marine pollution controls.

EPA Response: As part of instituting a NDZ, Peconic Baykeeper has published and is distributing a Clean Boating Guide throughout the estuary to educate the boaters on clean water practices and to inform them of the location of pumpout facilities. Additional educational efforts are expected from the South Shore Estuary Reserve Program Office.

Outreach

14. *Comment:* One commenter inquired as to what kind of performance measure on outreach efforts there was for the NDZ designations.

EPA Response: As a result of this designation approval, improvements in water quality may be demonstrated through routine ambient sampling. Since there are several ongoing programs to improve the water quality in the estuary, it is difficult to attribute these improvements to a specific program. Currently, EPA is undertaking a national study to evaluate the efficacy of the NDZ designations and will publish the results when they are available.

15. *Comment:* One commenter asked if EPA would be able to post an online map of NDZs on the EPA Region 2 Web page.

EPA Response: EPA Region 2 has established a regional Web page that can be viewed at the following link: EPA R2 Web page at: *http://www.epa.gov/region02/water/ndz/index.html*

The EPA national NDZ web page is located at: *http://www.epa.gov/owow/oceans/regulatory/vessel_sewage/vs_nodischarge_map.htm.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that a petition has been received from the State of New York requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for South Shore Estuary Reserve (SSER) and its harbors, bays and creeks within the following boundaries:

East Rockaway Inlet, approach to Reynolds Channel, flashing green buoy (N ''9'')
N 40°–35.5′
W 73°–44.9′
Jones Inlet, Jones Inlet red buoy (N ''8'')
N 40°–35.2′
W 73°–34.3′
Fire Island Inlet, Fire Island Inlet flashing red buoy (N ''10'')
N 40°–37.5′
W 73°–17.9′

Moriches Inlet, flashing red tower on east jetty terminus
N 40°–45.8′
W 72°–45.3′
Shinnecock Inlet, flashing green tower on west jetty terminus
N 40°–50.2′
W 72°–28.7′

The SSER encompasses 110,720 acres of open water and intertidal area. The waterbodies included in the SSER are Shinnecock Bay (East and West), Quantuck Bay, Moriches Bay (East and West), Bellport Bay, Patchogue Bay, Nicoll Bay, Great South Bay (West, East and Great Cove), South Oyster Bay, East Bay Complex, Middle Bay Complex and Western South Shore Bay. New York has provided documentation indicating the SSER vessel population and the number of pumpouts for each embayment. Shinnecock Bay—East is serviced by 3 pumpouts and has a vessel population of 864 (288 vessels per pumpout). Shinnecock Bay—West is serviced by 1 pumpout and has a vessel population of 1841 (1841 vessels per pumpout). Quantuck Bay is serviced by 1 pumpout and has a vessel population of 363 (363 vessels per pumpout). Moriches Bay—East is serviced by 2 pumpouts and has a vessel population of 951 (476 vessels per pumpout). Moriches Bay—West is serviced by 5 pumpouts and has a vessel population of 1829 (366 vessels per pumpout). Bellport Bay is serviced by 2 pumpouts and has a vessel population of 336 (168 vessels per pumpout). Patchogue Bay is serviced by 11 pumpouts and has a vessel population of 2814 (256 vessels per pumpout). Nicoll Bay is serviced by 6 pumpouts and has a vessel population of 1765 (294 vessels per pumpout). Great South Bay—East and Great Cove is serviced by 7 pumpouts and has a vessel population of 1810 (259 vessels per pumpout). Great South Bay—West is serviced by 12 pumpouts and has a vessel population of 5066 (422 vessels per pumpout). South Oyster Bay is serviced by 5 pumpouts and has a vessel population of 1453 (291 vessels per pumpout). East Bay Complex is serviced by 4 pumpouts and has a vessel population of 747 (187 vessels per pumpout). Middle Bay Complex is serviced by 8 pumpouts and has a vessel population of 3392 (424 vessels per pumpout). Western South Shore Bay is serviced by 2 pumpouts and has a vessel population of 705 (352 vessels per pumpout).

The criterion established by the Clean Vessel Act regarding the adequate number of pumpouts per vessel population is 1 pumpout per 300–600 vessels. All areas of the SSER meet or exceed this criterion with the exception of Shinnecock Bay—West, which has one pumpout per 1841 vessels. Factoring in the adjacent waters, Shinnecock Bay—East and Quantuck Bay, 5 pumpouts service a vessel population of 2492. The ratio is one pumpout per 498 vessels, which meets the criterion.

The facilities located in the Shinnecock Bay—East are as follow:

Name: Sherry and Joe Corrs Best Boat Works.
Lat/Long: N40.97938 W72.43858.
Phone: 631–283–7359.
VHF Channel: N/A.
Dates of Operation: Spring–Summer.
Hours of Operation: 9 a.m.–5 p.m.
Fee: $5.
Vessel Limitations Length/Draught: None/4.5 feet.
Method of Sewage Disposal: Private contractor.
Name: Shinnecock Canal County Marina.
Lat/Long: N40.884444 W72.501944.
Phone: 631–852–8291 or 631–852–8899.
VHF Channel: N/A.
Dates of Operation: April 1–October 31.
Hours of Operation: 24 hours.
Fee: Free.
Vessel Limitation Length/Draught: 60 feet/8 feet.
Method of Sewage Disposal: Private contractor.
Name: Southampton Town Pumpout Boat.
Lat/Long: N/A.
Phone: 631–283–6000.
VHF Channel: 73.
Dates of Operation: April–November.
Hours of Operation: 8 a.m.–5 p.m.
Fee: Free.
Vessel Limitation Length/Draught: N/A.
Method of Sewage Disposal: Pumps out at Shinnecock Canal County Marina.

The facility located in Quantuck Bay and Shinnecock Bay—West is as follows:

Name: Southampton Town Pumpout Boat.
Lat/Long: N/A.
Phone: 631–283–6000.
VHF Channel: 73.
Dates of Operation: April–November.
Hours of Operation: 8 a.m.–5 p.m.
Fee: Free.
Vessel Limitation Length/Draught: N/A.
Method of Sewage Disposal: Pumps out at Shinnecock Canal County Marina.

The facility located in Moriches Bay—East is as follows:

Name: Remsenburg Marina.
Lat/Long: N40.8157 W72.72324.
Phone: 631–325–1677.
VHF Channel: N/A.
Dates of Operation: April 1–November 1, 7 days a week.
Hours of Operation: 8 a.m.–5 p.m.
Fee: $5.
Vessel Limitation Length/Draught: 45 feet/4 feet.
Method of Sewage Disposal: Waste emptied and disposed of by private contractor.

The facilities located in Moriches Bay—West are as follow:

Name: Windswept Marina.
Lat/Long: N40.791389 W72.753333.
Phone: 631–878–2100.
VHF Channel: N/A.
Dates of Operation: April 1–November 1.
Hours of Operation: 8 a.m.–5 p.m.
Fee: Free.
Vessel Limitation Length/Draught: 45 feet/6 feet.
Method of Sewage Disposal: Waste emptied and disposed of private contractor.
Name: Senix Marina.
Lat/Long: N40.795 W72.805833.
Phone: 631–874–2092.
VHF Channel: N/A.
Dates of Operation: April 1–November 1.
Hours of Operation: 8 a.m.–5 p.m.
Fee: $5.
Vessel Limitation Length/Draught: 45 feet/4 feet.
Method of Sewage Disposal: Waste emptied and disposed of private contractor.
Name: Waterways Marina.
Lat/Long: N40.78756 W72.81813.
Phone: 631–874–8066.
VHF Channel: N/A.
Dates of Operation: March 15–November 15.
Hours of Operation: 8 a.m.–4 p.m.
Fee: Free.
Vessel Limitation Length/Draught: 60 feet/4 feet.
Method of Sewage Disposal: Pumped into sewage treatment plant.
Name: Brookhaven Town Marina.
Lat/Long: N40.80199 W72.83084.
Phone: 631–395–3993.
VHF Channel: N/A.
Dates of Operation: April 1–November 1.
Hours of Operation: 8 a.m.–5 p.m.
Fee: $5.
Vessel Limitation Length/Draught: 45 feet/4 feet.
Method of Sewage Disposal: Waste emptied weekly and disposed of private contractor.
Name: Brookhaven Town Pumpout Boat.
Lat/Long: N/A.
Phone: 631–878–2100.

VHF Channel: 73.
Dates of Operation: April 1–November 1.
Hours of Operation: 8 a.m.–5 p.m.
Fee: $5.
Vessel Limitation Length/Draught: N/A.
Method of Sewage Disposal: Waste emptied and disposed of private contractor.

The facility located in Bellport Bay is as follows:

Name: Beaver DamBoat Marina.
Lat/Long: N40.77222 W72.91778.
Phone: 631–286–7186.
VHF Channel: 73.
Dates of Operation: April 1–November 1.
Hours of Operation: 8 a.m.–5 p.m.
Fee: $5.
Vessel Limitation Length/Draught: 45 feet/4 feet.
Method of Sewage Disposal: Waste emptied and disposed of private contractor.

The facilities located in Patchogue Bay are as follow:

Name: Patchogue Shores Marina.
Lat/Long: N40.75 W72.975278.
Phone: 631–475–0790.
VHF Channel: 73.
Dates of Operation: April 1–November 1.
Hours of Operation: 8 a.m.–5 p.m.
Fee: $5.
Vessel Limitation Length/Draught: 45 feet/4 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Brookhaven Town Pumpout Boats (2), these boats also service vessels in Bellport Bay and Moriches Bay—West.
Lat/Long: N/A.
Phone: N/A.
VHF Channel: 73.
Dates of Operation: April 1–November 1.
Hours of Operation: 8 a.m.–5 p.m.
Fee: $5.
Vessel Limitation Length/Draught: N/A.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Dockside Mobile Pumpout—pumpout boat and mobile truck.
Lat/Long: N/A.
Phone: 631–447–1189.
VHF Channel: N/A.
Dates of Operation: All year.
Hours of Operation: 8 a.m.–5 p.m.
Fee: Varies based on location.
Vessel Limitation Length/Draught: N/A.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Morgan's Swan Marina.
Lat/Long: N40.7481 W72.99726.
Phone: 631–785–3524.
VHF Channel: 73.
Dates of Operation: Memorial Day–September, Tuesday–Sunday.
Hours of Operation: 10 a.m.–4 p.m.
Fee: $5.
Vessel Limitation Length/Draught: 34 feet/5 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Watch Hill.
Lat/Long: N40.69147 W72.98933.
Phone: 631–597–3109.
VHF Channel: 9.
Dates of Operation: April 1–November 1.
Hours of Operation: 8 a.m.–5 p.m.
Fee: Free.
Vessel Limitation Length/Draught: 45 feet/4.5 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Davis Park Marina.
Lat/Long: N40.68581 W73.00312.
Phone: 631–597–6830.
VHF Channel: 9.
Dates of Operation: Everyday from the third week of May through the end of October.
Hours of Operation: 8 a.m.–9 p.m.
Fee: Free.
Vessel Limitation Length/Draught: 40 feet/3.5 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Sandspit Marina.
Lat/Long: N40.74715 W73.01513.
Phone: 631–475–1592.
VHF Channel: 9.
Dates of Operation: May–November.
Hours of Operation: 24 hours a day.
Fee: Free.
Vessel Limitation Length/Draught: 35+ feet/2 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Island View Marina.
Lat/Long: N40.75035 W73.01805.
Phone: 631–447–1234.
VHF Channel: N/A.
Dates of Operation: April 1–December 15.
Hours of Operation: Monday–Thursday 8 a.m.–6 p.m., Friday–Sunday 8 a.m.–8 p.m.
Fee: $10.
Vessel Limitation Length/Draught: 65 feet/5 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Leeward Cove Marina.
Lat/Long: N40.75619 W73.02737.
Phone: 631–363–6045.
VHF Channel: N/A.
Dates of Operation: May–November.
Hours of Operation: 24 hours.
Fee: Free.
Vessel Limitation Length/Draught: 32 feet/6 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Blue Point Marina.
Lat/Long: N40.74679 W73.02737.
Phone: 631–363–6045.
VHF Channel: N/A.
Dates of Operation: May–November.
Hours of Operation: 24 hours.
Fee: Free.
Vessel Limitation Length/Draught: 32 feet/6 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Browns River Marina.
Lat/Long: N40.7250 W73.0706.
Phone: 631–589–5550.
VHF Channel:
Dates of Operation: Year round.
Hours of Operation: 24 hours.
Fee: Free.
Vessel Limitation Length/Draught: 60 feet/6 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: East West Sayville Boat Basin.
Lat/Long: N40.72117 W73.09324.
Phone: 631–589–4141.
VHF Channel: N/A.
Dates of Operation: All Year (self serve March 1–December 1).
Hours of Operation: 24 hours.
Fee: $5 (voluntary).

The facilities located in Nicoll Bay are as follow:

Name: West Sayville Boat Basin.
Lat/Long: N40.72117 W73.09324.
Phone: 631–589–4141.
VHF Channel: N/A.
Dates of Operation: All Year (self serve March 1–December 1).
Hours of Operation: 24 hours.
Fee: $5 (voluntary).
Vessel Limitation Length/Draught: None/5 feet/.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Sailors Haven.
Lat/Long: N40.65714 W73.10440.
Phone: 631–597–6171.
VHF Channel: N/A.
Dates of Operation: May 15–October 15.
Hours of Operation: 24 hours.
Fee: Free.
Vessel Limitation Length/Draught: None/2.5 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Timber Point East County Marina.
Lat/Long: N40.71273 W73.14414.
Phone: 631–854–0930.
VHF Channel: N/A.
Dates of Operation: June–October.
Hours of Operation: 7 a.m.–7 p.m.
Fee: Free.
Vessel Limitation Length/Draught: 40 feet/4.5 feet.

Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Heckster State Park.
Lat/Long: N40.70332 W73.14691.
Phone: 631–581–2100.
VHF Channel: N/A.
Dates of Operation: April 1–November 1.
Hours of Operation: 7 a.m.–Sunset.
Fee: Free with entrance fee to park.
Vessel Limitation Length/Draught: None/3 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
The facilities located in Great South Bay—East and Great Cove are as follow:
Name: Atlantique Marina.
Lat/Long: N40.64340 W73.17353.
Phone: 631–583–8610.
VHF Channel: 9.
Dates of Operation: When Marina is open during boating season.
Hours of Operation: 9 a.m.–6:30 p.m.
Fee: Free.
Vessel Limitation Length/Draught: None/10 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: East Islip Marina.
Lat/Long: N40.70744 W73.18954.
Phone: 631–224–5413.
VHF Channel: N/A.
Dates of Operation: During Marina Season.
Hours of Operation: 8 a.m.–4 p.m.
Fee: Free.
Vessel Limitation Length/Draught: None/6 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Islip Pumpout Boat.
Lat/Long: N/A.
Phone: N/A.
VHF Channel: 73.
Dates of Operation: April 1–November 1.
Hours of Operation: 7 a.m.–Sunset.
Fee: Free.
Vessel Limitation Length/Draught: None/10 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Bay Shore Marina.
Lat/Long: N40.71276 W73.23727.
Phone: 631–224–5648.
VHF Channel: 73.
Dates of Operation: April 1–November 1.
Hours of Operation: 7 a.m.–Sunset.
Fee: Free.
Vessel Limitation Length/Draught: 30 feet/3 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Captree State Park.
Lat/Long: N40.64208 W73.25290.
Phone: 631–321–3533.
VHF Channel: 73.
Dates of Operation: April 1–November 1.
Hours of Operation: 7 a.m.–Sunset.
Fee: Free.
Vessel Limitation Length/Draught: None/3 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Robert Moses State Park.
Lat/Long: N40.62483 W73.26657.
Phone: 631–669–1000 or 631–669–0470.
VHF Channel: 73.
Dates of Operation: April 1–November 1.
Hours of Operation: 7 a.m.–sunset.
Fee: Free.
Vessel Limitation Length/Draught: None/3 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
The facilities located in Great South Bay—West are as follow:
Name: Babylon Fishing Station.
Lat/Long: N40.686111 W73.31611.
Phone: 631–669–4503.
VHF Channel: 78.
Dates of Operation: April 1–December 1.
Hours of Operation: 8 a.m.–5 p.m.
Fee: $5.
Vessel Limitation Length/Draught: Unlimited/5 feet.
Method of Sewage Disposal: Waste pumped directly into the sewer system.
Name: Babylon Marine.
Lat/Long: N40.68646 W73.32479.
Phone: 631–587–0333.
VHF Channel: N/A.
Dates of Operation: Spring and Summer.
Hours of Operation: Monday–Saturday 8 a.m.–5 p.m., Sunday 9 a.m.–5 p.m.
Fee: Free with gas purchase, $10 without.
Vessel Limitation Length/Draught: None/4 feet.
Method of Sewage Disposal: Waste pumped directly into sewer system.
Name: Bergen Point Marina.
Lat/Long: N40.677222 W73.338056.
Phone: 631–957–7440.
VHF Channel: N/A.
Dates of Operation: May–November.
Hours of Operation: 24 hours/7 days.
Fee: Free.
Vessel Limitation Length/Draught: None/10 feet.
Method of Sewage Disposal: Bergen Point STP.
Name: Cedar Beach Marina.
Lat/Long: N40.635156 W73.34457.
Phone: 631–669–5949.
VHF Channel: N/A.
Dates of Operation: Weekends beginning 2nd weekend of May, full-time June 28–Columbus Day.
Hours of Operation: 24 hours a day.
Fee: Free.
Vessel Limitation Length/Draught: 45 feet/14 feet.
Method of Sewage Disposal: Settling pools onsite, truck pumpout if necessary.
Name: Surfside 3 Marina.
Lat/Long: N40.66984 W73.35807.
Phone: 631–957–5900.
VHF Channel: N/A.
Dates of Operation: All Year.
Hours of Operation: 8 a.m.–8 p.m.
Fee: Free with gas purchase, $10 without.
Vessel Limitation Length/Draught: 50 feet/4 feet.
Method of Sewage Disposal: Waste pumped directly into sewer system.
Name: Boatland.
Lat/Long: N40.675556 W73.358611.
Phone: 631–957–5550.
VHF Channel: N/A.
Dates of Operation: April 1–October 1.
Hours of Operation: Monday–Thursday 8 a.m.–5 p.m., Friday–Sunday 7 a.m.–7 p.m.
Fee: $5.
Vessel Limitation Length/Draught: 50 feet/5 feet.
Method of Sewage Disposal: Waste pumped directly into sewer system.
Name: The Anchorage.
Lat/Long: N40.67066 W73.35812.
Phone: 631–225–5656.
VHF Channel: N/A.
Dates of Operation: April–October.
Hours of Operation: 9 a.m.–7 p.m.
Fee: $10.
Vessel Limitation Length/Draught: 60 Feet/5 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: LaSala Boat Yard.
Lat/Long: N40.5931 W73.5403.
Phone: 516–623–5757.
VHF Channel: N/A.
Dates of Operation: Boating Season.
Hours of Operation: 8 a.m.–5 p.m.
Fee: Free.
Vessel Limitation Length/Draught: 40 feet/4 feet.
Method of Sewage Disposal: Waste pumped directly into sewer system.
Name: Tanner Park.
Lat/Long: N40.66023 W73.39365.
Phone: 631–789–4159.
VHF Channel: N/A.
Dates of Operation: Boating Season.
Hours of Operation: 24 hours a day.
Fee: Free.
Vessel Limitation Length/Draught: 60 feet/5 feet.
Method of Sewage Disposal: Waste emptied and disposed of by contractor.
Name: Gilgo Beach Marina.
Lat/Long: N40.61879 W73.39796.
Phone: 631–826–1255.
VHF Channel: N/A.

Dates of Operation: April 1–November 1.

Hours of Operation: Monday–Friday 8 a.m.–5 p.m., Saturday and Sunday 7 a.m.–7 p.m.

Fee: Free.

Vessel Limitation Length/Draught: 60 feet/4.5 feet.

Method of Sewage Disposal: Waste emptied and disposed of by contractor.

Name: Delmarine, Inc.

Lat/Long: N40.66333 W73.4225.

Phone: 631–598–2946.

VHF Channel: N/A.

Dates of Operation: Boating Season.

Hours of Operation: Monday–Friday 8 a.m.–5 p.m., Saturday 8 a.m.–12 p.m.

Fee: Available only to private slip users, Free.

Vessel Limitation Length/Draught: N/A.

Method of Sewage Disposal: Waste pumped directly into sewer system.

The facilities located in South Oyster Bay are as follow:

Name: TOBAY Heading Marina.

Lat/Long: N40.615 W73.426667.

Phone: 516–679–3900.

VHF Channel: 16.

Dates of Operation: Memorial Day–October.

Hours of Operation: 9 a.m.–7 p.m.

Fee: Free.

Vessel Limitation Length/Draught: 45 feet/4 feet.

Method of Sewage Disposal: 2 cesspools and leaching field, pump truck if needed.

Name: Town of Oyster Bay Pumpout Boat.

Lat/Long: N/A.

Phone: 516–679–3900.

VHF Channel: 9.

Dates of Operation: Memorial Day–October.

Hours of Operation: 9 a.m.–7 p.m.

Fee: Free.

Vessel Limitation Length/Draught: N/A.

Method of Sewage Disposal: Empties at TOBAY Marina.

Name: Treasure Island Marine Basin Corp.

Lat/Long: N40.649444 W73.498056.

Phone: 516–221–7156.

VHF Channel: N/A.

Dates of Operation: April–November.

Hours of Operation: Weekdays 8 a.m.–5 p.m., Weekends 9 a.m.–4 p.m.

Fee: Free for customers, $20 otherwise.

Vessel Limitation Length/Draught: 35 feet/5 feet.

Method of Sewage Disposal: Waste pumped directly into sewer sytem.

Name: Precision Marina.

Lat/Long: N40.647222 W73.498611.

Phone: 516–785–3013.

VHF Channel: N/A.

Dates of Operation: April–November.

Hours of Operation: Summer 8 a.m.–6 p.m., Winter 8 a.m.–4 p.m.

Fee: $5.

Vessel Limitation Length/Draught: 35/5 feet.

Method of Sewage Disposal: Waste epumped directly into sewer system.

The facilities located in East Bay Complex are as follow:

Name: Wantagh County Park.

Lat/Long: N40.645556 W73.514722.

Phone: 516–571–7460.

VHF Channel: N/A.

Dates of Operation: April–November.

Hours of Operation: 24 hours a day.

Fee: Free.

Vessel Limitation Length/Draught: 40 feet/5 feet.

Method of Sewage Disposal: Waste pumped directly into sewer system.

Name: Blue Water Yacht Club.

Lat/Long: N40.5931 W73.5403.

Phone: 516–625–5757.

VHF Channel: N/A.

Dates of Operation: April–November.

Hours of Operation: 24 hours a day.

Fee: Free.

Vessel Limitation Length/Draught: 40 feet/5 feet.

Method of Sewage Disposal: Water pumped directly into sewer system.

This facility services vessels in Western South Shore Bay, Middle Bay, and East Bay:

Name: Town of Hempstead Pumpout Boat.

Lat/Long: N/A.

Phone: 516–431–9200.

VHF Channel: 73.

Dates of Operation: Mid-May–October.

Hours of Operation: 9 a.m.–5 p.m.

Fee: Free.

Vessel Limitation Length/Draught: N/A.

Method of Sewage Disposal: Waste pumped into sewage treatment plant.

The facilities located in Middle Bay Complex are as follow:

Name: West End Boat Basin.

Lat/Long: N40.59056 W73.5556.

Phone: 516–785–1600.

VHF Channel: N/A.

Dates of Operation: April 1–October 15.

Hours of Operation: 9 a.m.–4:30 p.m.

Fee: Free.

Vessel Limitation Length/Draught: 50 feet/7 feet.

Method of Sewage Disposal: Waste emptied and disposed of by contractor.

Name: Al Grover's High and Dry.

Lat/Long: N40.64417 W73.57333.

Phone: 516–546–8880.

VHF Channel: N/A.

Dates of Operation: April–October.

Hours of Operation: 8 a.m.–5 p.m.

Fee: $40.

Vessel Limitation Length/Draught: 35 feet/7 feet.

Method of Sewage Disposal: Waste emptied directly into sewer system.

Name: Guy Lombardo Marina.

Lat/Long: N40.629444 W73.58.

Phone: 516–378–3417.

VHF Channel: N/A.

Dates of Operation: April–November.

Hours of Operation: 24 hours a day.

Fee: Free.

Vessel Limitation Length/Draught: None/5 feet.

Method of Sewage Disposal: Waste emptied and disposed of by contractor

Name: Town of Hempstead East Marina.

Lat/Long: N40.59361 W73.584722.

Phone: 516–897–4128.

VHF Channel: N/A.

Dates of Operation: April–November.

Hours of Operation: 24 hours a day.

Fee: Free.

Vessel Limitation Length/Draught: None/5 feet.

Method of Sewage Disposal: Waste emptied and disposed of by contractor.

Name: Empire Point Marina.

Lat/Long: N40.61556 W73.64889.

Phone: 516–889–1067.

VHF Channel: N/A.

Dates of Operation: Year round.

Hours of Operation: Monday–Thursday 9 a.m.–5 p.m., Friday–Sunday 6 a.m.–6 p.m.

Fee: $5.

Vessel Limitation Length/Draught: 100 feet/30 feet.

Method of Sewage Disposal: Waste emptied and disposed of by contractor.

The facility located in Western South Shore Bay is as follows:

Name: Crow's Nest Marina.

Lat/Long: N40.63597 W73.6577.

Phone: 516–766–2020.

VHF Channel: N/A.

Dates of Operation: May–October, Monday–Friday.

Hours of Operation: 9 a.m.–4 p.m.

Fee: Free for marina patrons, $25 for visitors.

Vessel Limitation Length/Draught: 35 feet/4 feet.

Method of Sewage Disposal: Waste emptied and disposed of by contractor.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the South Shore Estuary Reserve in the Counties of Nassau and Suffolk, New York.

Dated: October 20, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

[FR Doc. E9–27567 Filed 11–16–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2009–0795, FRL–8976–8]

Office of Environmental Information; Announcement of Availability and Comment Period for Revised Environmental Sampling, Analysis and Results Data Standards (ESAR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment.

SUMMARY: Notice of availability for a 30 day review and comment period is hereby given for six revised data standards—Well Information Data Standard, *ESAR:* Field Activity, ESAR: Monitoring Location, *ESAR:* Analysis and Results, *ESAR:* Project and Quality Assurance and Quality Control Data Standards.

ESAR, along with the suite of related data standards, enhances the availability and exchange of monitoring data used for environmental decision-making. Biological related data elements are largely missing from ESAR and given the importance and interest in these data, the Environmental Council of States (ECOS) and US EPA worked together to adapt/incorporate two Advisory Committee on Water Information (ACWI) approved standards into ESAR.

The ACWI approved Water Quality Data Elements for Reporting Results of Populations/Community Biological Assessments and Toxicity Test Analyses (TOX and POP) has been adapted for inclusion in ESAR

DATES: Comments must be received on or before December 17, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2009–0795 by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: oei-docket@epa.gov*
- *Fax:* 202–566–1753
- *Mail:* Announcement of Availability and Comment Period for Revised, Environmental Sampling, Analysis and Results Data Standards (ESAR), Environmental Protection Agency, *Mail code:* 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of four copies.
- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Please include a total of four copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2009–0795. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Michael Pendleton, Information Exchange & Services Division, Office of Environmental Information, U.S. EPA, 1200 Pennsylvania Ave., NW., MC 2823T; Washington, DC 20460; phone 202–566–1658; fax 202–566–1684; e-mail: *Pendleton.michael@epa.gov*.

SUPPLEMENTARY INFORMATION: Standards are intended for use in environmental data exchange among States, Tribal entities and U.S. EPA. They are not meant to dictate or limit data an agency chooses to collect for its own internal purposes. Adoption of a data standard should be interpreted to mean that revisions to databases or information systems are required. What the adoption does mean is that formats for sharing data with Exchange Network (EN) partners will change because the EN has adopted Shared Schema Components (SSCs) based on the data standards. The SSCs are available on the Exchange Network Web site at: *http://www.exchangenetwork.net*.

The revised data standards are available through the Docket system as indicated above and at: *http://www.epa.gov/datastandards*, and *http://www.exchangenetwork.net/standards*.

Dated: October 8, 2009.

Connie Dwyer,

Director, Information Exchange & Services Division.

[FR Doc. E9–27605 Filed 11–16–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Safety and Homeland Security Bureau; Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Communications Security, Reliability, and Interoperability Council (CSRIC) will hold its first meeting on December 7, 2009, at 10 a.m. in the Commission Meeting Room of the Federal Communications Commission, Room

TW–C305, 445 12th Street, SW., Washington, DC 20554.

DATES: December 7, 2009.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer of the FCC's CSRIC, (202) 418–1096 (voice) or jeffery.goldthorp@fcc.gov (e-mail); or Jean Ann Collins, Deputy Designated Federal Officer of the FCC's CSRIC, 202–418–2792 (voice) or *jeanann.collins@fcc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The CSRIC is a Federal Advisory Committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to ensure optimal security, reliability, and interoperability of communications systems. On March 19, 2009, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2011.

At this meeting, the CSRIC will consider its mission and duties as set forth in the CSRIC charter, the process for completing its tasks, and the committee's structure. There may also be presentations from some member organizations. Members of the general public may attend the meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live*. The public may submit written comments before the meeting to Jeffery Goldthorp, the FCC's Designated Federal Officer for the CSRIC by e-mail to Jeffery.goldthorp@fcc.gov or U.S. Postal Service Mail to Jeffery Goldthorp, Chief, Communications Systems Analysis Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Additional information regarding the CSRIC can be found at: *http://www.fcc.gov/pshs/advisory/csric/*.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E9–27454 Filed 11–16–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Wednesday, November 18, 2009

Date: November 10, 2009.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, November 18, 2009, which is scheduled to commence at 10 a.m. in room TW–C305, at 445 12th Street, SW., Washington, DC.

The meeting will also include a presentation on the status of the Commission's processes for development of a National Broadband Plan and an analysis of the major gaps in broadband in America.

ITEM NO.	BUREAU	SUBJECT
	WIRELESS TELE–COMMUNICATIONS	TITLE: In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance (WT Docket No. 08–165) SUMMARY: The Commission will consider a Petition for Declaratory Ruling which requests that the Commission establish timeframes for State and local zoning authorities to consider wireless facilities siting applications.

The meeting site is fully accessible to people using wheelchairs or mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disability are available upon request. Include a description of the accommodation you will need including as much detail as you can. In addition, include a way we can contact you if we need more information. Make your request as early as possible; please allow at least 5 days advance notice. Last minute request will be accepted, but may be impossible to fill. Send an e–mail to: fcc504@fcc.gov or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fisk, Office of Media Relations, 202–418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcasted live with open captioning over Internet from the FCC Audio/Video Events web page at http://www.fcc.gov/realaudio.

For a fee this meeting can be viewed live over George Mason University's Capital Connection. The Capital Connection also will carry the meeting live via the Internet. To purchase these services, call 703–993–3100 or go to http://www.capitalconnection.gmu.edu.

Copies of material adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc., 202–488–5300; Fax 202–488–5563; TTY 202–488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by e–mail at FCC@BCPIWEB.com.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–27599 Filed 11–13–09; 11:15 am]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE–IN); Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

DATES: Wednesday, December 2, 2009, from 8:30 a.m. to 4:45 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will be focused on the results of the FDIC National Unbanked and Underbanked Household Survey, a discussion regarding scaling small dollar loans across the financial mainstream, and the strategic focus for the committee. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting.

This ComE–IN meeting will be Webcast live via the Internet at: *http://www.vodium.com/goto/fdic/advisorycommittee.asp*. This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html*. Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash*. Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The ComE–IN meeting videos are made available on-demand approximately two weeks after the event.

Dated: November 11, 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. E9–27498 Filed 11–16–09; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:35 a.m. on Thursday, November 12, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision and resolution activities.

In calling the meeting, the Board determined, on motion of Director John E. Bowman (Acting Director, Office of Thrift Supervision), seconded by Director Thomas J. Curry (Appointive), concurred in by Vice Chairman Martin J. Gruenberg, Director John C. Dugan (Comptroller of the Currency), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 12, 2009.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E9–27699 Filed 11–13–09; 4:15 pm]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, November 23, 2009.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, November 13, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–27739 Filed 11–13–09; 4:15 pm]

BILLING CODE 6210–01–S

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request for an Unmodified OGE Form 201 Ethics Act Access Form

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period, OGE plans to submit an unmodified OGE Form 201 to the Office of Management and Budget (OMB) for review and approval of a three-year extension under the Paperwork Reduction Act. The OGE Form 201 is used by persons for requesting access to executive branch public financial disclosure reports and other covered records. OGE is proposing no changes to the form at this time.

DATES: Written comments by the agencies and the public on this proposed extension are invited and should be received by January 19, 2010.

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

- *E-Mail: usoge@oge.gov.* For E-mail messages, the subject line should include the following reference: ''OGE Form 201 Paperwork Comment.''
- *Fax:* 202–482–9237.
- *Mail, Hand Delivery or Courier:* Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, *Attention:* Paul D. Ledvina.

FOR FURTHER INFORMATION CONTACT: Paul D. Ledvina, Records Officer, Office of Government Ethics; *telephone:* 202–482–9247; *TTY:* 800–877–8339; *Fax:* 202–482–9237; *E-mail: pledvina@oge.gov.* An electronic copy of the OGE Form 201 is available in the Forms Library section of OGE's Web site at *http://www.usoge.gov.* A paper copy may also be obtained, without charge, by contacting Mr. Ledvina.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is the supervising ethics office for the executive branch of the Federal Government under section 109(18)(D) of the Ethics in Government Act (the Ethics Act), 5 U.S.C. appendix, § 109(18)(D). OGE is planning to submit, after this notice and comment period, an unmodified OGE Form 201 ''Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Reports or Other Covered Records'' for review and three-year extension of approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Prior to the expiration of this proposed three-year extension, OGE may propose, and submit to OMB for approval, a modified OGE 201 form that provides requesters with an option to submit the form electronically.

The OGE Form 201 (OMB control # 3209–0002) collects information from, and provides certain information to, persons who seek access to SF 278 reports and other covered records. The form reflects the requirements of the Ethics Act and OGE's implementing regulations that must be met by a person before access can be granted. These requirements relate to information about the identity of the requester, as well as any other person on whose behalf a record is sought, and a notification of prohibited uses of SF 278 reports. See section 105(b) and (c) of the Ethics Act, 5 U.S.C. appendix, § 105(b) and (c), and 5 CFR 2634.603(c) and (f) of OGE's executive branchwide regulations thereunder.

Executive branch departments and agencies are encouraged to utilize the OGE Form 201. Agencies can, if they so choose, continue to use or develop their own forms as long as those forms contain all the information required by the Ethics Act and OGE regulations, and include the appropriate Privacy Act and paperwork notices with any attendant clearances being obtained by the agencies.

Reporting Burden

OGE estimates that an average of 450 OGE Form 201s will be filed throughout the executive branch each year by members of the public (primarily by news media, public interest groups and private citizens) during the period 2010 through 2012. This figure is based on the number of OGE Form 201s filed at OGE by members of the public (155 for 2006, 138 for 2007 and 79 for 2008) and those filed at other departments and agencies in the executive branch (138 for 2006, 135 for 2007 and 127 for 2008) as reported on OGE's annual agency ethics program questionnaire. The three-year annual average was then adjusted to reflect the typical, significant increase in the number of OGE Form 201s filed by the public during and following a Presidential transition. During the first half of the 2009 Presidential transition year, 310 forms were filed with OGE. (OGE does not have, at this time, recent statistics covering the number of forms filed with other departments and agencies in the executive branch.) Using these figures, OGE estimates that there will be an annual average of 450 forms submitted to OGE and the other executive branch departments and agencies for the years 2010 through 2012.

The estimated average amount of time to complete the form, including review of the instructions, remains at 10 minutes. Thus, the estimated annual public burden for the OGE Form 201 (throughout the executive branch) is 75 hours (450 forms × 10 minutes per form—number rounded down). This is an increase from the current estimated burden of 61 hours.

Web Site Distribution of Blank Forms

The OGE Form 201 will continue to be made available free-of-charge to the public as well as departments and agencies, as a downloadable, fillable, and printable, Portable Document Format (PDF) file. This PDF version is located in the Forms Library section of OGE's Internet Web site at *http://www.usoge.gov.*

OGE will continue to permit departments and agencies to use the version of the OGE Form 201 available on OGE's Web site or to develop and utilize their own, electronic versions of the OGE form, provided that they precisely duplicate the original to the extent possible.

Consideration of Comments

Public comment is invited on each aspect of the unmodified OGE Form 201 as set forth in this notice, including specifically views on the need for and practical utility of this information collection; the accuracy of OGE's burden estimate; the enhancement of quality, utility and clarity of the information collected; and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for OMB paperwork approval for this proposed unmodified information collection. The comments will also become a matter of public record.

Approved: November 5, 2009.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. E9–27569 Filed 11–16–09; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board: Notification of Public Teleconference

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Biodefense Science Board (NBSB) will hold a teleconference meeting. The meeting is open to the public. Pre-registration is NOT required, however, individuals who wish to participate in the public comment session should e-mail *NBSB@HHS.GOV* to RSVP.

DATES: The meeting will be held on December 9, 2009 from 12 p.m. to 2 p.m. EST.

ADDRESSES: The meeting will occur by teleconference. To attend, call 1–866–395–4129, pass-code ''ASPR.'' Please call 15 minutes prior to the beginning of the conference call to facilitate attendance.

FOR FURTHER INFORMATION CONTACT: E-mail: NBSB@HHS.GOV.

SUPPLEMENTARY INFORMATION: Pursuant to section 319M of the Public Health Service Act (*42 U.S.C. 247d–7f)* and section 222 of the Public Health Service Act (42 U.S.C. 217a), the Department of Health and Human Services established the National Biodefense Science Board.

The Board shall provide expert advice and guidance to the Secretary on scientific, technical, and other matters of special interest to the Department of Health and Human Services regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. The Board may also provide advice and guidance to the Secretary on other matters related to public health emergency preparedness and response.

This is a special meeting of the NBSB. Discussions will surround issues related to Novel Influenza A H1N1.

Members of the public are invited to attend by teleconference via a toll-free call-in phone number. The teleconference will be operator assisted to allow the public the opportunity to provide comments to the Board. Public participation will be limited to time and space available. Public comments will be limited to no more than 3 minutes per speaker. To be placed on the public comment list, notify the operator when you join the teleconference.

Public comments received by close of business one week prior to each teleconference will be distributed to the NBSB in advance. Submit comments via e-mail to *NBSB@HHS.GOV*, with ''NBSB Public Comment'' as the subject line.

A draft agenda and any additional materials/agendas will be posted on the NBSB Web site (*http://www.hhs.gov/aspr/omsph/nbsb/*) prior to the meeting.

Dated: October 9, 2009.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. E9–27450 Filed 11–16–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tribal TANF Financial Report (ACF–196T).

OMB No.: 0970–0345.

Description: Tribes use Form ACF–196T to report expenditures for the Tribal TANF grant. Authority to collect and report this information is found in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193. Tribal entities with approved Tribal plans for implementation of the TANF program are required by Section 412(h) of the Social Security Act to report financial data. Form ACF–196T provides for the collection of data regarding Federal expenditures. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. Financial management of the program would be seriously compromised if the expenditure data were not collected.

45 CFR Part 286 Subpart E requires the strictest controls on funding requirements, which necessities review of documentation in support of Tribal expenditures for reimbursement. Comments received from previous efforts to implement a similar Tribal TANF report Form ACF–196T were used to guide ACF in the development of the product presented with this submittal.

The American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111–5 has authorized emergency TANF funds to be awarded to States, Tribes, and Territories who meet certain eligibility requirements written in the legislation. TANF Policy Announcement TANF–ACF–PA–2009–01 provides additional guidance on eligibility requirements. Recipients of ARRA funds are to report spending and performance data to Federal agencies quarterly for posting on the public website, ''Recovery.gov''. Federal agencies are required to collect ARRA expenditures data and the data must be clearly distinguishable from the regular TANF (non-ARRA) funds. Therefore, in order to meet this data collection requirement, the ACF–196T has been modified with the addition two line items and a column to report ARRA expenditures. The collection and posting of this data is to allow the public to see where their tax dollars are spent.

Respondents: All Tribal TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196T	56	4	1.50	336

Estimated Total Annual Burden Hours: 336

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: November 10, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–27444 Filed 11–16–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0083]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Gluten-Free Labeling of Food Products Experimental Study

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 17, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title ''Gluten-Free Labeling of Food Products Experimental Study.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Gluten-Free Labeling of Food Products Experimental Study—(OMB Control Number 0910–NEW)

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393 (b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the nation's food supply. FDA is planning to conduct an experimental study about gluten-free labeling of food products. The Gluten-Free Labeling of Food Products Experimental Study will collect information from both consumers who have celiac disease or gluten intolerance and those who do not have either condition. The purpose of the study is to gauge perceptions of characteristics related to claims of ''gluten-free'' and allowed variants (e.g., ''free of gluten,'' ''without gluten,'' ''no gluten''), in addition to other types of statements (e.g., ''made in a gluten-free facility'' or ''not made in a facility that processes gluten-containing foods'') on the food label. The study will also assess consumer understanding of ''gluten-free'' claims on foods that are naturally free of gluten, and gauge consumer reaction to a product carrying a gluten claim concurrently with a statement about the amount of gluten the product contains.

In a 60-day **Federal Register** notice, which published on March 6, 2009 (74 FR 9822), FDA stated that the data would be collected over the Internet from samples derived from two sources: (1) A membership list from a celiac disease special interest organization and (2) an online consumer panel. FDA will not utilize the membership list of a celiac disease special interest organization. Instead, FDA will obtain participants through the assistance of major celiac disease and research centers around the United States. Participation in the study is voluntary.

Also in the March 6, 2009, sixty-day **Federal Register** notice, FDA requested public comment on the proposed information collection provisions. FDA received 34 letters in response to the notice, each containing 1 or more comments. The comments, and the agency's responses, are discussed in the following paragraphs. Some of the comments received were beyond the scope of the collection of information. Those comments are not addressed in this document.

(Comment 1) Several comments cited the importance of doing the gluten-free study and commended FDA for doing it.

(Response) FDA agrees that the study will help FDA learn how consumers react and respond to the gluten-free labeling options presented in the gluten-free labeling proposed rule (See 72 FR 2795, January 23, 2007).

(Comment 2) One comment suggested using software tools such as *surveymonkey.com* to minimize the costs associated with creating online surveys. This comment also suggested using a survey program that allowed for both closed-ended (choose a response) and open-ended (write a response) response options.

(Response) FDA agrees that using existing software to collect data online will minimize the costs. The contractor hired to collect the data has a long history of online data collection and has existing software for this type of data collection. This software allows for multiple types of questions and response options.

(Comment 3) Several comments recommended that FDA expand the data collection method from using the Internet only to also include paper surveys. One comment said that computer access is difficult for people who live in rural areas. Another comment said that elderly people and those with lower incomes are less likely to have access to computers.

(Response) FDA agrees that a paper version should be available for people who might have difficulties in accessing the internet. FDA plans to make a paper version available by providing a telephone number for potential respondents to call and request a paper version. The telephone number will be included in a flyer about the study FDA will disseminate to celiac disease treatment and research centers to post for patients to view.

(Comment 4) One comment said that many children have access to computers only at school so they suggested that FDA offer a paper survey so that respondents can include children.

(Response) FDA disagrees. The study is limited to adults age 18 and above. This age group includes individuals who regularly shop for and prepare foods. FDA acknowledges that children can shop for and prepare foods but the likelihood that they do is far less than their caregivers, who will be included in the study.

(Comment 5) One comment recommended FDA to test gluten-free statements that say, ''Testing meets FDA standards for gluten'' and ''Testing meets FDA standards of less than 20ppm of gluten present.''

(Response) FDA disagrees with the comment. Section 206 of the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (Title II of Public Law No. 108–282) requires FDA to issue a rule to define and permit use of the term ''gluten-free'' on the labeling of foods. In the proposed rule (72 FR 2795), FDA proposed a regulation to define the term ''gluten-free'' and to establish uniform conditions for its use in the voluntary labeling of foods. FDA will not test these statements because they are not consistent with FALCPA or with our proposed rule.

(Comment 6) One comment suggested having an open-ended question where respondents can describe the type of labeling that they believe is the best and most understandable.

(Response) FDA agrees and will provide an open-ended question at the end of the questionnaire to allow respondents to comment on the study and to make suggestions for labeling preferences.

(Comment 7) One comment asked that the questions be very clear.

(Response) FDA agrees that it is important that the study questions be unambiguous. To achieve this goal, FDA will conduct cognitive interviews prior to administering the main study, in which a trained interviewer goes through the questionnaire with adults with celiac disease and discusses whether the questions are understandable and valid.

(Comment 8) Several comments had recommendations for groups of people that should be included in the study. One comment said that the control group, the people for whom gluten poses no adverse health-effects, should be comprised of individuals who are ''avid label readers,'' on the theory that their label-reading behavior would make them most like people who use label information to help them avoid gluten. One comment said it was essential to get participants who are in various stages of a gluten-free diet because labeling needs are different depending on how long one has been diagnosed with celiac disease. One comment said it was important to recruit participants from various ethnic and socio-economic backgrounds because these factors may have impacts on what people eat. One comment said the FDA should consider that many people who have celiac disease or gluten sensitivities also have other food intolerances and the survey should be constructed with these people in mind.

(Response) FDA agrees that the control group should consist of respondents who frequently read the food label in making purchase decisions. FDA will identify and recruit such individuals by including a question in the study screener to gauge such efforts. FDA will also identify and recruit individuals who report in the study screener that they follow gluten free diets for reasons other than that they have celiac disease. FDA will include a question for individuals with celiac disease and for caregivers to such individuals that asks how long they have been diagnosed with celiac disease. FDA expects that individuals from various ethnic and socio-economic backgrounds will respond to the invitation to participate in the study. Working through major celiac disease and research centers around the United States will also help to reach a diverse population. FDA will include a question in the study asking individuals with celiac disease if they have other food intolerances or food allergies.

(Comment 9) One comment suggested including natural food store owners in the study.

(Response) FDA disagrees with the comment that natural food store owners should be included in the study. The study population in this research is consumers. Store owners may participate if they meet the study criteria.

(Comment 10) One comment suggested that instead of recruiting participants from celiac disease special interest groups that might introduce interest-based biases, FDA should contact celiac disease and research centers to ask them to distribute the survey to their mailing lists.

(Response) FDA agrees with the comment and has contacted major celiac disease and research centers around the United States to ask them to distribute an invitation to participate in the study to their mailing lists, if they have one, and to put up a flyer at their centers inviting patients to participate online or call to request a paper copy.

(Comment 11) Several comments suggested making the survey available in more than one language.

(Response) FDA disagrees. Although making the questionnaire available in more than one language increases public access, FDA plans to administer the study only in English because existing research and information on individuals with celiac disease and gluten-intolerances does not suggest that gluten-free labeling issues vary by culture.

(Comment 12) One comment suggested that the survey results should be made available to the public.

(Response) FDA agrees with the comment and will make the study results available when they are ready.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Questionnaire	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener	10,000	1	10,000	0.0055	55
Pretest	140	1	140	.167	24
Experiment	7,000	1	7,000	.167	1,169
Total					1,248

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the March 6, 2009, sixty-day notice, FDA estimated the total annual reporting burden to be 892 hours. FDA has made several changes to its burden estimate as reflected in table 1 of this document. The agency increased: (1) The number of screeners from 6,000 to 10,000 and (2) the number of completed questionnaires from 5,000 to 7,000.

Approximately 10,000 respondents will be screened. We estimate that it will take a respondent 20 seconds (0.0055 hours) to complete the screening questions, for a total of 55 hours. A pretest will be conducted with 140 respondents; we estimate that it will take a respondent 10 minutes (0.167 hours) to complete the pretest, for a total of 24 hours. Seven thousand (7,000) respondents will complete the experiment. We estimate that it will take a respondent 10 minutes (0.167 hours) to complete the entire experiment, for a total of 1,169 hours. Thus, the total estimated annual reporting burden is 1,248 hours. FDA's burden estimate is based on prior experience with consumer experiments that are similar to this proposed experiment.

Dated: November 9, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27512 Filed 11–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

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

Proposed Project: FASD Diagnosis and Intervention Programs in the Fetal Alcohol Spectrum Disorder (FASD) Center of Excellence—New

Since 2001, SAMHSA's Center for Substance Abuse Prevention has been operating a Fetal Alcohol Spectrum Disorder (FASD) Center of Excellence which addresses FASD mainly by providing trainings and technical assistance; and developing and supporting systems of care that respond to FASD using effective evidence based practices and interventions.

Currently the integration of evidence-based practices into service delivery organizations is being accomplished through subcontracts. One such intervention which integrates diagnosis and intervention strategies into existing service delivery organizations is the FASD Diagnosis and Intervention programs targeting children 0–18 years of age. The Diagnosis and Intervention programs use the following 11 data collection tools.

DESCRIPTION OF INSTRUMENTS/ACTIVITY FOR THE DIAGNOSIS AND INTERVENTION PROGRAMS

Instrument/Activity	Description
Screening and Diagnosis Tool	The purpose of the screening and diagnosis tool is to determine eligibility to participate in the SAMHSA FASD Center Diagnosis and Treatment Intervention. The form includes demographic, screening, and diagnostic data.
Positive Monitor Tracking	The Positive Monitor Tracking form is to monitor the outcome of placing a child (ages 0–3 years) on a positive monitor.
Services Child is Receiving at the time of the FASD Diagnosis.	The Services Child is Receiving at the time of the FASD Diagnosis form is to record services the child is receiving at the time of an FASD diagnosis.
Services Planned and Provided based on Diagnostic Evaluation.	The Services Planned and Provided based on Diagnostic Evaluation form is to record services planned and received based on the diagnostic evaluation.
Services Delivery Tracking Form	The Services Delivery Tracking form is for the services provided during every visit.
End of Intervention/Program Improvement Measure—Case Manager.	The End of Intervention/Program Improvement Measure—Case Manager form is for the case manager to report on the overall improvement in the child as a result of receiving services.
End of Intervention/Program Improvement Measure—Parent/Guardian.	The End of Intervention/Program Improvement Measure—Parent/Guardian form is for the parent/guardian to report on the overall improvement in the child as a result of receiving services.
End of Intervention/Program Customer Satisfaction with Service.	The End of Intervention/Program Customer Satisfaction with Service form is to determine customer satisfaction (parents) with the SAMHSA FASD Center Diagnosis and Intervention project.
Outcome Measures (Children 0–7 years)	The Outcome Measures (Children 0–7 years) form is an outcomes measure checklist used to record measures every six months from start of service to end of service, at end of intervention, at 6 months follow-up, and 12 months follow-up.
Outcome Measures (Children 8–18 years)	The Outcome Measures (Children 8–18 years) form is an outcomes measure checklist used to record measures every six months from start of service to end of service, at end of intervention, at 6 months follow-up, and 12 months follow-up.
Lost to follow-up	The Lost to follow-up form is used if the child is no longer accessible for follow-up.

Eight subcontracts were awarded in February 2008 to integrate the FASD Diagnosis and Intervention program within existing service delivery organization sites. Using an integrated service delivery model all sites are screening children using an FASD screening tool, obtaining a diagnostic evaluation, and providing services/interventions as indicated by the diagnostic evaluation. Specific interventions are based upon the individual child's diagnosis. Six of the sites are integrating the FASD Diagnosis and Intervention projects either in a child mental health provider setting or in a dependency court setting and serve children ages 0–7 years. Two of the sites are delinquency courts and serve children 10–18 years of age.

Data collection at all sites involves administering the screening and diagnosis tool, recording process level indicators such as type and units of service provided; improvement in functionality and outcome measures such as school performance, stability in housing/placement, and adjudication measures (10–18 yrs only). Data will be collected at baseline, monthly, every six months from start of service to end of service, at end of intervention, at 6 months follow-up, and 12 months follow-up.

ESTIMATED ANNUALIZED BURDEN HOURS

Instrument/Activity	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours per collection
Client Surveys: Children 0–7.				
Screening and Diagnosis Tool	1400	1	0.17	238
Positive Monitor Tracking	450	1	0.03	14
Services Child is Receiving at the time of the FASD Diagnosis	750	1	0.17	128
Services Planned and Provided based on Diagnostic Evaluation	750	1	0.33	248
Services Delivery Tracking Form	750	12	0.08	720
End of Intervention/Program Improvement Measure—Case Manager	750	1	0.02	15
End of Intervention/Program Improvement Measure—Parent/Guardian	750	1	0.02	15
End of Intervention/Program Customer Satisfaction with Service	750	1	0.03	23
Outcome Measures (Children 0–7 years)	750	3	0.08	180
Lost to follow-up	135	1	0.03	4
Client Surveys: Children 8–18:				
Screening and Diagnosis Tool	100	1	0.17	17
Services Child is Receiving at the time of the FASD Diagnosis	50	1	0.17	9
Services Planned and Provided based on Diagnostic Evaluation	50	1	0.33	17
Services Delivery Tracking Form	50	12	0.08	48
End of Intervention/Program Improvement Measure—Case Manager	50	1	0.02	1
End of Intervention/Program Improvement Measure—Parent/Guardian	50	1	0.02	1
End of Intervention/Program Customer Satisfaction with Service	50	1	0.03	2
Outcome Measures (Children 8–18 years)	50	3	0.08	12
Lost to follow-up	15	1	0.03	1
TOTAL	7,700	45	—	1,693

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *AND* e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: November 4, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–27524 Filed 11–16–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

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

Proposed Project: Substance Abuse Prevention and Treatment (SAPT) Block Grant Uniform Application Guidance and Instructions FY 2011–2013 and Regulations (OMB No. 0930–0080)—Revision

Sections 1921 through 1935 of the Public Health Service Act (U.S.C. 300x–21 to 300x–35) provide for annual allotments to assist States to plan, carry out and evaluate activities to prevent and treat substance abuse and for related activities. Under the provisions of the law, States may receive allotments only after an application is submitted and approved by the Secretary, DHHS. For the Federal fiscal years (FY) 2011–FY 2013 Substance Abuse Prevention and Treatment (SAPT) Block Grant application cycles, SAMHSA will provide States with revised application guidance and instructions to implement changes made in accordance with recommendations from the National Association of State Alcohol and Drug Abuse Directors (NASADAD) and their member States in the revisions and clarification of data reporting requirements and instructions.

During negotiations with the States resulting in agreement on the National Outcome Measures (NOMs) for substance abuse treatment and prevention, SAMHSA pledged to the States to:

1. Reduce respondent burden;
2. Work with the States to improve performance management of the SAPT Block Grant;
3. Improve the availability, timeliness, and quality of data available to Federal, State, and provider administrators of block grant funded programs.

This revision of the Uniform Application and Regulation for the SAPT Block Grant takes additional steps toward implementing these commitments. SAMHSA, in consultation with NASADAD, has provided States the ability to reduce their application burden by consolidating the FY 2011–FY 2013 State Plan into a 3-year plan. With the exception of the projected annual budget form, States only would be expected to submit any proposed revisions to its approved three-year plan but would otherwise not have to resubmit a State Plan during FY 2012 and FY 2013. Individual States may reduce their respondent burden further by selecting the option of using SAMHSA pre-populated tables for Section IVa and IVb. The data for these tables would be drawn from SAMHSA data sets known as Drug and Alcohol Services Information System (DASIS) Treatment Episode Data Set (TEDS) and

National Survey on Drug Use and Health (NSDUH) by SAMHSA and provided to the States. In addition, the Web-based Block Grant Application System now facilitates completion of the provider entity table through added pre-populated data items. The data for this table would be drawn from SAMHSA data set known as DASIS National Survey of Substance Abuse Treatment Services (N–SSATS). SAMHSA will continue to work with NASADAD and the States to assess the feasibility and usefulness of pre-populating additional sections of the application with data extracted from SAMHSA data sets to further reduce respondent burden.

SAMHSA continues to provide the States with the option of reporting on prevention expenditures utilizing the six primary prevention strategies or utilizing the Institute of Medicine classification of Universal, Selective or Indicated. SAMHSA has designed the State Prevention Framework State Incentive Grant (SPF SIG) competitive program and funded contracts in States without an SPF SIG to support data driven prevention planning by the Single State Agencies for Substance Abuse. States are expected to use the State level data collected with support from these programs in the planning in section II of the Uniform Application.

The Uniform Application has been modified to move needs assessment, planning narrative and future year budget forms into Section II, the FY 2011–FY 2013 Plan section.

In December 2004, SAMHSA and the States agreed on the goal of having all States reporting the NOMs measures as defined at the meeting by the end of a 3-year implementation period starting in FY 2005 and concluding at the end of FY 2007. By January 2006, supportive technical assistance on information technology design and payment for data submitted became available by the State Outcomes Measurement and Management System (SOMMS) program. States who have participated in the SOMMS/NOMs subcontracts may choose to have their data pre-populated which would significantly reduce their reporting burden for this application. During the subsequent three years, SAMHSA in partnership with the States and all other SAPT Block Grant stakeholders have continued to work towards improving standards for analyzing and responding to the results of NOMs data appropriate to each level of block grant funded administration including Federal, State, and Provider roles and responsibilities.

SAMHSA realigned resources to address the need for technical assistance in information technology (IT) and software purchasing to implement and maintain NOMs data standards. This technical assistance first became available in September 2006 and IT support continues.

Revisions to the previously-approved Uniform Application resulting from such stakeholder input reflect the following changes: (1) Section I, *Form 2,* ''Table of Contents,'' was revised to appropriately enumerate the specific items within each section; (2) In Section II, the former single year ''Intended Use Plan'' is aggregated into a *''Three Year State Plan''* to reduce the States' annual plan reporting burden. The first *''Three Year Plan''* will cover FYs 2011–2013. In the next two subsequent years, only revisions or updates to the 3-year plan will be required in the States' FY 2012 and FY 2013 Uniform Applications. Planned expenditures of each Federal Fiscal Year award will still be collected annually; (3) In Section II, the Form formerly specified as Form 12 has been removed; (4) In Section III, Narratives covering the Federal requirements, financial expenditure reports and services utilization reports are consolidated into the ''*Annual Report Section'';* (5) In Section IV subparts IVa and IVb, Treatment and Prevention Performance Reporting Forms are maintained and are to be completed annually.

The total annual reporting burden estimate is shown below:

FY 2011

	Number of respondents	Responses per respondent	Number of hours per response	Total hours
Sections I–III—States and Territories	60	1	*480	28,800
Section IV–A	60	1	40	2,400
Section IV–B	60	1	42.75	2,565
Recordkeeping	60	1	16	960
Total	60			34,725

* (additional 10 hours per completion of Section II per State due to addition of FYs 2012 and 2013 in *''Three Year Plan''*).

FY 2012 AND FY 2013

[Due to the reduction in section II]

	Number of respondents	Responses per respondent	Number hours per response	Total hours
Sections I–III—States and Territories	60	1	440	26,400
Section IVa	60	1	40	2,400
Section IVb	60	1	42.75	2,565
Recordkeeping	60	1	16	960
Total	60			32,325

* (reduction of approximately 40 hours per respondent due to reductions in response burden for Section II, *''Three Year Plan''*).

Average Annual Total Burden is projected to be 33,125 or a decrease of about 800 hours.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *and* e-mail a copy to *summer.king@samhsa.hhs.gov.*

Written comments should be received within 60 days of this notice.

Dated: November 10, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–27523 Filed 11–16–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

National Mammography Quality Assurance Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: National Mammography Quality Assurance Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 25, 2010, from 9 a.m. to 5 p.m.

Location: Holiday Inn, Walker-Whetstone Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Normica Facey, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–5914, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512397. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On January 25, 2010, the committee will discuss guidance documents issued since the last meeting. The committee will also receive updates on: Interventional mammography accreditation programs, recently approved alternative standards, facility inspection findings, the status of current inspection followup actions, and the radiological health program.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 4, 2010. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10:30 a.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 28, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 29, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, 301–796–5996, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 10, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27492 Filed 11–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 17, 2009, from 8 a.m. to 1 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel phone number is 301–977–8900.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–6793, fax: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 17, 2009, the committee will discuss new drug application (NDA) 022–555, proposed

trade name HEXVIX (hexaminolevulinate as hydrochloride) Kit, for the preparation of HEXVIX solution for intravesical use, by Photocure ASA. The product is a diagnostic imaging agent that becomes visible when illuminated by blue light, a special type of light that causes the agent to appear a certain (fluorescent) color. The agent is proposed for administration into the bladder to help in the examination of the bladder wall with a cystoscope, a surgical instrument used to detect some types of cancer. The proposed indication (use) for this product is for blue light cystoscopy performed with the Karl Storz Photodynamic Diagnosis (PDD) system (equipment that produces blue light) as an adjunct to white light cystoscopy in the detection of non-muscle invasive papillary cancer of the bladder.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 9, 2009. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 1, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 2, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 10, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27493 Filed 11–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 25, 2010, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Peter L. Hudson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., White Oak 66, rm. 3618, Silver Spring, MD 20993, 301–796–6440 or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512519. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 25, 2010, the committee will review and discuss recent information, including recent literature regarding the possible risks to the general public from intentional exposure to ultraviolet radiation (UV) from use of tanning lamps. There continues to be a growing body of literature showing association of skin cancer with use of tanning lamps and the committee will discuss this information and other information related to the association of UV and skin cancer (both melanoma and non-melanoma). The committee will be asked to recommend whether changes to current classification or current regulatory controls of UV emitting devices (lamps) used for tanning are needed.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views orally or in writing on the issues pending before the committee. Written submissions may be made to the contact person on or before March 11, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 3, 2009. Time allotted for each presentation may be limited. If

the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 4, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 10, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27491 Filed 11–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 16, 2009, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel phone number is 301–977–8900.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–6793, FAX: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512542. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 16, 2009, during the morning session, the committee will discuss supplemental new drug application (sNDA) 021–743/S–016, TARCEVA (erlotinib) tablets, by OSI Pharmaceuticals, Inc. The proposed indication (use) for this product is first-line maintenance, monotherapy (first-choice, single drug) treatment in patients with a form of lung cancer called non-small cell lung cancer (NSCLC) that is either locally advanced (has spread regionally within the lung and/or within chest lymph nodes) or metastatic (has spread beyond the lung), and who have not progressed (including those patients with stable disease) on first-line treatment with platinum-based chemotherapy (a regimen including a platinum drug (cisplatin or carboplatin) plus another chemotherapy drug).

During the afternoon session, the committee will discuss supplemental new drug application (sNDA) 022–059/S–007, TYKERB (lapatinib) tablets, by SmithKline Beecham Ltd. doing business as GlaxoSmithKline. The proposed indication (use) for this product is in combination with an aromatase inhibitor for the treatment of hormone sensitive advanced or metastatic breast cancer. FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 9, 2009. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m., and 3:30 p.m. and 4 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before December 1, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 2, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 10, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27490 Filed 11–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Proposed Revisions to Federal Drug Testing Custody and Control Form

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Proposed Revisions to the Federal Custody and Control Form.

SUMMARY: The Department of Health and Human Services (HHS) establishes the standards for Federal workplace drug testing programs under authority of Section 503 of Public Law 100–71, 5 U.S.C. Section 7301 and Executive Order No. 12564. As required, HHS published the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Guidelines) in the **Federal Register** on April 11, 1988 (53 FR 11979). The Substance Abuse and Mental Health Services Administration (SAMHSA) subsequently revised the Guidelines on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), on November 13, 1998 (63 FR 63483), on April 13, 2004 (69 FR 19644) and on November 25, 2008 (73 FR 71858) with an effective date of May 1, 2010 (correct effective date published on December 10, 2008; 73 FR 75122). The Guidelines establish comprehensive standards for all aspects of the Federal workplace drug testing program, including the requirement for all urine specimens to be collected using chain of custody procedures to document specimen integrity and security from the time of collection until receipt by the ''test facility.'' To ensure uniformity among all Federal agency workplace drug testing programs and procedures, the Guidelines require agencies to use an Office of Management and Budget (OMB) approved Federal Custody and Control Form (Federal CCF) for their programs. Additionally, the Department of Transportation (DOT) requires its regulated industries to use the Federal CCF.

The current Federal CCF is a five-part form that consists of the following copies: Copy 1—Laboratory Copy, with the tamper-evident specimen bottle seal(s)/label(s) that are attached to the bottom of Copy 1, Copy 2—Medical Review Officer (MRO) Copy, Copy 3—Collector Copy, Copy 4—Employer Copy, and Copy 5—Donor Copy. The reverse side of each copy has a Public Burden Statement. The reverse side of Copy 5 also has a Privacy Act Statement (for Federal employees only) and instructions for completing the Federal CCF. The current Federal CCF has been approved for use by OMB until September 1, 2012 for all Federal agency and federally-regulated drug testing programs that must comply with the Guidelines.

In the latest revision to the Guidelines, dated November 25, 2008 (73 FR 71858 with an effective date of May 1, 2010), the new regulations will permit the certification of Instrumented Initial Test Facilities (IITF) and will expand the drug testing profile to include new drug analytes: methylenedioxymethamphetamine (MDMA) commonly known as ''ecstasy,'' methylenedioxyamphetamine (MDA), and methylenedioxyethylamphetamine (MDEA) which are close chemical analogues of MDMA. These new regulatory actions will require that the Federal CCF be modified to accommodate the new rule changes.

This notice provides proposed changes to the current Federal CCF. It incorporates changes in accordance with the latest revisions to the Guidelines (published November 25, 2008; 73 FR 71858; effective May 1, 2010) and recommendations developed in a collaborative effort involving HHS and DOT. The proposed form is provided in Appendix A.

DATES: Written comments on the proposed draft should be submitted by January 19, 2010.

ADDRESSES: Written comments should be addressed to Robert L. Stephenson II, M.P.H., Director, Division of Workplace Programs (DWP), Center for Substance Abuse Prevention (CSAP), 1 Choke Cherry Road, Room 2–1035, Rockville, MD 20857. The public may also send comments by e-mail to *charles.lodico@samhsa.hhs.gov*. All comments received will be posted without change to *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Charles LoDico, M.S., D–ABFT, Drug Testing Team, DWP, CSAP, 1 Choke Cherry Road, Room 2–1039, Rockville, MD 20857, telephone (240) 276–2600, fax (240) 276–2610, or e-mail: *charles.lodico@samhsa.hhs.gov.*

Discussion

SAMHSA is proposing several major changes to the Federal CCF. The first major change is to revise Copy 1 to permit use by IITFs, in addition to laboratories. This is in accordance with the latest revisions to the Guidelines (published November 25, 2008; effective May 1, 2010), which allow certification of IITFs to perform federally-regulated drug testing. A chain of custody section was added in Step 4 of Copy 1 for the IITF to document receipt of the specimen and, as needed, to document subsequent transfer of the specimen to an HHS-certified laboratory for testing. The second major change is to add the new drug analytes required by the revised Guidelines to the Primary Specimen Report section in Step 5a of Copy 1. The new drug analytes are MDMA, MDA and MDEA. The third major change is to discontinue recording split specimen test results on Copy 1 of the Federal CCF. Instead, Step 5b of Copy 1 will be used to identify the split testing laboratory (i.e., laboratory name, city, and State), to indicate that the split specimen was tested, and to refer to a separate laboratory report for the split specimen test results. The fourth major change is to revise the MRO reporting sections on Copy 2 for primary specimens (Step 6) and for split specimens (Step 7), to facilitate reporting in accordance with the Guidelines and DOT Regulations. Revisions to Copy 2, Step 6 include the addition of lines for the MRO to specify positive drug analyte(s), to specify the adulterant/reason for reporting a specimen as adulterated, and to report other reasons for reporting a Refusal to Test (in addition to Adulteration and Substitution). Revisions to Copy 2, Step 7 include the addition of lines for the MRO to specify drug analyte(s), substitution, or adulteration for ''Reconfirmed'' or ''Failed to Reconfirm'' split specimens, and the addition of a checkbox to report a cancelled test.

A desired outcome from the proposed Federal CCF revision process was to maintain the same form size (8.5 inch by 11 inch) as the current Federal CCF. The content and format was redrawn for conciseness, to conserve space, and to allow for the needed additional content while maintaining the overall familiarity to which collectors, laboratories and MROs were accustomed to using.

Appendix A presents the required format and appearance for each copy of the proposed Federal CCF. SAMHSA recognizes that suppliers use different hardware and software to print forms and minor differences in appearance will occur. For example, the size of each checkbox on the form may be different, the font sizes and styles used for letters may be different, or the exact location of an item on a printed form may vary slightly from the location indicated on the sample provided in Appendix A. These minor changes in appearance are permitted since they do not significantly impact on the required format. Other changes permitted on the printed copies

include highlighting data entry/information fields where the collector and donor would be providing information and using combs/boxes (rather than a single line) for the donor's identification, to facilitate using optical readers for transferring that information. The colors used to highlight the fields may be different for different fields but must not prevent making clear photocopies of the information that is printed or handwritten in the highlighted fields. Other required information (e.g., the name and address of the test facility, the specimen identification number appearing on the top of the form and on the specimen bottle seal(s)/label(s)) may be printed on the Federal CCF during the original printing and assembly process or added by overprinting the five-part printed form after assembly.

A detailed discussion of other proposed changes follows:

Copy 1

To reflect use of the Federal CCF by IITFs as well as laboratories, Copy 1 has been redesignated as the Test Facility Copy (changed from Laboratory Copy). As on the current form, Copy 1 has a one-inch space at the top of the page reserved for: the title of the form (''Federal Custody and Control Form'') that must be printed along the top edge, the name and street address of the test facility, the unique preprinted specimen identification number (i.e., a barcode with an associated human readable number or only a human readable number), the test facility accession number (if used), and other information (e.g., accounting) that the test facility or user of the Federal CCF may want to include. There are no restrictions on the font size used for the information appearing in this one-inch space. Also as on the current form, the OMB number must be included, either vertically or horizontally, in the upper right-hand corner.

The collector or employer representative completes Step 1. The items in Step 1(a), (b), and (c) are essentially the same as on the current Federal CCF. Step 1(d) is a new proposed item to list the acronyms for the Federal testing authority under which the specimen is being collected. The new Step 1(d) would read as follows: D. ''Specify Testing Authority: HHS, NRC, DOT—Specify DOT Agency: FMCSA, FAA, FRA, FTA, PHMSA, USCG'' with a checkbox beside each agency name.

The DOT-regulated testing program applies to more than 6 million individuals. Some of the DOT agencies and the United States Coast Guard (USCG) have or anticipate having reporting requirements for test results. For example, the Federal Aviation Administration (FAA) requires the reporting of test results for pilots and mechanics, while the USCG requires the reporting of test results for mariners. We also expect other DOT agencies (e.g., FMCSA) may in the future require the identification of the ''testing authority'' in reporting of positive and refusal to test results which will be entered into a database. Identifying the Federal testing authority will facilitate reporting results to DOT agencies when their regulations require it and will assist HHS in identifying the Federal testing authority when it receives laboratory data. The information identifying the specific Federal testing authority captured on the Federal CCF will make it simpler for the entity reporting the result to the DOT agency (usually the employer or other program participant) to gather the information to satisfy the DOT agency reporting requirement. Knowing which data belongs to HHS, NRC, the USCG and the DOT agencies will prove helpful to each of these entities.

The collector or employer should not find it difficult or impossible to complete this new step. HHS and DOT experience is that employers and Consortium/Third Party Administration (C/TPA) currently provide specific instructions to the collector or collection site in order to conduct the collection. For example, C/TPA would provide the name of the employer, the date of the collection, the test reason, whether the test is to be conducted under direct observation, and employee information (e.g., name and ID number). Therefore, we would expect the employers and C/TPAs to simply add another data element to what they already provide. In the event the information in Step 1(d) is not completed the test facility must not hold up processing, or testing the specimen. Similarly, the MRO must not hold up reporting a verified result. We believe this is something the test facility or MRO should just note and continue with processing, testing, and reporting of the specimen result.

Step 1(e) contains the item ''Reason for Test,'' with the reasons consolidated on a single line to conserve space on the proposed Federal CCF. Items in Steps 1(f) and (g) are essentially the same as on the current Federal CCF.

The collector completes Step 2 after he/she has received the specimen from the donor and has read the temperature of the specimen. The changes proposed for Step 2 are intended to gain more space on the proposed Federal CCF and to allow more space for the collector's Remarks. One proposed change is to move the instructions for Step 2 [i.e., ''(make remarks when appropriate)'' and ''Collector reads specimen temperature within 4 minutes''] to the same line as ''Completed by Collector.'' Another proposed change is to revise the sentence ''Is temperature between 90 ° and 100 °F?'' to ''Temperature between 90 ° and 100 °F?'' This will reduce the space required for the three sections in Step 2 [i.e., for recording specimen temperature (Yes/No, Enter Remark) and collection type (Split/Single/None Provided, Enter Remark), and to indicate an observed collection (Observed, Enter Remark)]. We are proposing to increase the space for collector comments in the ''Remarks'' section to allow additional explanation and to improve legibility of handwritten remarks.

Step 3 instructs the collector to seal the specimen bottle(s), the donor to initial the bottle seal(s), and the donor to then complete Step 5 on Copy 2 (the MRO copy). These are the same instructions as on the current Federal CCF.

Step 4 is the chain of custody section initiated by the collector and completed by the test facility. The major changes proposed for Step 4 are to permit use of the Federal CCF by IITFs, as well as by laboratories, in accordance with the revised Guidelines. We are also proposing format changes to improve legibility of handwritten entries and facilitate form completion, while allowing all required information to be included. In the collector's chain of custody section, we propose to enlarge the block for the collector's signature while reducing the width of the ''Specimen Bottle(s) Released to:'' block. We also propose changing ''Initiated by Collector and Completed by Laboratory'' to ''Initiated by Collector and Completed by Test Facility''. The ''Received at IITF'' chain of custody section includes lines/checkboxes for the accessioner at the IITF to sign and print his/her name on the Federal CCF, record the date of specimen receipt, document the name and address of the IITF (if different from that printed on the Federal CCF), document the condition of the primary specimen bottle seal, and document the transfer of specimen custody. If a specimen received at the IITF cannot be reported (i.e., as rejected for testing, negative, or negative and dilute), the remaining specimen will be resealed using tamper-evident tape and forwarded to an HHS-certified laboratory for testing. This handling will be documented in the ''Transfer from IITF to Lab'' section of

the proposed Federal CCF. The laboratory chain of custody section in Step 4 is essentially the same as on the current Federal CCF. We are proposing changes similar to those for the collector's chain of custody section: to enlarge the block for the laboratory accessioner's signature while reducing the width of both the ''Specimen Bottle(s) Released to:'' block and the block for documenting condition of the primary specimen bottle seal.

Step 5(a) is completed by the test facility to report the test results of the primary specimen. Changes are proposed for this section in accordance with the revised Guidelines, including: changing ''Primary Specimen Test Results—Completed by Primary Laboratory'' to ''Primary Specimen Report—Completed by Test Facility''; adding the new drug analytes (MDMA, MDA, and MDEA); changing ''Test Lab (if different from above)'' to ''Test Facility (if different from above)''; and changing ''Certifying Scientist'' to ''Certifying Technician/Scientist'' on both signature and printed name lines. In addition, for clarity and to facilitate form completion, we propose to reposition drug/metabolite names and checkboxes, and to change the term ''Rejected for Testing'' to ''Rejected.'' We also propose to add ''Δ9–THCA'' after ''Marijuana Metabolite'' and ''BZE'' after ''Cocaine Metabolite'' to specify the drug analytes.

We are proposing major changes to Step 5(b) of the current Federal CCF to accommodate the additional information needed on Copy 1 to address revised Guidelines requirements as described above. Laboratories will no longer record split specimen test results on Copy 1 of the proposed Federal CCF and be moved to Copy 2 (Medical Review Officer Copy). This change is justified by National Laboratory Certification Program (NLCP) data obtained from HHS-certified laboratories in 2008. These data indicate that only 0.07% of federally-regulated split specimens were tested (i.e., 3.7% of the total reported positives). Also, in many cases, the ''Remarks'' line of the current Federal CCF is insufficient to document all required comments for reporting split specimen test results. Laboratories often use a separate laboratory report to report split specimen results to the MRO. Therefore, in Step 5(b) of the proposed Federal CCF, the split laboratory will record its name and location (city and State), indicate that the split specimen was tested, and reference the separate laboratory report for the split specimen test results.

At the bottom of Copy 1, we propose to reduce the area available for tamper-evident labels/seals to conserve space. The proposed Federal CCF in Appendix A shows two ½-inch wide labels (i.e., reduced from ¾-inch on the current Federal CCF). The reduced size is sufficient for the required specimen identification number and should not affect the legibility of information printed on the labels/seals. We are also proposing to change the designation ''Copy 1—Laboratory'' printed on the bottom of Copy 1 to ''Copy 1—Test Facility Copy''.

Copy 2

Steps 1 through 4 of Copy 2 (Medical Review Officer Copy) will be the same as Steps 1 through 4 of Copy 1 (Test Facility Copy) through the collector chain of custody section. The changes to the proposed Federal CCF begin in Step 4 of Copy 2. We propose to delete the ''Received at Lab'' section in Step 4 of Copy 2 of the current Federal CCF. The collector separates the copies of the Federal CCF and sends Copy 1 to the test facility with the specimen. At that time, the test facility resumes chain of custody documentation. Therefore, chain of custody sections beyond the collector section are not completed on Copies 2 through 5.

The collector instructs the donor to read the donor certification statement in Step 5 of Copy 2 and to complete the entries (signature, printed name, date, daytime telephone number, evening telephone number, and date of birth) in this section. The MRO uses this information to contact the donor as necessary during the verification process. We propose to revise the instructions to the donor at the bottom of the section to be consistent with current Guidelines requirements. The current statement ''Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you * * *'' will be changed to ''After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you * * *.'' Also, for clarity and ease of viewing, we propose to bold the lines on the proposed Federal CCF above and below Step 5 to provide visual separation of the section completed by the donor and the rest of the form.

Step 6 on Copy 2 is used by the MRO to report the primary specimen test results to the employer after completing the verification. The proposed changes to this section are intended to facilitate form completion in accordance with MRO reporting requirements in the Guidelines and in DOT Regulations. The proposed changes include: changing the term ''determination/verification'' to ''verification'', repositioning results and checkboxes, adding a line after ''Positive'' for the MRO to specify the positive drug analyte(s), adding a line after ''Adulterated'' for the MRO to specify the adulterant/reason, adding ''Other'' under the ''Refusal to Test'' grouping to allow additional reasons for this result, and adding another ''Remarks'' line for the MRO's explanatory comments.

Step 7 is used by the MRO to report the split specimen test results to the employer after completing the verification. The proposed changes to this section are intended to facilitate form completion in accordance with MRO reporting requirements in the Guidelines and in DOT Regulations. The proposed changes include: changing the term ''determination/verification'' to ''verification'', adding a line after ''Reconfirmed'' for the MRO to specify the reconfirmed test results (i.e., drug analytes, substitution, adulteration), adding the result and checkbox to report ''Test Cancelled'', adding a line after ''Failed to Reconfirm'' for the MRO to specify the test results that were not reconfirmed (i.e., drug analytes, substitution, adulteration), and adding another ''Remarks'' line for the MRO's explanatory comments.

Copy 3, Copy 4, Copy 5

Copy 3 (Collector Copy), Copy 4 (Employer Copy), and Copy 5 (Donor Copy) will be the same as Copy 2 (Medical Review Officer Copy).

Instructions for Completing the Federal Custody and Control Form

As on the current Federal CCF, instructions for completing the form are included on the back of Copy 5 (Donor Copy). The purpose of these instructions is to provide the donor with an overview of the specimen collection process. We propose to revise and update the instructions for clarity and for consistency with the revised Guidelines.

Public Burden Statement

The Public Burden Statement in Appendix A must appear on all Federal Government forms that place a reporting burden on gathering information. This statement must be included on the back of each copy of the Federal CCF (i.e., Copies 1 through 5). The reporting address in this notice has been updated on the proposed revised Federal CCF and the word ''laboratory'' has been changed to ''test facility''. Otherwise, the statement is the same as the

''Paperwork Reduction Act Notice'' on the current OMB-approved Federal CCF. However, SAMHSA is interested in receiving public comments concerning the estimated average times for the collector, the donor, the test facility, and the MRO to complete the form. Individuals commenting on these topics should include in their estimates the time to review, print information, and/or read certification statements on the form.

Privacy Act Statement

The Privacy Act Statement in Appendix A must appear on the back of Copy 5 (Donor Copy). It applies to all donors who are Federal employees. The statement is the same as that on the current Federal CCF.

Tamper-Evident Labels/Seals

The size of the two tamper-evident labels/seals may vary, but they must be placed within the space provided at the bottom of Copy 1. It is the responsibility of the supplier of the specimen bottle labels/seals to ensure that they are tamper-evident. Tamper-evident tape is a tape that is placed on a specimen bottle which cannot be removed and be replaced without visible evidence that tampering has occurred. SAMHSA believes this single requirement is sufficient to ensure that the labels/seals provided with the Federal CCF are tamper-evident; however, comments are welcome on recommending other specifications/requirements that should be considered.

Availability of the Federal CCF

The proposed Federal CCF, once approved by OMB, will be available on the SAMHSA Web site at *http://www.drugfreeworkplace.gov/as* an electronic file (using several different formats) that can be downloaded. Photocopies will also be available from the Division of Workplace Programs (DWP). SAMHSA believes making the Federal CCF available using this approach will ensure that the form is readily available from different sources.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

APPENDIX A—Federal Drug Testing Custody and Control Forms

BILLING CODE 4162–20–P

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE ACCESSION NO.

A. Employer Name, Address, I.D. No. B. MRO Name, Address, Phone No. and Fax No.

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT – Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) _____

G. Collection Site Address:

Collector Phone No. _____

Collector Fax No. _____

OMB No. 0930-0158

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark	Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark	☐ Observed, Enter Remark

REMARKS

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

X _____ Signature of Collector

(PRINT) Collector's Name (First, MI, Last) | Date (Mo/Day/Yr) | Time of Collection: AM PM

SPECIMEN BOTTLE(S) RELEASED TO: | Name of Delivery Service

RECEIVED AT IITF:

X _____ Signature of Accessioner

(PRINT) Accessioner's Name (First, MI, Last) | Date (Mo/Day/Yr)

IITF Name and Address (if not above):

Primary Specimen Bottle Seal Intact ☐ YES ☐ NO If NO, Enter remark in Step 5A.

SPECIMEN BOTTLE(S) RELEASED TO:

TRANSFER FROM IITF TO LAB. *I certify that the specimen identified on this form was handled using chain of custody procedures and resealed in accordance with applicable Federal requirements.*

X _____ Signature | (PRINT) Name (First, MI, Last) | Date (Mo/Day/Yr)

SPECIMEN BOTTLE(S) RELEASED TO: | Name of Delivery Service

RECEIVED AT LAB:

X _____ Signature of Accessioner

(PRINT) Accessioner's Name (First, MI, Last) | Date (Mo/Day/Yr)

Primary Specimen Bottle Seal Intact ☐ YES ☐ NO If NO, Enter remark in Step 5A.

SPECIMEN BOTTLE(S) RELEASED TO:

STEP 5A: PRIMARY SPECIMEN REPORT - COMPLETED BY TEST FACILITY

☐ **NEGATIVE** ☐ DILUTE ☐ **POSITIVE** for: ☐ Marijuana Metabolite (Δ9-THCA) ☐ Cocaine Metabolite (BZE) ☐ PCP ☐ 6-Acetylmorphine ☐ Morphine ☐ Codeine ☐ Methamphetamine ☐ Amphetamine ☐ MDMA ☐ MDA ☐ MDEA

☐ **REJECTED** ☐ **ADULTERATED** ☐ **SUBSTITUTED** ☐ **INVALID RESULT**

REMARKS: _____

Test Facility (if different from above) : _____

I certify that the specimen identified on this form was examined upon receipt, handled using chain of custody procedures, analyzed, and reported in accordance with applicable Federal requirements

X _____ Signature of Certifying Technician/Scientist | (PRINT) Certifying Technician/Scientist's Name (First, MI, Last) | Date (Mo/Day/Yr)

STEP 5B: COMPLETED BY SPLIT TESTING LABORATORY

☐ **SPLIT SPECIMEN TESTED; SEE LABORATORY REPORT** _____ Split Testing Laboratory (Name, City, State)

0000001 SPECIMEN ID NO. A | PLACE OVER CAP | 0000001 SPECIMEN BOTTLE SEAL | Date (Mo/Day/Yr) _____ Donor's Initials

0000001 SPECIMEN ID NO. B (SPLIT) | PLACE OVER CAP | 0000001 SPECIMEN BOTTLE SEAL | Date (Mo/Day/Yr) _____ Donor's Initials

PRESS HARD - YOU ARE MAKING MULTIPLE COPIES

COPY 1 - TEST FACILITY COPY

Public Burden Statement

Public Burden Statement: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0930–0158. Public reporting burden for this collection of information is estimated to average 5 minutes/donor, 4 minutes/collector, 3 minutes/test facility and 3 minutes/Medical Review Officer. Send comments regarding this burden estimate or any other aspect of this

collection information, including suggestions for reducing this burden, to SAMHSA Reports Clearance Officer, 1 Choke Cherry Road, Room 7–1044, Rockville, Maryland 20857.

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE ACCESSION NO.

A. Employer Name, Address, I.D. No. B. MRO Name, Address, Phone No. and Fax No.

OMB No. 0930-0158

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT – Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) _____

G. Collection Site Address:

Collector Phone No. _____

Collector Fax No. _____

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark	Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark	☐ Observed, Enter Remark

REMARKS

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

SPECIMEN BOTTLE(S) RELEASED TO:

X _____ AM PM

Signature of Collector

(PRINT) Collector's Name (First, MI, Last) _____ Date (Mo/Day/Yr) _____ Time of Collection _____ Name of Delivery Service

STEP 5: COMPLETED BY DONOR

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct.

X _____ _____ _____

Signature of Donor (PRINT) Donor's Name (First, MI, Last) Date (Mo/Day/Yr)

Daytime Phone No. (_____) _____ Evening Phone No. (_____) _____ Date of Birth _____ (Mo/Day/Yr)

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). – DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 6: COMPLETED BY MEDICAL REVIEW OFFICER - PRIMARY SPECIMEN

In accordance with applicable Federal requirements, my verification is:

☐ NEGATIVE ☐ POSITIVE for: _____ ☐ DILUTE

☐ REFUSAL TO TEST because – check reason(s) below: ☐ TEST CANCELLED

☐ ADULTERATED (adulterant/reason): _____

☐ SUBSTITUTED

☐ OTHER: _____

REMARKS: _____

X _____ _____ _____

Signature of Medical Review Officer (PRINT) Medical Review Officer's Name (First, MI, Last) Date (Mo/Day/Yr)

STEP 7: COMPLETED BY MEDICAL REVIEW OFFICER - SPLIT SPECIMEN

In accordance with applicable Federal requirements, my verification for the split specimen (if tested) is:

☐ RECONFIRMED for: _____ ☐ TEST CANCELLED

☐ FAILED TO RECONFIRM for: _____

REMARKS: _____

X _____ _____ _____

Signature of Medical Review Officer (PRINT) Medical Review Officer's Name (First, MI, Last) Date (Mo/Day/Yr)

COPY 2 - MEDICAL REVIEW OFFICER COPY

Public Burden Statement

Public Burden Statement: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0930–0158. Public reporting burden for this collection of information is estimated to average 5 minutes/donor, 4 minutes/collector, 3 minutes/test facility and 3 minutes/

Medical Review Officer. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, to SAMHSA Reports Clearance Officer, 1 Choke Cherry Road, Room 7–1044, Rockville, Maryland 20857.

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE ACCESSION NO.

A. Employer Name, Address, I.D. No. B. MRO Name, Address, Phone No. and Fax No.

OMB No. 0930-0158

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT – Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) _____

G. Collection Site Address:

Collector Phone No. _____

Collector Fax No. _____

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark	Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark	☐ Observed, Enter Remark

REMARKS

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

SPECIMEN BOTTLE(S) RELEASED TO:

X _____
Signature of Collector

(PRINT) Collector's Name (First, MI, Last) | Date (Mo/Day/Yr) | Time of Collection: AM / PM | Name of Delivery Service

STEP 5: COMPLETED BY DONOR

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct.

X _____ (PRINT) Donor's Name (First, MI, Last) _____ / _____ / _____
Signature of Donor | Date (Mo/Day/Yr)

Daytime Phone No. (_____) _____ Evening Phone No. (_____) _____ Date of Birth _____ / _____ / _____ (Mo/Day/Yr)

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). – DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 6: COMPLETED BY MEDICAL REVIEW OFFICER - PRIMARY SPECIMEN

In accordance with applicable Federal requirements, my verification is:

☐ **NEGATIVE** ☐ **POSITIVE** for: _____
☐ DILUTE

☐ **REFUSAL TO TEST** because – check reason(s) below: ☐ **TEST CANCELLED**
☐ ADULTERATED (adulterant/reason): _____
☐ SUBSTITUTED
☐ OTHER: _____

REMARKS: _____

X _____ (PRINT) Medical Review Officer's Name (First, MI, Last) _____ / _____ / _____
Signature of Medical Review Officer | Date (Mo/Day/Yr)

STEP 7: COMPLETED BY MEDICAL REVIEW OFFICER - SPLIT SPECIMEN

In accordance with applicable Federal requirements, my verification for the split specimen (if tested) is:

☐ **RECONFIRMED** for: _____ ☐ **TEST CANCELLED**

☐ **FAILED TO RECONFIRM** for: _____

REMARKS: _____

X _____ (PRINT) Medical Review Officer's Name (First, MI, Last) _____ / _____ / _____
Signature of Medical Review Officer | Date (Mo/Day/Yr)

COPY 3 - COLLECTOR COPY

Public Burden Statement

Public Burden Statement: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0930–0158. Public reporting burden for this collection of information is estimated to average 5 minutes/donor, 4 minutes/collector, 3 minutes/test facility and 3 minutes/

Medical Review Officer. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, to SAMHSA Reports Clearance Officer, 1 Choke Cherry Road, Room 7–1044, Rockville, Maryland 20857.

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE ACCESSION NO.

A. Employer Name, Address, I.D. No. B. MRO Name, Address, Phone No. and Fax No.

OMB No. 0930-0158

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT – Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) _____

G. Collection Site Address:

Collector Phone No. _____

Collector Fax No. _____

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark	Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark	☐ Observed, Enter Remark

REMARKS

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

SPECIMEN BOTTLE(S) RELEASED TO:

X _____ Signature of Collector

_____ (PRINT) Collector's Name (First, MI, Last) _____ / _____ / _____ Date (Mo/Day/Yr) _____ AM PM Time of Collection

_____ Name of Delivery Service

STEP 5: COMPLETED BY DONOR

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct.

X _____ Signature of Donor _____ (PRINT) Donor's Name (First, MI, Last) _____ / _____ / _____ Date (Mo/Day/Yr)

Daytime Phone No. (_____) _____ Evening Phone No. (_____) _____ Date of Birth _____ / _____ / _____ (Mo/Day/Yr)

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). – DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 6: COMPLETED BY MEDICAL REVIEW OFFICER - PRIMARY SPECIMEN

In accordance with applicable Federal requirements, my verification is:

☐ **NEGATIVE** ☐ **POSITIVE** for: _____ ☐ DILUTE

☐ **REFUSAL TO TEST** because – check reason(s) below: ☐ **TEST CANCELLED**

☐ ADULTERATED (adulterant/reason): _____

☐ SUBSTITUTED

☐ OTHER: _____

REMARKS: _____

X _____ Signature of Medical Review Officer _____ (PRINT) Medical Review Officer's Name (First, MI, Last) _____ / _____ / _____ Date (Mo/Day/Yr)

STEP 7: COMPLETED BY MEDICAL REVIEW OFFICER - SPLIT SPECIMEN

In accordance with applicable Federal requirements, my verification for the split specimen (if tested) is:

☐ **RECONFIRMED** for: _____ ☐ **TEST CANCELLED**

☐ **FAILED TO RECONFIRM** for: _____

REMARKS: _____

X _____ Signature of Medical Review Officer _____ (PRINT) Medical Review Officer's Name (First, MI, Last) _____ / _____ / _____ Date (Mo/Day/Yr)

COPY 4 - EMPLOYER COPY

Public Burden Statement

Public Burden Statement: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0930–0158. Public reporting burden for this collection of information is estimated to average 5 minutes/donor, 4 minutes/collector, 3 minutes/test facility and 3 minutes/

Medical Review Officer. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, to SAMHSA Reports Clearance Officer, 1 Choke Cherry Road, Room 7–1044, Rockville, Maryland 20857.

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE ACCESSION NO.

A. Employer Name, Address, I.D. No. B. MRO Name, Address, Phone No. and Fax No.

OMB No. 0930-0158

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT – Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) _____

G. Collection Site Address:

Collector Phone No. _____

Collector Fax No. _____

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark	Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark	☐ Observed, Enter Remark

REMARKS

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

SPECIMEN BOTTLE(S) RELEASED TO:

X _____ Signature of Collector

(PRINT) Collector's Name (First, MI, Last) _____ Date (Mo/Day/Yr) _____ Time of Collection AM PM

Name of Delivery Service

STEP 5: COMPLETED BY DONOR

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct.

X _____ Signature of Donor _____ (PRINT) Donor's Name (First, MI, Last) _____ Date (Mo/Day/Yr)

Daytime Phone No. (_____) _____ Evening Phone No. (_____) _____ Date of Birth _____ (Mo/Day/Yr)

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). – DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 6: COMPLETED BY MEDICAL REVIEW OFFICER - PRIMARY SPECIMEN

In accordance with applicable Federal requirements, my verification is:

☐ **NEGATIVE** ☐ **POSITIVE** for: _____ ☐ DILUTE

☐ **REFUSAL TO TEST** because – check reason(s) below: ☐ **TEST CANCELLED**

☐ ADULTERATED (adulterant/reason): _____

☐ SUBSTITUTED

☐ OTHER: _____

REMARKS: _____

X _____ Signature of Medical Review Officer _____ (PRINT) Medical Review Officer's Name (First, MI, Last) _____ Date (Mo/Day/Yr)

STEP 7: COMPLETED BY MEDICAL REVIEW OFFICER - SPLIT SPECIMEN

In accordance with applicable Federal requirements, my verification for the split specimen (if tested) is:

☐ **RECONFIRMED** for: _____ ☐ **TEST CANCELLED**

☐ **FAILED TO RECONFIRM** for: _____

REMARKS: _____

X _____ Signature of Medical Review Officer _____ (PRINT) Medical Review Officer's Name (First, MI, Last) _____ Date (Mo/Day/Yr)

COPY 5 - DONOR COPY

BILLING CODE 4162–20–C

Instructions for Completing the Federal Drug Testing Custody and Control Form

When Making Entries Use Black or Blue Ink Pen and Press Firmly

Collector ensures that the name and address of the HHS-certified Instrumented Initial Test Facility (IITF) or HHS-certified laboratory are on the top of the Federal CCF and the Specimen identification (I.D.). Number on the top of the Federal CCF matches the Specimen I.D. number on the label(s)/seal(s).

STEP 1:

• Collector ensures that the required information is in STEP 1. Collector enters a remark in STEP 2 if donor refuses to provide his/her SSN or Employee I.D. number.

• Collector gives collection container to Donor and instructs Donor to provide a specimen. Collector notes any unusual behavior or appearance of Donor in the remarks line STEP 2. If the Donor's conduct at any time during the collection process clearly indicates an attempt to tamper with the specimen, Collector notes the conduct in the remarks line in STEP 2 and takes action as required.

STEP 2:

• Collector checks specimen temperature within 4 minutes after receiving the specimen from Donor, and marks the appropriate temperature box in STEP 2. If the temperature is outside the acceptable range, Collector enters a remark in STEP 2 and takes action as required.

• Collector inspects the specimen and notes any unusual findings in the remarks line in STEP 2 and takes action as required. Any specimen with unusual physical characteristics (e.g., unusual color, presence of foreign objects or material, unusual odor) cannot be sent to an IITF and must be sent to an HHS-certified laboratory for testing, as required.

• Collector determines the volume of specimen in the collection container. If the volume is acceptable, Collector proceeds with the collection. If the volume is less than required by the Federal Agency, Collector takes action as required, and enters remarks in STEP 2. If no specimen is collected by the end of the collection process, Collector checks the *None Provided* box, enters a remark in STEP 2, discards Copy 1, and distributes remaining copies as required.

• Collector checks the Split or Single specimen collection box. If the collection is observed, Collector checks the Observed box and enters a remark in STEP 2.

STEP 3:

• Donor watches Collector pour the specimen from the collection container into the specimen bottle(s), place the cap(s) on the specimen bottle(s), and affix the label(s)/seal(s) on the specimen bottle(s).

• Collector dates the specimen bottle label(s) after placement on the specimen bottle(s).

• Donor initials the specimen bottle label(s) after placement on the specimen bottle(s).

• Collector turns to Copy 2 (Medical Review Officer Copy) and instructs the Donor to read and complete the certification statement in STEP 5 (signature, printed name, date, phone numbers, and date of birth). If Donor refuses to sign the certification statement, Collector enters a remark in STEP 2 on Copy 1.

STEP 4:

• Collector completes STEP 4 on Copy 1 (signature, printed name, date, time of collection, and name of delivery service), places the sealed specimen bottle(s) and Copy 1 in a leak-proof plastic bag, seals the bag, prepares the specimen package for shipment, and distributes the remaining CCF copies as required.

Privacy Act Statement: (For Federal Employees Only)

Submission of the requested information on the attached form is voluntary. However, incomplete submission of the requested information, refusal to provide a urine specimen, or substitution or adulteration of a specimen may result in delay or denial of your application for employment/appointment or may result in removal from the Federal service or other disciplinary action.

The authority for obtaining the urine specimen and identifying information contained herein is Executive Order 12564 (''Drug-Free Federal Workplace''), 5 U.S.C. Sec. 3301 (2), 5 U.S.C. Sec. 7301, and Section 503 of Public Law 100–71, 5 U.S.C. Sec. 7301 note. Under provisions of Executive Order 12564 and 5 U.S.C. 7301, test results may only be disclosed to agency officials on a need-to-know basis. This may include the agency Medical Review Officer, the administrator of the Employee Assistance Program, and a supervisor with authority to take adverse personnel action. This information may also be disclosed to a court where necessary to defend against a challenge to an adverse personnel action.

Submission of your SSN is not required by law and is voluntary. Your refusal to furnish your number will not result in the denial of any right, benefit, or privilege provided by law. Your SSN is solicited, pursuant to Executive Order 9397, for purposes of associating information in agency files relating to you and for purposes of identifying the urine specimen provided for testing for the presence of illegal drugs. If you refuse to indicate your SSN, a substitute number or other identifier will be assigned, as required, to process the specimen.

Public Burden Statement

Public Burden Statement: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0930–0158. Public reporting burden for this collection of information is estimated to average 5 minutes/donor, 4 minutes/collector, 3 minutes/test facility and 3 minutes/Medical Review Officer. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, to SAMHSA Reports Clearance Officer, 1 Choke Cherry Road, Room 7–1044, Rockville, Maryland 20857.

[FR Doc. E9–27371 Filed 11–16–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Thermal Aspects of Radio Frequency Exposure; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Thermal Aspects of Radio Frequency Exposure.'' The purpose of the workshop is to discuss thermal sensitivity and heating effects of different tissues.

Date and Time: The public workshop will be held on January 11 and 12, 2010, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the Gaithersburg Hilton, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Victoria Wagman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–6581, FAX: 301–796–5428, e-mail: *victoria.wagman@fda.hhs.gov*.

Registration: Mail or fax your registration information (including name, title, firm name, address, telephone and fax numbers) to the contact person by December 15, 2009. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Victoria Wagman by November 4, 2009.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm.*

Dated: November 6, 2009.

Jeffrey Shuren,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. E9–27513 Filed 11–16–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0017; Public Assistance Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0017; Public Assistance Program; FEMA Form 90–49, Request for Public Assistance; FEMA Form 90–91, Project Worksheet (PW); FEMA Form 90–91A, Project Worksheet—Damage Description and Scope of Work Continuation Sheet; FEMA Form 90–91B, Project Worksheet—Cost Estimate Continuation Sheet; FEMA Form 90–91C Project Worksheet—Maps and Sketches Sheet; FEMA Form 90–91D, Project Worksheet—Photo Sheet; FEMA Form 90–120, Special Considerations Questions; FEMA Form 121, PNP Facility Questionnaire; FEMA Form 90–123, Force Account Labor Summary Record; FEMA Form 90–124, Materials Summary Record; FEMA Form 90–125, Rented Equipment Summary Record; FEMA Form 90–126, Contract Work Summary Record; FEMA Form 90–127, Force Account Equipment Summary Record; and FEMA Form 90–128, Applicant's Benefits Calculation Worksheet.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the information collected by FEMA to make determinations for Public Assistance payments.

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Wash, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Clifford Brown, Program Specialist, Public Assistance Grant Program at (202) 646–4136 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The information collected is required for the Public Assistance (PA) Program eligibility determinations, grants management, and compliance with other Federal laws and regulations. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), authorizes financial and other forms of assistance to State and local governments and certain Private Nonprofit (PNP) organizations to support the response, recovery, and mitigation efforts following Presidentially declared major disasters and emergencies. 44 CFR Part 206 specifies the information collections necessary to facilitate the provision of assistance under the PA Program.

Pursuant to 44 CFR 206.202(c), the Grantee is required to submit a completed Request, FEMA Form 90–49 for each applicant who requests Public Assistance. Section 206.202(d) requires the applicant to submit a Project Worksheet (FEMA Forms 90–91, 90–91A, 90–91B, 90–91C, and 90–91D) for each project. The Project Worksheet must identify the eligible scope of work and must include a quantitative estimate for the eligible work. As a supplement to the Project Worksheet, FEMA also requires a Special Considerations form, FEMA Form 90–120, and an Applicant's Benefits Calculation Worksheet, FEMA Form 90–128. There are also various optional forms to aid the applicant in preparing and submitting the Project Worksheet.

Pursuant to 44 CFR 206.207, States are required to develop a State Administrative plan to administer the PA Program. The submission of the State Administrative Plan is required as a condition of receiving PA funding. FEMA must approve a State Administrative Plan before awarding any project grant assistance to a community or State applicant. The State must submit a revised plan annually. In addition, FEMA will request that the State amend its plan to meet current policy guidance in each disaster for which Public Assistance is included.

Pursuant to 44 CFR 206.204(c), the Grantee may to approve time extensions for the completion of projects for an additional six months for debris clearance and emergency work and an additional 30 months for permanent work. Time extensions beyond the Grantee's authority (i.e., beyond the extensions available under section 206.204(c)), must be submitted by the Grantee to FEMA, pursuant to 44 CFR

206.204(d). Such extensions require the Regional Administrator's approval in writing, pursuant to 44 CFR 206.204(d)(2).

A subgrantee may request additional funding through the Grantee to the Regional Administrator for cost overruns, pursuant to 44 CFR 206.204(e). All requests for the Regional Administrator's approval must contain sufficient documentation to support the eligibility of all claimed work and costs. The Grantee must include a written recommendation when forwarding the request to the Regional Administrator.

Pursuant to 44 CFR 206.204(f), progress reports must be submitted by the Grantee to the Regional Administrator on a quarterly basis. The Regional Administrator and Grantee negotiate the date for submission of the first report. Progress reports describe the status of those projects on which a final payment of the Federal share has not been made to the Grantee, and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions.

Once FEMA has made a determination on an application or project, the applicant may appeal that determination. If an applicant seeks appeal, 44 CFR 206.206 requires an applicant to submit a request for appeal, and the Grantee to submit a recommendation regarding the applicant's request. For those projects over $500,000.00 resulting from Hurricanes Katrina or Rita (DR–1603, DR–1604, DR–1605, DR–1606, and DR–1607), applicants may seek arbitration in lieu of an appeal. To seek arbitration, applicants must submit a request for arbitration which may be accompanied by a recommendation from the Grantee. Arbitration is authorized by Section 601 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) and 44 CFR 206.209.

Collection of Information

Title: Public Assistance Program.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0017.

Form Titles and Numbers: FEMA Form 90–49, Request for Public Assistance; FEMA Form 90–91, Project Worksheet (PW); FEMA Form 90–91A, Project Worksheet—Damage Description and Scope of Work Continuation Sheet; FEMA Form 90–91B, Project Worksheet—Cost Estimate Continuation Sheet; FEMA Form 90–91C Project Worksheet—Maps and Sketches Sheet; FEMA Form 90–91D, Project Worksheet—Photo Sheet; FEMA Form 90–120, Special Considerations Questions; FEMA Form 121, PNP Facility Questionnaire; FEMA Form 90–123, Force Account Labor Summary Record; FEMA Form 90–124, Materials Summary Record; FEMA Form 90–125, Rented Equipment Summary Record; FEMA Form 90–126, Contract Work Summary Record; FEMA Form 90–127, Force Account Equipment Summary Record; and FEMA Form 90–128, Applicant's Benefits Calculation Worksheet.

Abstract: The information collected is utilized by FEMA to make determinations for Public Assistance payments based on the information supplied by the respondents. The following listing provides the instances of information sharing and how the individual collection instruments provide necessary information for Public Assistance considerations. FEMA Form 90–49 identifies the applicant and initiates the request. FEMA Forms 90–91A, B, C and D identifies the scope of the work and cost estimates. FEMA Form 90–120 records factors that could affect the scope of the work. FEMA Form 90–121 is used to determine private non-profit applicant eligibility. FEMA Form 90–123 identifies employees from the applicant's own workforce who perform related work, and FEMA form 90–124 identifies materials of the applicant used on the project. FEMA Form 90–125 provides a list of materials rented for the project, FEMA Form 90–126 identifies contract costs for the project, FEMA Form 90–127 records the applicant's equipment costs and FEMA Form 90–128 provides the applicant's benefit costs for the project. The request for appeals, both first and second, and well as the arbitration requests allow for the applicant to request a review of determinations made.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 167,554 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total no. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	Request for Public Assistance/ FEMA Form 90–49.	56	212	11,872	0.167	1,983	$51.10	$101,312
State, Local or Tribal Government.	Project Worksheet (PW) and continuation forms/ FEMA Form 90–91 (including sheets 90–91A, 90–91B, 90–91C and 90–91D).	56	903	50,568	1.5	75,852	51.10	3,876,037
State, Local or Tribal Government.	Special Considerations Questions/FEMA Form 90–120.	56	903	50,568	0.5	25,284	51.10	1,292,012
State, Local or Tribal Government.	Applicant's Benefits Calculation Worksheet/ FEMA Form 90–128.	56	903	50,568	0.5	25,284	51.10	1,292,012

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total no. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	PNP Facility Questionnaire/FEMA Form 90–121.	56	94	5,264	0.5	2,632	51.10	134,495
State, Local or Tribal Government.	Force Account Labor Summary Record/FEMA Form 90–123.	56	94	5,264	0.5	2,632	51.10	134,495
State, Local or Tribal Government.	Materials Summary Record/FEMA Form 90–124.	56	94	5,264	0.25	1,316	51.10	67,248
State, Local or Tribal Government.	Rented Equipment Summary Record/FEMA Form 90–125.	56	94	5,264	0.5	2,632	51.10	134,495
State, Local or Tribal Government.	Contract Work Summary Record/FEMA Form 90–126.	56	94	5,264	0.5	2,632	51.10	134,495
State, Local or Tribal Government.	Force Account Equipment Summary Record/ FEMA Form 90–127.	56	94	5,264	0.25	1,316	51.10	67,248
State, Local or Tribal Government.	State Administrative Plan/No Form.	56	1	56	8	448	51.10	22,893
State, Local or Tribal Government.	State Administrative Plan—Submission of Amendments After a Declaration/No Form.	56	1	56	8	448	51.10	22,893
State, Local or Tribal Government.	Request for Time Extension/No Form.	56	47	2,632	0.5	1,316	51.10	67,248
State, Local or Tribal Government.	Request for Additional Funding Cost Overruns for Large Projects/No Form.	56	19	1,064	0.5	532	51.10	27,185
State, Local or Tribal Government.	Progress Report/ No Form.	56	4	224	100	22,400	51.10	1,144,640
State, Local or Tribal Government.	Request for First Appeal and Recommendation/No Form.	56	7	392	1	392	51.10	20,031
State, Local or Tribal Government.	Request for Second Appeal and Recommendation/No Form.	56	2	112	1	112	51.10	5,723
State, Local or Tribal Government.	Request for Arbitration/No Form.	171	1	171	1	171	51.10	8,738
State, Local or Tribal Government.	Recommendation for Arbitration.	4	43	172	1	172	51.10	8,789
Total	.....	56	.....	.....	.....	167,554	.....	$8,561,990

Estimated Cost: There are no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the

burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Lawann Johnson,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27542 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request; OMB No. 1660–NEW; Regional Catastrophic Preparedness Grant Program (RCPGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–19, RCPGP Investment Justification Template; FEMA Form 089–26, RCGCP (Sample) Detailed Project Plan Template; FEMA Form 089–17, RCPT Membership List.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the Regional Catastrophic Preparedness Grant Program (RCPGP).

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Wash, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to FEMA-POLICY@dhs.gov. Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Nicholas W. Peake, Planning Section Chief, National Preparedness Directorate, 202–786–9726 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the Regional Catastrophic Preparedness Grant Program (RCPGP) is to enhance catastrophic incident preparedness in Tier 1 and selected Tier 2 Urban Areas. RCPGP is intended to support coordination of regional all-hazard planning for catastrophic events, including the development of integrated planning communities, plans, protocols, and procedures to manage a catastrophic event. The collection of information for the RCPGP is mandated by Title III of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329). This program was originally created under the general grant and cooperative agreement making powers of the Secretary under 6 U.S.C. 112(b)(2).

The RCPGP information is to be used to produce improved catastrophic plans and planning processes by the states and local jurisdictions involved. Specifically, the plans and planning must address shortcomings in existing plans to address regional catastrophic planning issues, including the establishment of a regional network of plans to address catastrophic events. Plans will include a process for establishing an incident command structure and will also identify roles and responsibilities for each organization. Additionally, plans will identify detailed resource, personnel, and asset allocations in order to execute strategic objectives and translate strategic priorities into operational execution. These plans should apply existing capabilities and assist in assessing gaps in needed capabilities.

Collection of Information

Title: FEMA Preparedness Grants: Regional Catastrophic Preparedness Grant Program (RCPGP).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–19, RCPGP Investment Justification Template; FEMA Form 089–26, RCGCP (Sample) Detailed Project Plan Template; FEMA Form 089–17, RCPT Membership List.

Abstract: The RCPGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 1,762 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Annual number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	RCPGP Investment Justification Template, FEMA Form 089–19.	10	1	10	120	1,200	$50.08	$60,096.00
State, Local or Tribal Government.	RCPGP (Sample) Detailed Project Plan Template, FEMA Form 089–26.	10	1	10	40	400	50.08	20,032.00
State, Local or Tribal Government.	Regional Catastrophic Planning Team (RCPT) Charter Guidelines.	10	1	10	16	160	50.08	8,012.80
State, Local or Tribal Government.	RCPT Membership List, FEMA Form 089–17.	10	1	10	0.2 hr.	2	50.08	100.16
Total		.....	.....	40	.....	1,762	.....	88,240.96

Estimated Cost: There is no annual reporting recordkeeping cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27544 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; FEMA Preparedness Grants: Operation Stonegarden (OPSG)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–16, OPSG Operations Order; 089–20, Prioritization of Operations Orders.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the information collection activities required to administer the Operation Stonegarden (OPSG) Grant Program.

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Wash, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Alex Mrazik, Program Analyst, Grants Program Directorate, 202–786–9732 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: A State Homeland Security Grant Program (SHSP) was established to assist State, local, and tribal governments in preventing, preparing for, protecting against, and responding to acts of terrorism. As a component of the SHSP, Operation Stonegarden grants are established by Section 2004(a) of the Homeland Security Act of 2002 (6 U.S.C. 605), as amended by Section 101, Title I of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053). Title III of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329) provides a specific line item within the SHSP appropriation to fund the Operation Stonegarden grant.

Collection of Information

Title: FEMA Preparedness Grants: Operation Stonegarden (OPSG).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–16, OPSG Operations Order; 089–20, Prioritization of Operations Orders.

Abstract: The Operation Stonegarden grant is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments. The grant provides funding to designated localities to enhance cooperation and coordination between Federal, State, local, and tribal law enforcement agencies in a joint mission to secure the U.S. borders along routes of ingress from International borders to include travel corridors in States bordering Mexico and Canada, as well as States and territories with International water borders.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 25,038 Hours.

TABLE A.12: ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ form number	No. of respondents	No. of responses per respondent	Total no. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	Prioritization of Operation Orders/FEMA Form 089–20.	39	1	39	72	2,808	$37.80	$106,142.40
State, Local or Tribal Government.	OPSG Operations Order Report/FEMA Form 089–16.	39	1	39	570	22,230	$37.80	$840,294.00
Total	.....	39	.....	.....	.....	25,038	.....	$946,436.40

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27546 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; FEMA Preparedness Grants: Emergency Operations Center (EOC) Grant Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Preparedness Grants: Emergency Operations Center (EOC) Grant Program; FEMA Form 089–3, EOC Grant Program Investment Justification and Scoring Criteria; FEMA Form 089–18, Prioritization of Competitive Investment Justifications Template.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning information collection activities required to administer the Emergency Operations Center (EOC) Grant Program.

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov*. Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Alex Mrazik, Program Analyst, Grant Programs Directorate, 202–786–9732 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Emergency Operations Center (EOC) Grant Program is intended to improve emergency management and preparedness capabilities by supporting flexible, sustainable, secure, and interoperable EOCs with a focus on addressing identified deficiencies and needs. Fully capable emergency operations facilities at the State, territory, local and/or tribal levels are an essential element of a comprehensive national emergency management system and are necessary to ensure continuity of operations and continuity of government in major disasters caused by any hazard. Section 614 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196c), as amended by Section 202, Title II of the *Implementing Recommendations of the 9/11 Commission Act of 2007* (Pub. L. 110–053), states, ''The Administrator of the Federal Emergency Management Agency may make grants to States under this title for equipping, upgrading, and constructing State and local emergency operations centers.''

Collection of Information

Title: FEMA Preparedness Grants: Emergency Operations Center (EOC) Grant Program.

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–3, EOC Grant Program Investment Justification and Scoring Criteria; FEMA Form 089–18, Prioritization of Competitive Investment Justifications Template.

Abstract: The Emergency Operations Center (EOC) Grant Program is intended to improve emergency management and preparedness capabilities by supporting flexible, sustainable, secure, and interoperable EOCs with a focus on addressing identified deficiencies and needs. Fully capable emergency operations facilities at the State, territory, local and/or tribal levels are an essential element of a comprehensive national emergency management system and are necessary to ensure continuity of operations and continuity of government in major disasters caused by any hazard. The information collection activity is the collection of financial and programmatic information from State, territory, local, tribal, and/or for-profit partners pertaining to grant and cooperative agreement awards that include application, program narrative statements, grant award, performance information, outlay reports, grant funding and property management, and closeout information. The information enables FEMA and any federal partners to evaluate applications and make award decisions, monitor ongoing performance and manage the flow of federal funds, and to appropriately close out grants or cooperative agreements.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 5,908 Hours.

Type of respondent	Form name/ form number	Number of respondents	Number of responses per respondent	Annual number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	EOC Grant Program Investment Justification and Scoring Criteria, FEMA Form 089–3.	700	1	700	8	5,600	$37.80	$211,680.00
State, Local or Tribal Government.	Prioritization of Competitive Investment Justifications Template FEMA Form 089–18.	56	1	56	5.5	308	32.20	9,917.60
Total EOC.	.....	756	.....	.....	.....	5,908	.....	221,597.60

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27543 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; FEMA Preparedness Grants: Transit Security Grant Program (TSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–4, TSGP Investment Justification; FEMA Form 089–27, Fast Track Cost Training Matrix.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the information collection activities required to administer the FEMA Transit Security Grant Program (TSGP).

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under

docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov*. Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Alex Mrazik, Program Analyst, Grant Programs Directorate, 202–786–9732 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Transit Security Grant Program (TSGP) is a FEMA grant program that focuses on transportation infrastructure protection activities. The collection of information for TSGP is mandated by Section 1406, Title XIV of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1135), which directs the Secretary to establish a program for making grants to eligible public transportation agencies for security improvements. Additionally, information is collected in accordance with Section 1406(c) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (6 U.S.C. 1135(c)) which authorizes the Secretary to determine the requirements for grant recipients, including application requirements.

Collection of Information

Title: FEMA Preparedness Grants: Transit Security Grant Program (TSGP).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–4, TSGP Investment Justification; FEMA Form 089–27, Fast Track Cost Training Matrix.

Abstract: The TSGP is an important component of the Department of Homeland Security's effort to enhance the security of the Nation's critical infrastructure. The program provides funds to owners and operators of transit systems to protect critical surface transportation infrastructure and the traveling public from acts of terrorism, major disasters, and other emergencies.

Affected Public: Business or other for profit.

Estimated Total Annual Burden Hours: 5,135.25 hours.

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Annual number of responses	Total annual respondent cost
Business or other for profit.	TSGP Investment Justification/ FEMA Form 089–4.	123	1	17	2,091	$33.60	123	$70,257.60
Business or other for profit.	Fast Track Cost Training Matrix/ FEMA Form 089–27.	123	1	0.75	92.25	33.60	123	3,099.60
Business or other for profit.	Regional Transit Security Strategy.	123	1	24	2,952	33.60	123	99,187.2
Total	.....	369	.....	.....	5,135.25	.....	369	172,544.40

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27548 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; FEMA's Grants Reporting Tool (GRT)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form—None.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the collection of information necessary for the Grants Reporting Tool (GRT).

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov*. Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Paul Belkin, Program Analyst, Grant Programs Directorate, 202–786–9771 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: Title 44 CFR, part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government establishes uniform administrative rules for Federal grants and cooperative agreements and sub-awards to State, local and Indian tribal governments. FEMA has determined that in order to have consistent implementation of FEMA grant administration policies, to reduce duplicative and tedious data entry, to more effectively measure preparedness gains, and to streamline application submission and management for Grantees, Regions, State and local partners, it is necessary to automate the reporting processes.

The Homeland Security Presidential Directive (HSPD–5) related to the ''Management of Domestic Incidents'' gives the Secretary the authority to gather information related to domestic incidents and mandates the Secretary provide standardized, quantitative reports on the readiness and preparedness of the Nation—at all levels of government—to prevent, prepare for, respond to, and recover from domestic incidents.

The Homeland Security Presidential Directive (HSPD–8) related to ''National Preparedness'' authorizes the Federal government to deliver Federal preparedness awards to the States. Applicants must apply the funds to the highest priority preparedness requirements at the appropriate level of government. Federal preparedness assistance is based upon the adoption of statewide comprehensive all-hazards preparedness strategies, consistent with the national preparedness goal. HSPD–8 authorizes the Secretary to review and approve strategies submitted by the States and establishes the requirement that applicants must have adopted approved statewide strategies in order to receive Federal grant funds. Further, HSPD–8 authorizes Federal departments and agencies to develop appropriate mechanisms to ensure rapid obligation and disbursement of funds from their programs to the States, such as the GRT. HSPD–8 mandates Federal departments and agencies report annually on the obligation, expenditure status, and the use of funds associated with Federal preparedness assistance programs.

Section 430 of the Homeland Security Act of 2002, as amended (6 U.S.C. 238), authorized the Office for Domestic Preparedness (ODP, which was transferred to FEMA by the Post Katrina Emergency Management Reform Act of 2006, Pub. L. 109–295) to have primary responsibility for national preparedness, including directing and supervising terrorism preparedness grant programs for emergency response providers and incorporating the Strategy priorities into planning guidance on an agency level for the overall national preparedness efforts. ODP (now FEMA) was authorized to develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

Collection of Information

Title: FEMA's Grants Reporting Tool (GRT).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form—None.

Abstract: GRT is the collection of financial and programmatic information from States and local governments pertaining to grant and cooperative agreement awards. The information enables FEMA to evaluate applications and make award decisions, monitor ongoing performance and manage the flow of Federal funds, and to appropriately close out grants or cooperative agreements. GRT supports the information collection needs of each grant program processed in the system.

Affected Public: State, Local, or Tribal Government.

Estimated Total Annual Burden Hours: 2,492 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Total No. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate *	Total annual respondent cost
State, Local or Tribal Government.	Initial Strategy Implementation Plan (ISIP).	56	1	56	8	448	$32.20	$14,425.60
State, Local or Tribal Government.	Biannual Strategy Implementation Report (BSIR).	56	2	112	15.25	1,708	32.20	54,997.60
State, Local or Tribal Government.	Investment Justification (IJ).	56	1	56	6	336	32.20	10,819.20
Total		56	.....	.....	.....	2,492	.....	80,242.40

Estimated Cost: There is no annual reporting recordkeeping cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27552 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0025; FEMA Grants Administration/ND Grants System

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0025; FEMA Form 20–15, Budget Information—Construction; 20–16, 20–16A, 20–16B, 20–16C, Summary Sheet for Assurances and Certifications; 20–17, Outlay Report and Request for Reimbursement for Construction Program; 20–18, Report of Government Property; 20–19, Reconciliation of Grants and Cooperative Agreements; 20–20, Budget Information—Non-construction; 76–10, Obligating Document for Award/Amendment; 089–9, Detailed Budget Worksheet.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the collection of financial and administrative information required to evaluate an application for one or more of the grants that the Federal Emergency Management Agency administers.

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Wash., DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Hutchinson, Staff Accountant, Grant Programs Directorate, 202–786–9536 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: Title 44 CFR, part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government, establishes uniform

administrative rules for Federal grants and cooperative agreements and sub-awards to State, local and Indian tribal governments. FEMA has determined that in order to have consistent implementation of FEMA grant administration policies and to minimize the administrative disruption for State and local partners, it is necessary to standardize FEMA grant administration forms used in FEMA grant programs. The forms are designed to collect information of an administrative or financial nature. With Nondisaster (ND) Grants, FEMA seeks to meet the intent of the E-Government initiative, authorized by Public Law 106–107 passed on November 20, 1999 that requires that all government agencies both streamline grant application processes and provide for the means to electronically create, review, and submit a grant application via the Internet.

Collection of Information

Title: FEMA Grants Administration/ND Grants System.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0025.

Form Titles and Numbers: FEMA Form 20–15, Budget Information—Construction; 20–16, 20–16A, 20–16B, 20–16C, Summary Sheet for Assurances and Certifications; 20–17, Outlay Report and Request for Reimbursement for Construction Program; 20–18, Report of Government Property; 20–19, Reconciliation of Grants and Cooperative Agreements; 20–20, Budget Information—Non-construction; 76–10, Obligating Document for Award/Amendment; 089–9, Detailed Budget Worksheet.

Abstract: The grant programs included in this collection are important tools among a comprehensive set of measures to help strengthen the Nation against risk associated with potential terrorist attacks, natural and other disasters, as well as to plan and implement mitigation efforts to prevent such occurrences. FEMA uses the information to evaluate applications for grants for various disaster related and non-disaster grant opportunities which it administers. FEMA is also implementing the use of the ND Grants System to electronically accept grant applications from a subset of all non-disaster grants currently administered by FEMA with the intention of expanding this function to other non-disaster grants as soon as possible.

Affected Public: State, Local or Tribal Governments; Not-for-profit institutions; Business or other for-profit.

Estimated Total Annual Burden Hours: 2,072,220 Hours.

FEMA Administrative Forms

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate ($)	Total annual respondent cost ($)
Disaster Programs Public Assistance Grants								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	56	1	56	9.7	543	36.15	19,636.68
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/FEMA Forms 20–16, A, B, C.	56	1	56	1.7	95	36.15	3,441.48
Subtotal				112		638		23,078.16
Multiply above subtotal by 57—represents the number of disasters each grant applies to								
Total				6,384		36,389		1,315,455.12
S Crisis Counseling								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	17	1	17	9.7	165	55.30	9,118.97
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/FEMA Forms 20–16, A, B, C.	17	1	17	1.7	29	55.30	1,598.17
Subtotal				34		194		10,717.14
Multiply above subtotal by 57—represents the number of disasters each grant applies to								
Total				1,938		11,047		610,876.98
Other Needs Assistance								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	40	1	40	9.7	388	43.11	16,726.68

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate ($)	Total annual respondent cost ($)
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	40	1	40	1.7	68	43.11	2,931.48
Subtotal	.....	.....	.....	80	.....	456	.....	19,658.16
Multiply above subtotal by 57—represents the number of disasters each grant applies to								
Total	.....	.....	.....	4,560	.....	25,992	.....	1,120,515.12
Hazard Mitigation Grant Program								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	52	15	780	9.7	7,566	42.00	317,772.00
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	52	1	52	1.7	88	42.00	3,712.80
State, Local or Tribal Government.	Outlay Report and Request for Reimbursement for Construction Programs/FEMA Form 20–17.	52	15	780	17.2	13,416	42.00	563,472.00
State, Local or Tribal Government.	Report of Government Property/ FEMA Form 20–18.	52	6	312	4.2	1,310	42.00	55,036.80
State, Local or Tribal Government.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	52	6	312	0.084	26	42.00	1,100.74
Subtotal	.....	.....	.....	2,236	.....	22,407	.....	941,094.34
Multiply total by 57—represents number of disasters grant applies to								
Total	.....	.....	.....	127,452	.....	1,277,199	.....	53,642,377.15
Fire Management Assistance Grant Program								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	36	4	144	9.7	1,397	37.58	52,491.74
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	36	4	144	1.7	245	37.58	9,199.58
State, Local or Tribal Government.	Budget Information—Construction Forms/FEMA Form 20–15.	36	4	144	17.2	2,477	37.58	93,078.14
State, Local or Tribal Government.	Report of Government Property/ FEMA Form 20–18.	36	4	144	4.2	605	37.58	22,728.38
State, Local or Tribal Government.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	36	4	144	0.084	12	37.58	454.57
Subtotal	.....	.....	.....	720	.....	4,735	.....	177,952.42
Multiply total by 94—represents number of disasters grant applies to								
Total	.....	.....	.....	67,680	.....	445,118	.....	16,727,527.83

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate ($)	Total annual respondent cost ($)
Totals for Disaster-Related Grants				208,014		1,795,745		73,416,752.20
Non-Disaster Grant Programs								
National Urban Search and Rescue Response System (97.025)								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	28	1	28	9.7	272	45.74	12,422.98
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	28	1	28	1.7	48	45.74	2,177.22
State, Local or Tribal Government.	Obligating Document for Awards/ Amendments/ FEMA Form 76–10A.	28	1	28	1.2	34	45.74	1,536.86
Total				84		353		16,137.07
Community Assistance Program—State Support Services Element (97.023)								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	56	1	56	9.7	543	36.15	19,636.68
State, Local or Tribal Government.	Budget Information—Construction/FEMA Form 20–15.	56	1	56	17.2	963	36.15	34,819.68
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	56	1	56	1.7	95	36.15	3,441.48
State, Local or Tribal Government.	Obligating Document for Awards/ Amendments/ FEMA Form 76–10A.	56	1	56	1.2	67	36.15	2,429.28
State, Local or Tribal Government.	Report of Government Property/ FEMA Form 20–18.	56	1	56	4.2	235	36.15	8,502.48
State, Local or Tribal Government.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	56	1	56	0.084	5	36.15	170.05
Total				336		1,909		68,999.65
Chemical Stockpile Emergency Preparedness Program (97.040)								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	10	1	10	9.7	97	31.91	3,095.27
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	10	1	10	1.7	17	31.91	542.47
State, Local or Tribal Government.	Obligating Document for Awards/ Amendments/ FEMA Form 76–10A.	10	1	10	1.2	12	31.91	382.92
State, Local or Tribal Government.	Report of Government Property/ FEMA Form 20–18.	10	1	10	4.2	42	31.91	1,340.22

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate ($)	Total annual respondent cost ($)
State, Local or Tribal Government.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	10	1	10	0.084	1	31.91	26.80
Total				50		169		5,387.68
National Dam Safety Program								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	51	1	51	9.7	495	36.15	17,883.41
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	51	1	51	1.7	87	36.15	3,134.21
State, Local or Tribal Government.	Obligating Document for Awards/ Amendments/ FEMA Form 76–10A.	51	1	51	1.2	61	36.15	2,212.38
Total				153		643		23,229.99
Earthquake Consortium (EqC) (97.082)								
Total				0		0		0.00
Disaster Donations Management Program (AIDMATRRIX) (97.098)								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	1	1	1	9.7	10	36.15	350.66
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	1	1	1	1.7	2	36.15	61.46
Total				2		11		412.11
Alternative Housing Pilot Program (AHPP) (97.087)								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	4	1	4	9.7	39	36.15	1,402.62
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	4	1	4	1.7	7	36.15	245.82
Total				8		46		1,648.44
Cooperating Technical Partners (CTP) (97.045)								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	20	1	20	9.7	194	36.15	7,013.10
State, Local or Tribal Government.	Budget Information—Construction/FEMA Form 20–15.	20	1	20	17.2	344	36.15	12,435.60

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate ($)	Total annual respondent cost ($)
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	20	1	20	1.7	34	36.15	1,229.10
Total	.....	.....	.....	60	.....	572	.....	20,677.80
Map Modernization Management Support (MMMS) (97.070)								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	20	1	20	9.7	194	36.15	7,013.10
State, Local or Tribal Government.	Budget Information—Construction/FEMA Form 20–15.	20	1	20	17.2	344	36.15	12,435.60
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	20	1	20	1.7	34	36.15	1,229.10
Total	.....	.....	.....	60	.....	572	.....	20,677.80
New Repetitive Flood Claims (RFC) (97.092)								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	56	1	56	9.7	543	36.15	19,636.68
State, Local or Tribal Government.	Obligating Document for Awards/ Amendments/ FEMA Form 76–10A.	56	1	56	1.2	67	36.15	2,429.28
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	56	1	56	1.7	95	36.15	3,441.48
State, Local or Tribal Government.	Report of Government Property/ FEMA Form 20–18.	56	1	56	4.2	235	36.15	8,502.48
State, Local or Tribal Government.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	56	1	56	0.084	5	36.15	170.05
Total	.....	.....	.....	280	.....	946	.....	34,179.97
Flood Mitigation Assistance (FMA) (97.029)								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	56	3	168	9.7	1,630	36.15	58,910.04
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/ FEMA Forms 20–16, A, B, C.	56	1	56	1.7	95	36.15	3,441.48
State, Local or Tribal Government.	Obligating Document for Awards/ Amendments/ FEMA Form 76–10A.	56	3	168	1.2	202	36.15	7,287.84
State, Local or Tribal Government.	Report of Government Property/ FEMA Form 20–18.	56	1	56	4.2	235	36.15	8,502.48

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate ($)	Total annual respondent cost ($)
State, Local or Tribal Government.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	56	1	56	0.084	5	36.15	170.05
Total	.....	.....	.....	504	.....	2,166	.....	78,311.89
Pre-Disaster Mitigation (PDM) (97.047)								
State, Local or Tribal Government.	Budget Information—Construction/FEMA Form 20–15.	56	1	56	17.2	963	36.15	34,819.68
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	56	2	112	9.7	1,086	36.15	39,273.36
State, Local or Tribal Government.	Obligating Document for Awards/Amendments/FEMA Form 76–10A.	56	2	112	1.2	134	36.15	4,858.56
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/FEMA Forms 20–16, A, B, C.	56	2	112	1.7	190	36.15	6,882.96
State, Local or Tribal Government.	Outlay Report and Request for Reimbursement for Construction Programs/FEMA Form 20–17.	56	20	1,120	17.2	19,264	36.15	696,393.60
State, Local or Tribal Government.	Report of Government Property/FEMA Form 20–18.	56	2	112	4.2	470	36.15	17,004.96
State, Local or Tribal Government.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	56	2	112	0.084	9	36.15	340.10
Total	.....	.....	.....	1,736	.....	22,118	.....	799,573.22
Assistance to Firefighters Grant (AFG) (97.044)								
Not-for-profit institutions.	Budget Information—Non-construction Programs/FEMA Form 20–20.	4,948	2	9,896	9.7	95,991	38.50	3,695,661.20
Not-for-profit institutions.	Obligating Document for Awards/Amendments/FEMA Form 76–10A.	4,948	2	9,896	1.2	11,875	38.50	457,195.20
Not-for-profit institutions.	Assurances and Summary Sheet for Assurances/FEMA Forms 20–16, A, B, C.	4,948	1	4,948	1.7	8,412	38.50	323,846.60
Not-for-profit institutions.	Outlay Report and Request for Reimbursement for Construction Programs/FEMA Form 20–17.	4,948	1	4,948	17.2	85,106	38.50	3,276,565.60
Not-for-profit institutions.	Report of Government Property/FEMA Form 20–18.	4,948	1	4,948	4.2	20,782	38.50	800,091.60

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate ($)	Total annual respondent cost ($)
Not-for-profit institutions.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	4,948	1	4,948	0.084	416	38.50	16,001.83
Total				39584		222,581		8,569,362.03
Fire Prevention and Safety (FP&S) (97.044)								
Not-for-profit institutions.	Budget Information—Non-construction Programs/FEMA Form 20–20.	218	2	436	9.7	4,229	38.50	162,824.20
Not-for-profit institutions.	Obligating Document for Awards/Amendments/FEMA Form 76–10A.	218	2	436	1.2	523	38.50	20,143.20
Not-for-profit institutions.	Assurances and Summary Sheet for Assurances/FEMA Forms 20–16, A, B, C.	218	1	218	1.7	371	38.50	14,268.10
Not-for-profit institutions.	Outlay Report and Request for Reimbursement for Construction Programs/FEMA Form 20–17.	218	1	218	17.2	3,750	38.50	144,359.60
Not-for-profit institutions.	Report of Government Property/FEMA Form 20–18.	218	1	218	4.2	916	38.50	35,250.60
Not-for-profit institutions.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	218	1	218	0.084	18	38.50	705.01
Total				1,744		9,807		377,550.71
Staffing for Adequate Fire and Emergency Response (SAFER) (97.083)								
Not-for-profit institutions.	Budget Information—Non-construction Programs/FEMA Form 20–20.	262	2	524	9.7	5,083	44.24	224,863.07
Not-for-profit institutions.	Obligating Document for Awards/Amendments/FEMA Form 76–10A.	262	2	524	1.2	629	44.24	27,818.11
Not-for-profit institutions.	Assurances and Summary Sheet for Assurances/FEMA Forms 20–16, A, B, C.	262	1	262	1.7	445	44.24	19,704.50
Not-for-profit institutions.	Outlay Report and Request for Reimbursement for Construction Programs/FEMA Form 20–17.	262	1	262	17.2	4,506	44.24	199,363.14
Not-for-profit institutions.	Report of Government Property/FEMA Form 20–18.	262	1	262	4.2	1,100	44.24	48,681.70
Not-for-profit institutions.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	262	1	262	0.084	22	44.24	973.63
Total				2096		11,786		521,404.15

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate ($)	Total annual respondent cost ($)
New Severe Repetitive Loss (SRL)								
State, Local or Tribal Government.	Budget Information—Non-construction Programs/FEMA Form 20–20.	56	1	56	9.7	543	36.15	19,636.68
State, Local or Tribal Government.	Obligating Document for Awards/Amendments/FEMA Form 76–10A.	56	1	56	1.2	67	36.15	2,429.28
State, Local or Tribal Government.	Assurances and Summary Sheet for Assurances/FEMA Forms 20–16, A, B, C.	56	1	56	1.7	95	36.15	3,441.48
State, Local or Tribal Government.	Report of Government Property/FEMA Form 20–18.	56	1	56	4.2	235	36.15	8,502.48
State, Local or Tribal Government.	Reconciliation of Grants and Cooperative Agreements/FEMA Form 20–19.	56	1	56	0.084	5	36.15	170.05
Total				280		946		34,179.97
Homeland Security Grant Program (HSGP) (97.067)								
State, Local or Tribal Government.	ND Grants System Uploading Documents.	56	1	56	0.167	9	32.20	301.13
Total				56		9		301.13
Interoperable Emergency Communications Grant Program (IECGP) (97.001)								
State, Local or Tribal Government.	ND Grants System Uploading Documents.	56	1	56	0.167	9	36.15	338.07
Total				56		9		338.07
Emergency Operations Center Grant Program (EOC) (97.052)								
State, Local or Tribal Government.	ND Grants System Uploading Documents.	56	1	56	0.167	9	36.15	338.07
Total				56		9		338.07
Urban Areas Security Initiative Nonprofit Security Grant Program (USAI NSGP) (97.008)								
State, Local or Tribal Government.	ND Grants System Uploading Documents.	56	1	56	0.167	9	36.15	338.07
Total				56		9		338.07
Operation Stonegarden (OPSG) (97.067)								
State, Local or Tribal Government.	ND Grants System Uploading Documents.	39	1	39	0.167	7	37.80	246.19
Total				39		7		246.19
Transit Security Grant Program (TSPG) (97.075)								
Business or other for profit.	Detailed Budget Worksheet/FEMA Form 089–9.	123	1	123	0.28	34.44	33.60	1,157.18
State, Local or Tribal Government.	ND Grants System Uploading Documents.	123	1	123	0.167	20.541	33.60	690.18
Total				246		55		1,847.36

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate ($)	Total annual respondent cost ($)
Port Security Grant Program (PSGP) (97.056)								
State, Local or Tribal Government.	Detailed Budget Worksheet/FEMA Form 089–9.	240	1	240	0.27	65	33.60	2,177.28
State, Local or Tribal Government.	ND Grants System Uploading Documents.	240	1	240	0.167	40.08	33.60	1,346.69
Total				480		105		3,523.97
Freight Rail Security Grant Program (FRSGP)								
State, Local or Tribal Government.	Detailed Budget Worksheet/FEMA Form 089–9.	400	1	400	3.3	1,320	30.31	40,009.20
State, Local or Tribal Government.	ND Grants System Uploading Documents.	400	1	400	0.167	66.8	30.31	2,024.71
Total				800		1,387		42,033.91
Trucking Security Program (TSP) (97.059)								
Business or other for profit.	Detailed Budget Worksheet/FEMA Form 089–9.	25	1	25	0.02	1	26.60	13.30
Business or other for profit.	ND Grants System Uploading Documents.	25	1	25	0.167	4.175	26.60	111.06
Total				50		5		124.36
Intercity Bus Security Grant Program (IBSGP) (97.057)								
Business or other for-profit.	Detailed Budget Worksheet/FEMA Form 089–9.	56	1	56	0.08	4	25.97	116.35
Business or other for profit.	ND Grants System Uploading Documents.	56	1	56	0.167	9.352	25.97	242.87
Total				112		14		359.22
Regional Catastrophic Preparedness Grant Program (RCPGP) (97.111)								
State, Local or Tribal Government.	Detailed Budget Worksheet/FEMA Form 089–9.	10	1	10	0.67	7	50.08	335.54
State, Local or Tribal Government.	ND Grants System Uploading Documents.	10	1	10	0.167	1.67	50.08	83.63
Total				20		8		419.17
Emergency Management Performance Grants (EMPG) (97.042)								
State, Local or Tribal Government.	Detailed Budget Worksheet/FEMA Form 089–9.	58	1	58	3.33	193	32.20	6,219.11
State, Local or Tribal Government.	ND Grants System Uploading Documents.	58	1	58	0.167	9.686	32.20	311.89
Total				116		203		6,531.00
Buffer Zone Protection Program (BZPP) (97.078)								
State, Local or Tribal Government.	ND Grants System Uploading Documents.	56	1	56	0.167	9	36.15	338.07
Total				56		9		338.07
Driver License Security Grant Program (DLSGP) (90.089)								
State, Local or Tribal Government.	Detailed Budget Worksheet/FEMA Form 089–9.	56	1	56	0.25	14	32.20	450.80

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate ($)	Total annual respondent cost ($)
State, Local or Tribal Government.	ND Grants System Uploading Documents.	56	1	56	0.167	9.352	32.20	301.13
Total				112		23		751.93
Total for Non-Disaster Grant Programs				49,232		276,476		10,629,223.02
Totals for Disaster-Related Grants				208,014		1,795,745		73,416,752.20
Total for all Grant Programs				257,246		2,072,220		84,045,975.22

Estimated Cost: There are no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27554 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; FEMA Preparedness Grants: Interoperable Emergency Communications Grant Program (IECGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–2, IECGP Investment Justification.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning information collection activities required to administer the Interoperable Emergency Communications Grant Program (IECGP).

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Wash, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Alex Mrazik, Program Analyst, Grant Programs Directorate, 202–786–9732 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Interoperable Emergency Communications Grant Program (IECGP) is mandated by Section 1809 of the Homeland Security Act of 2002 (6 U.S.C. 579), as amended by Section 301, Title III of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053), which states the Secretary shall establish the Interoperable Emergency Communications Grant Program to make grants to States to carry out initiatives to improve local, tribal, statewide, regional, national and, where appropriate, international interoperable emergency communications, including communications in collective response to natural disasters, acts of terrorism, and other man-made disasters. Further, the legislation authorizes the FEMA

Administrator to administer the IECGP, mandates that the use of grants is consistent with guidance established by the Director of Emergency Communications, and mandates a State receiving an IECGP grant use the funds to implement that State's Statewide Interoperability Plan required under section 7303(f) of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 194(f)) and approved under subsection (e) and to assist with activities determined by the Secretary to be integral to interoperable emergency communications.

Collection of Information

Title: FEMA Preparedness Grants: Interoperable Emergency Communications Grant Program (IECGP).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–2, IECGP Investment Justification.

Abstract: The IECGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/State/local planning, operations, and investments. Respondents are comprised of State, local, and tribal entities.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 37,362 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/ form number	No. of respondents	No. of responses per respondent	Total no. of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	IECGP Investment Justification/FEMA Form 089–2.	56	1	56	547	30,632	$36.15	$1,107,346.80
State, Local or Tribal Government.	SCIP Implementation Report/ No Form.	56	1	56	100	5,600	$36.15	$202,440.00
State, Local or Tribal Government.	Communication System Life Cycle/No Form.	56	1	56	25	1,400	$36.15	$50,610.00
Total		39				37,632		$1,360,396.80

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27557 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; FEMA Preparedness Grants; Driver's License Security Grant Program (DLSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; No Form.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning information collection activities required to administer the Driver's License Security Grant Program (DLSGP).

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov*. Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Alex Mrazik, Program Analyst, Grants Program Directorate, 202–786–9732 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

SUPPLEMENTARY INFORMATION: FEMA's Driver's License Security Grant Program (DLSGP, formerly known as REAL ID) is an important part of the Administration's larger, coordinated effort—known as the Federal Investment Strategy—to strengthen homeland security preparedness against risks associated with potential terrorist attacks. The purpose of DLSGP is to prevent terrorism, reduce fraud, and improve the reliability and accuracy of personal identification documents States and territories issue. DLSGP is authorized by section 204, Title II of the REAL ID Act of 2005, Division B of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Pub. L. 109–13) (49 U.S.C. 30301) The program utilizes the ''Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes: Final Rule,'' January 29, 2008, 6 CFR part 37.

Collection of Information

Title: FEMA Preparedness Grants; Driver's License Security Grant Program (DLSGP).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: No Forms.

Abstract: The DLSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments. The Program Narrative and Program Management Capabilities Work Plan provide the State with a Driver's License Security Grant Program implementation roadmap and tells the Department of Homeland Security (DHS) how grant funding will be used. The Program Narrative is a separate document from the Program Management Capabilities Work Plan, both of which help to assess program implementation potential and a State's management procedures and capabilities. The Program Narrative and the Program Management Capabilities Work Plan are required upon grant application and are reviewed by FEMA and the DHS Policy Office to determine funding decisions and assists with project oversight.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 168 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Annual number of responses	Total annual respondent cost
State, Local or Tribal Government.	Program Narrative and Program Management Capabilities Work Plan.	56	1	3	168	$32.20	56	$5,409.60
Total	.....	56	.....	.....	168	.....	56	$5,409.60

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27560 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; FEMA Preparedness Grants: Homeland Security Grant Program (HSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–1, HSGP Investment Justification.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the collection of information to administer the Homeland Security Grant Program (HSGP).

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Wash, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov*. Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Stacey Street, Program Analyst, Grant Programs Directorate, 202–786–9728 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA's Homeland Security Grant Program (HSGP) is an important part of the Administration's larger, coordinated effort—known as the Federal Investment Strategy—to strengthen homeland security preparedness. The HSGP implements objectives addressed in a series of post-9/11 laws, strategy documents, plans, and Homeland Security Presidential Directives. FEMA management requirements are incorporated into the Homeland Security Grant Program and reflect changes mandated in the Homeland Security Act of 2002 (6 U.S.C. 101 *et seq.*), as amended by the Implementing

Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053). Additional statutory requirements are outlined in the 'Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009' (Pub. L. 110–329).

Collection of Information

Title: FEMA Preparedness Grants: Homeland Security Grant Program (HSGP).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–1, HSGP Investment Justification.

Abstract: The HSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments. The Homeland Security Grant Program (HSGP) is a primary funding mechanism for building and sustaining national preparedness capabilities. HSGP is comprised of four separate grant programs: the State Homeland Security Program (SHSP), the Urban Areas Security Initiative (UASI), the Metropolitan Medical Response Systems (MMRS), and the Citizen Corps Program (CCP). Together, these grants fund a range of preparedness activities, including planning, organization, equipment purchase, training, exercises, and management and administration costs.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 308,136 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Annual No. of responses	Total annual respondent cost
State, Local or Tribal Government	HSGP Investment Justification, FEMA Form 089–1.	56	1	1482.5	83,020	$32.20	56	$2,673,244.00
State, Local or Tribal Government	Submission of written letter to DHS requesting tribal staff participation for overtime costs and fusion centers.	4	1	2	8	32.20	4	257.60
State, Local or Tribal Government	Documentation from SAA on how operational overtime UASI funds held by State would support urban area.	10	2	4	80	32.20	20	2,576.00
State, Local or Tribal Government	Multi-year Training & Exercise Plan.	56	1	42	2,352	32.20	56	75,734.40
State, Local or Tribal Government	Urban Area Working Group Structure, including Points of Contact.	62	2	1354	167,896	37.80	124	6,346,468.80
State, Local or Tribal Government	UASI governance charter.	33	2	250	16,500	37.80	66	623,700.00
State, Local or Tribal Government	UASI strategy	33	2	500	33,000	37.80	66	1,247,400.00
State, Local or Tribal Government	UAWG spending consensus.	33	2	80	5,280	37.80	66	199,584.00
Total HSGP		287			308,136		458	11,168,964.00

Estimated Cost: There is no annual reporting recordkeeping cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27559 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; FEMA Preparedness Grants: Port Security Grant Program (PSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–5, PSGP Investment Justification; FEMA Form 089–21, Ferry Investment Justification.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the information collection activities required to administer the Port Security Grant Program.

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Alex Mrazik, Program Analyst, Grants Program Directorate, 202–786–9732 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or *e-mail address: FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Port Security Grants Program (PSGP) provides grant funding to port areas for the protection of critical port infrastructure from terrorism. PSGP funds are primarily intended to assist ports in enhancing maritime domain awareness, enhancing risk management capabilities to prevent, detect, respond to and recover from attacks involving improvised explosive devices (IEDs), weapons of mass destruction (WMDs), and other non-conventional weapons, as well as training and exercises and Transportation Worker Identification Credential (TWIC) implementation. Section 102 of the Maritime Transportation Security Act of 2002, as amended (46 U.S.C. 70107), established the PSGP to provide for the establishment of a grant program for making a fair and equitable allocation of funds to implement Area Maritime Transportation Security Plans and facility security plans among port authorities, facility operators, and State and local government agencies required to provide port security services.

Collection of Information

Title: FEMA Preparedness Grants: Port Security Grant Program (PSGP).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–5, PSGP Investment Justification;

FEMA Form 089–21, Ferry Investment Justification.

Abstract: The PSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 8,520 hours.

Type of respondent	Form name/ form number	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	PSGP Investment Justification/FEMA Form 089–5.	235	1	16	3,760	$33.60	$126,336

Type of respondent	Form name/ form number	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	Ferry Investment Justification/ FEMA Form 089–21.	5	1	16	80	33.60	2,688
State, Local or Tribal Government.	Concept of Operations (CONOPS).	55	1	4	220	33.60	7,392
State, Local or Tribal Government.	Port-Wide Risk Management/ Mitigation Plan (PWRMP).	55	1	80	4,400	37.80	166,320
State, Local or Tribal Government.	PSGP—Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA).	30	1	2	60	37.80	2,268
Total	.....	380	.....	.....	8,520	.....	305,004.00

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27558 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW, FEMA Preparedness Grants: Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–25, NSGP Investment Justification and Selection Criteria; FEMA Form 089–24, NSGP State—UAWG Prioritization of Investment Justifications.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the information collection activities for the Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP).

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the

Administration Navigation Bar of *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Stacey Street, Program Analyst, Grants Programs Directorate, 202–786–9728 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

SUPPLEMENTARY INFORMATION: FEMA's Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program (NSGP) provides funding support for target hardening activities to nonprofit organizations that are at high risk of terrorist attack. The collection of information for the UASI Nonprofit Security Grant Program is mandated by Section 2003 of the Homeland Security Act of 2002 (6 U.S.C. 604), as amended by Section 101, Title I of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053).

Collection of Information

Title: FEMA Preparedness Grants: Urban Areas Security Initiative (UASI) Nonprofit Security Grant Program.

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–25, NSGP Investment Justification and Selection Criteria; FEMA Form 089–24, NSGP State—UAWG Prioritization of Investment Justifications.

Abstract: The NSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments. Information collected provides narrative details on proposed activities (Investments) that will be accomplished with grant funds and prioritizes the list of applicants from each requesting State. This program is designed to promote coordination and collaboration in emergency preparedness activities among public and private community representatives, State and local government agencies, and Citizen Corps Councils.

Affected Public: Not-for-profit Institutions; State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 61,275 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Annual number of responses	Total annual respondent cost
Not-for-profit Institutions.	NSGP Investment Justification and Selection Criteria FEMA Form 089–25.	700	1	84	58,800	$30.66	700	$1,802,808.00
State, Local or Tribal Government.	NSGP State—UAWG Prioritization of Investment Justifications FEMA Form 089–24.	33	1	75	2,475	32.20	33	79,695.00
Total	.....	733	.....	.....	61,275	.....	733	1,882,503.00

Estimated Cost: There are no recordkeeping, Operation and Maintenance, Capital and Start-up costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27555 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; FEMA Emergency Management Performance Grants (EMPG)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; No forms.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the information collection activities required to administer the FEMA Emergency Management Performance Grants (EMPG).

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://;www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Wash, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov*. Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Alex Mrazik, Program Analyst, Grant Programs Directorate, 202–786–9732 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Emergency Management Performance Grants Program (EMPG) helps facilitate a national and regional all-hazards approach to emergency response, including the development of a comprehensive program of planning, training, and exercises that provides a foundation for effective and consistent response to any threatened or actual disaster or emergency, regardless of the cause. Section 662 of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 762), as amended by section 201, Title II of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–053), empowers the FEMA Administrator to continue implementation of an emergency management performance grants program to make grants to States to assist State, local, and tribal governments in preparing for all hazards.

Collection of Information

Title: FEMA Emergency Management Performance Grants (EMPG).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: No forms.

Abstract: The Emergency Management Performance Grants (EMPG) assists State and local governments in enhancing and sustaining all-hazards emergency management capabilities. The EMPG Work Plan narrative must demonstrate how proposed projects address gaps, deficiencies, and capabilities in current programs and the ability to provide enhancements consistent with the purpose of the program and guidance provided by FEMA. FEMA uses the information to provide details, timelines, and milestones on proposed projects.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 174 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form number	No. of respondents	No. of responses per respondent	Avg. Burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	EMPG Work Plan	58	1	3	174	$32.20	$5,603
Total	.....	58			174		$5,603

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27553 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–NEW; FEMA Preparedness Grants: Buffer Zone Protection Program (BZPP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–23, Buffer Zone Plan; FEMA Form 089–23A, Vulnerability Reduction Purchasing Plan.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed new information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the information collection process for the Buffer Zone Protection Program grant.

DATES: Comments must be submitted on or before January 19, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Wash, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Stacey Street, Program Analyst, Grant Programs Directorate, 202–786–9728 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Buffer Zone Protection Program (BZPP) is an important part of the Administration's larger, coordinated effort— known as the Federal Investment Strategy— to strengthen homeland security preparedness, including the security of America's Critical Infrastructure and Key Resources (CIKR), including chemical facilities, financial institutions, nuclear and electric power plants, dams, stadiums, and other high-risk/high-consequence facilities. The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329) established the BZPP to help strengthen the Nation's critical infrastructure against risks associated with potential terrorist attacks.

Collection of Information

Title: FEMA Preparedness Grants: Buffer Zone Protection Program (BZPP).

Type of Information Collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–23, Buffer Zone Plan; FEMA Form 089–23A, Vulnerability Reduction Purchasing Plan.

Abstract: The information collection activity is the collection of financial and programmatic information from States and local governments pertaining to grant and cooperative agreement awards that include application, program narrative statement, grant award, performance information, outlay reports, property management, and closeout information. The information enables FEMA to evaluate applications and make award decisions, monitor ongoing performance and manage the flow of federal funds, and to appropriately close out grants or cooperative agreements. The Buffer Zone Plan is a narrative plan that includes an assessment of possible infrastructure security risks and documents the degree to which security processes and procedures are in place, including planning to enhance and/or improve site security and the actions jurisdictions undertake in their BZP to protect against or prevent terrorist attacks at critical infrastructure and key resources (CIKR). The Vulnerability Reduction Purchasing Plan is a plan applicants prepare that corresponds to the Buffer Zone Plan and lists procurement items including equipment, information technology, and other resources such as training, that are needed to improve or enhance a jurisdiction's preventive or protective posture around critical infrastructure and key resources (CIKR) sites identified in the BZP.

Affected Public: State, Local or Tribal Government.

Estimated Total Annual Burden Hours: 4,000 Hours.

ANNUAL HOUR BURDEN

Type of respondent	Form name/form number	No. of respondents	No. of responses per respondent	Total no. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
State, Local or Tribal Government.	Buffer Zone Plan/FEMA Form 089–23.	250	1	250	8	2,000	$36.15	$72,300.00
State, Local or Tribal Government.	Vulnerability Reduction Purchasing Plan/FEMA Form 089–23A.	250	1	250	8	2,000	$36.15	$72,300.00
Total				728		4,000		$144,600.00

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–27550 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service (NPS) Policies and Procedures for Recovering Costs Associated With Providing Utility Services to Non-NPS Users

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service is proposing to adopt a Director's Order setting forth the policies and procedures under which the NPS will recover expenses for providing utilities to non-NPS entities. These expenses include, but are not limited to, annual operating costs, cyclical repair and rehabilitation costs, and capital investment cost. 16 U.S.C. 1b(4) provides authority for the NPS to furnish ''on a reimbursement of appropriation basis, all types of utility services to concessioners, contractors, permittees, or other users of such services, within the National Park System.'' The Director's Order provides policies and procedures for consistent application of this guidance throughout the National Park Service.

DATES: Written comments will be accepted until January 4, 2010.

ADDRESSES: Draft Director's Order #35B is available on the Internet at *http://www.nps.gov/policy/DO–35Bdraft.htm*. Requests for copies of, and written comments on, the Director's Order should be sent to Tim Harvey, Chief, Park Facility Management Division, 1849 C Street, NW., Washington DC 20240, or to his Internet address: *tim_harvey@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Tim Harvey at (202) 513–7044.

SUPPLEMENTARY INFORMATION: When the NPS adopts documents containing new policy or procedural requirements that may affect parties outside the NPS, the documents are first made available for public review and comment before being adopted. A number of contacts have been made, prior to the issuance of this notice, to solicit input from potentially impacted groups and organizations.

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

Dated: October 30, 2009.

Stephen E. Whitesell,

Associate Director, Park Planning, Facilities, and Lands.

[FR Doc. E9–27520 Filed 11–16–09; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2009–N249; 94300–1122–0000–Z2]

Wind Turbine Guidelines Advisory Committee; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), will host a Wind Turbine Guidelines Advisory Committee (Committee) meeting December 1–3, 2009. The meeting is open to the public. The meeting agenda will include discussion of the current draft Recommendations to the Secretary.

DATES: The meeting is scheduled for December 1–3, 2009. The sessions will be 8 a.m. to 5:30 p.m. December 1–2, and 8 a.m. to 3:30 p.m. December 3.

ADDRESSES: We will hold the meeting at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, 22203. For more information, *see* ''Meeting Location Information'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2007, the Secretary of the Interior (Secretary) established the Committee to provide advice and recommendations to the Secretary on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. The Committee is made up of 22 members representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. All Committee meetings are open to the public.

Meeting Location Information

Please note that the meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least 2 weeks in advance of the meeting.

Persons planning to attend the meeting must register at *http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html* by November 24th, 2009. Seating is limited due to room capacity. We will give preference to registrants based on date and time of registration. Limited standing room will be available if all seats are filled.

Dated: November 12, 2009.

Rachel London,

Alternate Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.

[FR Doc. E9–27578 Filed 11–16–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on November 9, 2009, a proposed Consent Decree was filed with the United States District Court for the District of Idaho in *United States* v. *City of St. Maries, et al.,* No. 09–cv–00577 (D. Idaho). The proposed Consent Decree was entered into by the United States; the Coeur d'Alene Indian Tribe; the municipality the City of St. Maries, Idaho; Carney Products Co., Ltd.; and U.S. Bank National Association, as Trustee of the Testamentary Trust of Milo P. Flannery Fbo Jerome F. Nevin; Testamentary Trust of Milo P. Flannery Fbo Charlee O'malley; Living Family Trust of Maud O. Flannery Fbo Jerome F. Nevin; Living Family Trust of Maud O. Flannery Fbo Charlee O'malley; Living Charitable Trust of Maud O. Flannery Fbo Gonzaga University; Living Charitable Trust of Maud O. Flannery Fbo Gonzaga Preparatory School; Testamentary Trust of Aileen Flannery Nevin, Fund a Fbo John C. Nevin; and Testamentary Trust of Aileen Flannery Nevin, Fund B Fbo John C. Nevin, Jerome F. Nevin and Charlee O'malley; and Arcadis U.S., Inc., and resolves the United States' claims against the Defendants under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

Under the terms of the Consent Decree, the Defendants and their work contractor, Arcadis U.S., Inc., who is also a signatory, will perform EPA's selected remedy at the Site, estimated to cost in excess of $12 million. The Defendants will also reimburse $555,951.23 of the United States' past response costs.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of St. Maries, et al.,* DJ Ref. No. 90–11–3–06673.

The proposed Agreement may be examined at the Office of the United States Attorney for the District of Idaho, 800 Park Blvd., Suite 600, Boise, Idaho 83712, and at the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.50 (without attachments) or $106.25 (with attachments) (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–27425 Filed 11–16–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Corbett Package Co., et al.,* Civil No. 7:09 cv 00181, was lodged with the United States District Court for the Eastern District of North Carolina on November 10, 2009.

This proposed Consent Decree concerns a complaint filed by the United States against Defendants Corbett Package Company, Corbett Farming Company (d/b/a Corbett Timber Company), and a number of individuals with ownership interests in the Site, pursuant to Sections 301, 402, and 404 of the Clean Water Act, 33 U.S.C. 1311, 1342, and 1344 to obtain injunctive relief and impose civil penalties against the Defendants for violating the Clean Water Act by discharging fill material into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to pay a civil penalty and place a restrictive covenant on a 100-acre wetland portion of the Site that would be managed in perpetuity under a negotiated Timber Management Plan. Defendants would also covenant not to take any action on the Site that would alter the existing hydrologic characteristics of its wetlands or that would convert any existing wetlands on the Site to non-wetlands, except in accordance with a permit issued by the Corps under CWA section 404. The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Martin F. McDermott, United States Department of Justice, Environment & Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington DC 20026–3986 and refer to *United States* v. *Corbett Package Co., et al.,* Civil No. 7:09 cv 00181, DJ #90–5–1–1–16625.

The proposed Consent Decree may be examined at the Clerk's Office, 574 Terry Sandford Federal Building, 310 New Bern Avenue, Raleigh, North Carolina 27601–1418. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Maureen M. Katz,

Assistant Section Chief, Environment & Natural Resources Division.

[FR Doc. E9–27530 Filed 11–16–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Notice of Meeting

AGENCY: Office on Violence Against Women, United States Department of Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming public meeting of the Section 904 Violence Against Women in Indian Country Task Force (hereinafter ''the Task Force'').

DATES: The meeting will take place on December 1, 2009 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will take place in the Wright Room, Colcord Hotel, Fifteen N. Robinson Avenue, Oklahoma City, OK 73102. The public is asked to preregister by November 23, 2009 for the meeting (*see* below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530; by telephone at: (202) 514–8804; e-mail: *Lorraine.edmo@usdoj.gov;* or fax: 202 307–3911. You may also view information about the Task Force on the Office on Violence Against

Women Web site at: *http://www.ovw.usdoj.gov/siw.htm.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. Title IX of the Violence Against Women Act of 2005 (VAWA 2005) requires the Attorney General to establish a Task Force to assist the National Institute of Justice (NIJ) to develop and implement a program of research on violence against American Indian and Alaska Native women, including domestic violence, dating violence, sexual assault, stalking, and murder. The program will evaluate the effectiveness of the Federal, state, and tribal response to violence against Indian women, and will propose recommendations to improve the government's response to these crimes. The Attorney General, acting through the Director of the Office on Violence Against Women, established the Task Force on March 31, 2008.

This meeting will be the fourth meeting of the Task Force and will include a presentation of the collective recommendations of the Task Force members on the Title IX, Section 904 proposed program of research. In addition, the Task Force is also welcoming public oral comment at this meeting and has reserved an estimated 60 minutes for this purpose. Members of the public wishing to address the Task Force must contact Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530; by telephone at: (202) 514–8804; e-mail: *Lorraine.edmo@usdoj.gov;* or fax: 202 307–3911. Time will be reserved for public comment on December 1, 2009 from 9 a.m. to 10 a.m. See the section below for information on reserving time for public comment.

Access: This meeting will be open to the public but registration on a space available basis is required. All members of the public who wish to attend must register at least six (6) days in advance of the meeting by contacting Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by e-mail: *Lorraine.edmo@usdoj.gov;* or fax: 202–307–3911. All attendees will be required to sign in at the meeting registration desk. The meeting site is accessible to individuals with disabilities. Individuals who require special accommodation in order to attend the meeting should notify Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by e-mail: *Lorraine.edmo@usdoj.gov;* or fax: 202–307–3911 no later than November 23, 2009. After this date, attempts will be made to satisfy accommodation requests, but the ability to meet any requests cannot be guaranteed.

Written Comments: Interested parties are invited to submit written comments by November 23, 2009 to Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530 by mail; or by e-mail: *Lorraine.edmo@usdoj.gov;* or by fax: 202–307–3911.

Public Comment: Persons interested in participating during the public comment period of the meeting, which will address the Task Force's recommendations on the Title IX, Section 904 Research Plan Proposal, are requested to reserve time on the agenda by contacting Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, by e-mail: *Lorraine.edmo@usdoj.gov;* or fax: 202–307–3911. Requests must include the participant's name, organization represented, if appropriate, and a brief description of the subject of the comments. Each participant will be permitted approximately 5 minutes to present comments, depending on the number of individuals reserving time on the agenda. Participants are also encouraged to submit written copies of their comments at the meeting. Comments that are submitted to Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530 by mail; by e-mail: *Lorraine.edmo@usdoj.gov;* or fax: 202–307–3911, before November 23, 2009 will be circulated to Task Force members prior to the meeting.

Given the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible. Persons unable to obtain reservations to speak during the meeting are encouraged to submit written comments, which will be accepted at the meeting location or may be mailed to the Section 904 Violence Against Women in Indian Country Task Force, to the attention of Lorraine Edmo, Deputy Tribal Director, Office on Violence Against Women, United States Department of Justice, 800 K Street, NW., Suite 920, Washington, DC 20530.

Dated: November 10, 2009.

Catherine Pierce,

Acting Director, Office on Violence Against Women.

[FR Doc. E9–27582 Filed 11–16–09; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Office of Justice Programs (OJP) Solicitation Template.

The Department of Justice (DOJ), Office of Justice Programs will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 172, pages 46226–46227, on September 8, 2009, allowing for a 60-day comment period.

Comments are encouraged and will be accepted for ''thirty days'' until December 17, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Amy Callaghan, (202) 514–9292, Office of Audit, Assessment, and Management, Office of Justice Programs, Department of Justice, 810 Seventh Street, NW., Washington, DC 20531 or *Amy.Callaghan@usdoj.gov.*

Written comments and suggestions from the public and affected parties concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

— Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

— Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

— Enhance the quality, utility, and clarity of the information to be collected; and

— Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Information in response to the required data elements outlined in the solicitation template for programs administered by the Office of Justice Programs.

(2) *The title of the form/collection:* Office of Justice Programs solicitation template.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* State agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations and faith-based organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (e.g., project activities and timeline, proposed budget); outlines program evaluation and performance measures; explains selection criteria and the review process; and provides registration dates, due dates, and instructions on how to apply within the designated application system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that information will be collected annually from 9,800 applicants, representing State agencies, tribal governments, local governments, colleges and universities, non-profit organizations, and for-profit organizations. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package. Public reporting burden for this collection of information is estimated at up to 30 hours per application. The 30-hour estimate is based on the amount of time to prepare research and evaluation proposals, one of the most time intensive types of applications solicited by OJP. The estimate of burden hours is based on OJP's prior experience with the research application submissions process.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 294,000 hours.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 10, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E9–27459 Filed 11–16–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

November 10, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Mary Beth Smith-Toomey on 202–693–4223 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), Email: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Representative Fee Request.

OMB Control Number: 1215–0078.

Agency Form Number: CA–143.

Affected Public: Private Sector—Businesses and other for-profits.

Total Estimated Number of Respondents: 8,404.

Total Estimated Annual Burden Hours: 5,419.

Total Estimated Annual Costs Burden: $12,806.

Description: Individuals filing for compensation benefits with the Office of Workers' Compensation Programs (OWCP) may be represented by an attorney or other representative. The representative is entitled to request a fee for services under 20 CFR 10.700–703 (Federal Employees' Compensation Act) and 20 CFR 702.132 (Longshore and Harbor Workers' Compensation Act). The fee must be approved by the OWCP before any demand for payment can be made by the representative. Under the FECA, the representative is required to submit for review any fees resulting from representing the claimant in filing for benefits. The program does not make payment, but reviews the fee request to ensure that it is consistent with services provided, and with customary local charges for similar services. Fee requests

received have been used to approve attorney's fees, allowing the attorney to pursue payment of an appropriate amount from the claimant. If the fee requested is considered excessive, in view of the criteria outlined in the regulations, the fee approved would be reduced accordingly. For additional information, see related notice published at Volume 74 FR 46237 on September 8, 2009.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Request for Employment Information.

OMB Control Number: 1215–0105.

Agency Form Number: CA–1027.

Affected Public: Private Sector—Businesses and other for-profits.

Total Estimated Number of Respondents: 500.

Total Estimated Annual Burden Hours: 125.

Total Estimated Annual Costs Burden: $235.

Description: This information collection is used to collect information about a claimant's employment. It is necessary to determine continued eligibility for compensation payments under Federal Employees' Compensation Act. For additional information, see related notice published at Volume 74 FR 42124 on August 20, 2009.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Claim for Medical Reimbursement Form.

OMB Control Number: 1215–0193.

Agency Form Number: OWCP–915.

Affected Public: Individuals or households.

Total Estimated Number of Respondents: 16,824.

Total Estimated Annual Burden Hours: 11,171.

Total Estimated Annual Costs Burden: $103,636.

Description: Form OWCP–915 is used to claim reimbursement for out-of-pocket covered medical expenses paid by a beneficiary, and must be accompanied by required billing data elements (prepared by the medical provider) and by proof of payment by the beneficiary. For additional information, see related notice published at Volume 74 FR 384744 on August 3, 2009.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Pharmacy Billing Requirements.

OMB Control Number: 1215–0194.

Agency Form Number: N/A.

Affected Public: Private Sector—Businesses and other for-profits.

Total Estimated Number of Respondents: 28,150.

Total Estimated Annual Burden Hours: 121,494.

Total Estimated Annual Costs Burden: $0.

Description: The National Council for Prescription Drug Programs Standardized Pharmacy Billing Data Requirements is the electronic billing format used by pharmacies throughout the country to request payment for prescription drugs through data clearinghouses. They identify the provider, claimant, prescribing physician, drug by National Drug Code number, prescription volume and charge. Similar data elements are required to process paper-based pharmacy bills. For additional information, see related notice published at Volume 74 FR 37733 on July 29, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–27461 Filed 11–16–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF LABOR

Proposed Information Collection for Voice of Latino Workforce Experience Survey; Comment Request

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed one-time telephone survey of Latinos, entitled *Voice of Latino Workforce Experience.*

A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before January 19, 2010.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Policy Development and Research, 200 Constitution Avenue, NW., Room N5641, Washington, DC 20210, *Attention:* Mr. Daniel Carroll. *Telephone number:* 202–693–2795 (this is not a toll-free number). *Fax:* 202–693–2766. *E-mail: carroll.daniel.j@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Latino Americans are one of the fastest-growing segments of the American workforce, and projections indicate that this trend will continue. Latinos represent a substantial workforce asset because of their overall youth and notable rates of labor force participation, particularly in light of trends such as the aging of the workforce and slower labor force growth. However, Latinos tend to be concentrated in occupations with relatively low wages and few career options and experience higher unemployment rates and lower earnings than most other U.S. population groups. Workforce development is vital to ensuring that this growing portion of the U.S. labor force can reach its full potential. Yet, the Latino population and workforce are very diverse, and more detailed, specific information has been needed to ensure that programs and services are tailored to the various types of Latino workers' needs and preferences.

To understand the continuum of Latino perspectives on the economy, jobs, and public workforce investment system and increase the capacity to assist local workforce investment boards, the proposed survey, *Voice of Latino Workforce Experience,* will collect and analyze first-person accounts of experiences and opinions from Latino workers in Washington, DC, Fort Lauderdale, Florida, and Chicago, Illinois.

This will be a one-time telephone survey with a sample of self-identified Latino workers in each of the three metropolitan regions. The survey will

collect important information on a variety of topics, including basic demographics, current occupation, participation in workforce education and training programs, training needed for a better job, and obstacles to participating in necessary training.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: New Collection.

Agency: Employment and Training Administration.

Title: Voice of Latino Workforce Experience Survey.

OMB Number: 1205–0NEW.

Affected Public: Individuals.

Total Respondents: 4,800.

Frequency: One-time survey.

Total Responses: 4,800.

Average Time per Response: 5.25 minutes.

Estimated Total Burden Hours: 420 (*see* Table 1, below).

TABLE 1—ESTIMATED BURDEN HOURS

Who will be interviewed?	Survey Instrument	Respondents	Average Time per Respondent	Total Hours
Latino Workers.	Questionnaire.	1,200	15 minutes	300
Phone Answerer.	Point of Contact Only.	3,600	2 minutes	120
Total		4,800		420

Total Burden Cost (operating/maintaining): $0

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: Signed October 30, 2009.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–27533 Filed 11–16–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Multiple Worksite Report and the Report of Federal Employment and Wages.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before January 19, 2010.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Quarterly Census of Employment and Wages (QCEW) program is a Federal/State cooperative effort which compiles monthly employment data, quarterly wages data, and business identification information from employers subject to State Unemployment Insurance (UI) laws. These data are collected from State Quarterly Contribution Reports (QCRs) submitted to State Workforce Agencies (SWAs). The States send micro-level employment and wages data, supplemented with the names, addresses, and business identification information of these employers, to the BLS. The State data are used to create the BLS sampling frame, known as the longitudinal QCEW data. This file represents the best source of detailed industrial and geographical data on employers and is used as the sampling frame for most BLS surveys. The longitudinal QCEW data include the individual employers' employment and wages data along with associated business identification information that is maintained by each State to administer the UI program as well as the Unemployment Compensation for Federal Employees (UCFE) program.

The QCEW Report, produced for each calendar quarter, is a summary of these employer (micro-level) data by industry at the county level. Similar data for Federal Government employees covered by the UCFE program also are included in each State's report. These data are submitted by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands to the BLS which then summarizes these micro-level data to produce totals for the States and the Nation. The QCEW Report provides a virtual census of nonagricultural employees and their wages, with nearly 53 percent of the workers in agriculture covered as well.

For employers having only a single physical location or worksite in the State and, thus, operating under a single assigned industrial and geographical code, the data from the States' UI accounting files are sufficient for statistical purposes. However, such data are not sufficient for statistical purposes for those employers having multiple establishments and/or engaged in different industrial activities within the State. In such cases, the employer's QCR reflects only statewide employment and wages and is not disaggregated by establishment or worksite. Although data at this level are sufficient for many purposes of the UI Program, more detailed information is required to create a sampling frame and to meet the needs of several ongoing Federal/State statistical programs. The Multiple Worksite Report (MWR) is designed to supplement the QCR when more detailed information is needed.

As a result of the MWR, improved establishment business identification data elements have been incorporated into and maintained on the longitudinal QCEW data file. The MWR collects a physical location address, secondary name (trade name, division, subsidiary, etc.), and reporting unit description (store number, plant name or number, etc.) for each worksite of multi-establishment employers.

The function of the Report of Federal Employment and Wages (RFEW) is to collect employment and wages data for Federal establishments covered under the UCFE program. The MWR and RFEW are essentially the same. The MWR/RFEW forms are designed to collect data for each establishment of a multi-establishment employer.

No other standardized report is available to collect current establishment-level monthly employment and wages data by SWAs for statistical purposes each quarter from the private sector nor State and local governments. Also, no other standardized report currently is available to collect installation-level Federal monthly employment and wages data each quarter by SWAs for statistical purposes. Completion of the MWR is required by State law in 28 States and territories.

II. Current Action

Office of Management and Budget clearance is being sought for an extension of the Multiple Worksite Report and the Report of Federal Employment and Wages.

The BLS has taken steps to help reduce employer reporting burden by developing a standardized format for employers to use to send these data to the States in an electronic medium. The BLS also established an Electronic Data Interchange (EDI) Collection Center to improve and expedite the MWR collection process. Employers who complete the MWR for multi-location businesses can now submit employment and wages information on any electronic medium directly to the data collection center, rather than separately to each State agency. The data collection center then distributes the appropriate data to the respective States. The BLS also has been working very closely with firms providing payroll and tax filing services for employers as well as the developers of payroll and tax filing software to include this electronic reporting as either a service for their clients or a new feature of their system. In addition, the BLS has developed a Web-based system, MWRweb, to collect these data from small to medium-size businesses. This system was begun as a pilot project in four States in early 2006. Now, all States are participating in MWRweb and BLS has seen much greater utilization of this reporting option.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Extension of currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Multiple Worksite Report (MWR) and the Report of Federal Employment and Wages (RFEW).

OMB Number: 1220–0134.

Affected Public: Business or other for-profit institutions, not-for-profit institutions, and the Federal Government.

Frequency: Quarterly.

Form number	Total respondents	Respondent	Total responses	Average time per response (minutes)	Total burden (hours)
BLS 3020 (MWR)	130,226	Non-Federal	520,904	22.2	192,735
BLS 3021 (RFEW)	3,067	Federal	12,268	22.2	4,539
Totals:	133,293		533,172		197,274

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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

Signed at Washington, DC, this 10th day of November, 2009.

Kimberley Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E9–27462 Filed 11–16–09; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *September 21 through October 2, 2009.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–70,070; Maverick Tube LLC, Doing Business as Tenarishickman, Blytheville, AR. May 18, 2008.

TA–W–70,142; United States Steel Corporation, Great Lakes Works, Great Lakes Recovery, Tube City, Ecorse, MI. May 18, 2008.

TA–W–70,245; Caye Upholstery, Inc., Caye Home Furnishings, LLC, New Albany, MS. May 18, 2008.

TA–W–70,292; BHP Copper Inc., Pinto Valley Operations & San Manuel Arizona Railroad Co., BHP Billiton Ltd, Miami, AZ. May 19, 2009.

TA–W–70,431; Marlo Electronics, Inc., Ft. Lauderdale, FL. May 19, 2008.

TA–W–70,675; Grove U.S., LLC, Manitowoc Crane Company, Inc. Advance, etc., Shady Grove, PA. May 20, 2008.

TA–W–70,689; Penn-Union Corporation, Advanced Placemane Services, Edinboro, PA. May 21, 2008.

TA–W–70,726; Newport Corporation, Photonics and Precision Technologies Div., Irvine, CA. May 21, 2008.

TA–W–71,662; TRW Integrated Chassis Systems, Div. of TRW Automotive/ Leased Workers from ADECCO, Kelly, Aerotek Auto, Volt, Saginaw, MI. June 26, 2008.

TA–W–71,683; Sabic Innovative Plastics Mount Vernon, Sabic Innovative Plastics U.S., Mount Vernon, IN. July 13, 2008.

TA–W–71,711A; Superior Technical Resources, On-Site at OSRAM Sylvania, Lighting Div., St. Marys, PA. July 1, 2008.

TA–W–71,711; Osram Sylvania, Consumer Lighting Div./Superior Technical Resources, St. Marys, PA. July 1, 2008.

TA–W–71,798; Time Savers, Inc., Maple Grove, MN. July 21, 2008.

TA–W–71,877; American Furniture Manufacturing, Inc., Ecru, MS. July 29, 2008.

TA–W–70,049; Dan Draexlmaier Automotive North America LLC, Aerotek, Duncan, SC. May 18, 2008.

TA–W–71,328; Interdent Service Corporation, Billing and Collections Department, El Segundo, CA. June 11, 2008.

TA–W–71,462; Corporate Services Group, Inc., Colville, WA. June 29, 2008.

TA–W–70,004; Boralex Sherman, LLC, A Subsidiary of Boralex U.S. Development, Inc., Stacyville, ME. May 18, 2008.

TA–W–70,022; Wausau Paper Specialty Products, LLC, Specialty Products Division, Paper Machine 11, A Subsidiary of Wausau Paper, Jay, ME. May 18, 2008.

TA–W–70,043; Koch Originals, Inc., Evansville, IN. May 18, 2008.

TA–W–70,084; Vishay Intertechnology, Vishay Dale Electronics, Columbus, NE. May 18, 2008.

TA–W–70,113; Maine Wood Recycling, Inc., Ashland, ME. May 18, 2008.

TA–W–70,226; Egide USA, Inc., Cambridge, MD. May 19, 2008.

TA–W–70,247; Panel Crafters, Inc., White City, OR. May 18, 2008.

TA–W–70,265; Grayling ILevel-Weyerhaeuser Engineering Wood Products, Grayling, MI. May 18, 2008.

TA–W–70,284; Plains Cotton Cooperative Association, American Cotton Growers, Littlefield, TX. May 18, 2009.

TA–W–70,322; Steelscape, A Subsidiary of Bluescope Steel, Rancho Cucamonga, CA. May 18, 2008.

TA–W–70,328; Gaston Electronics, LLC, Leased Workers from American Staffing and Lincoln Staffing, Mount Holly, NC. May 18, 2008.

TA–W–70,596; Dietech North America, LLC, Roseville, MI. May 18, 2008.

TA–W–70,650; Tyco Electronics Corporation, Leased Workers from Kelly Services, Greensboro, NC. May 19, 2008.

TA–W–70,735; Arete Prime Products Inc., Converse, IN. May 28, 2008.

TA–W–70,767; Smurfit-Stone Container Corporation, Containerboard Mill Div./Leased Workers from Nelson Personnel, Puritan Cleaning and Securitas, Missoula, MT. May 26, 2008.

TA–W–70,848; Atwood Mobile Products, LLC, Antwerp/Spec-Tem Division, Antwerp, OH. May 29, 2008.

TA–W–70,937; Viscotec Automotive Products, LLC, Leased Workers From Catawba Valley Staffing, Morganton, NC. May 29, 2008.

TA–W–71,271; North American Hoganas High Alloys, LLC, North America Business, Manpower, At Work, Johnstown, PA. June 16, 2008.

TA–W–71,784; Mancor Indiana, Inc., Anderson, IN. July 22, 2008.

TA–W–71,800; Dana Holding Corporation, Light Vehicle Drive Div., Adecco, Aerotek, MSI, Orangeburg, SC. July 23, 2008.

TA–W–71,844; Clarcor Air Filtration Products, Inc., Workplace, Inc., Rockford, IL. July 28, 2008.

TA–W–71,910; Pacific Steel Casting, Leased Workers of Aerotek and Ledgent, Berkeley, CA. July 24, 2008.

TA–W–71,975; Parker Hannifin, Pneumatic Division North America, Canton, PA. July 27, 2008.

TA–W–72,072; Byer California, San Francisco, CA. August 11, 2008.

TA–W–70,551; Nabors Drilling USA, Williston, ND. May 19, 2008.

TA–W–70,142A; Great Lakes Recovery Systems, Inc., On-Site at U.S. Steel, Great Lakes Works, Ecorse, MI. May 18, 2009.

TA–W–70,142B; Tube City IMS, Inc., On Site at U.S. Steel Corp., Ecorse, MI. May 18, 2008.

TA–W–70,975A; B&C Corporation, Jr. Engineering Division, B & C Services, Barberton, OH. June 2, 2008.

TA–W–70,975; B&C Corporation, Jr. Wheel Div./Leased Workers of B&C Services, Inc., Norton, OH. June 2, 2008.

TA–W–70,250; Jagger Brothers, Inc., Springvale, ME. May 18, 2008.

TA–W–70,397; Weyerhaeuser NR Company, I Level, Emerson Veneer Division, Emerson, AR. May 19, 2008.

TA–W–70,691; Fairystone Fabrics, LLC, dba Fairystone Fabrics, Inc., Burlington, NC. May 19, 2008.

TA–W–71,981; Bailey Knit Corporation, Fort Payne, AL. August 5, 2008.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W–70,057; Rockwell Automation, Inc., Richland Center, WI. May 18, 2008.

TA–W–70,063; AIT, American Integrated Technologies, Pflugerville, TX. May 18, 2008.

TA–W–70,269; KGP Telecommunications, Inc., Express Personnel and Work Connection, Faribault, MN. May 18, 2008.

TA–W–70,316; O'Neal Steel, Inc., Leased Workers from Alpha Omega, Roanoke, VA. May 19, 2008.

TA–W–70,351; National Semiconductor Corporation, Arlington Manufacturing Site, GCA, CMPA, Arlington, TX. May 18, 2008.

TA–W–70,377; Morgan Advanced Materials and Technology, Inc., A Subsidiary of Morgan Crucible PLC, Coudersport, PA. May 20, 2008.
TA–W–70,408; DJ Fashions, LLC, New York, NY. May 8, 2008.
TA–W–70,430; UGL-Unnico, Northeast, Leased Workers at Fairchild Semiconductor, South Portland, ME. May 19, 2008.
TA–W–70,467; Fortis Plastics, LLC, Fort Smith, AR. May 20, 2008.
TA–W–70,504; Seagate Technology, LLC, Recording Head Operations, Leased workers from Spherion, Bloomington, MN. May 18, 2008.
TA–W–70,640; Leggett and Platt, Inc., Simpsonville, KY. May 19, 2008.
TA–W–70,647; Dana Holding Corporation, Sealing Products Division, Westaff, Robinson, IL. May 26, 2008.
TA–W–70,690; Nilfisk Advance, Inc., Plymouth, MN. May 19, 2008.
TA–W–70,834; Celerity, Inc., Leased Workers from Spherion, Austin, TX. May 28, 2008.
TA–W–70,838; The Berry Company LLC, Local Insight Media Holdings, Kelly Services, Office Team PSI, Dayton, OH. June 1, 2008.
TA–W–70,893; Alpha Sintered Metals, Inc., Ridgway, PA. June 1, 2008.
TA–W–70,927; Ingersoll-Rand, Security Technologies Div./Adecco, Colorado Springs, CO. June 1, 2008.
TA–W–71,075; Umicore Cobalt Specialty Materials, Umicore USA, Olsted Staffing, Wow Service, Richard, Maxton, NC. September 9, 2008.
TA–W–71,246; True Temper Sports, Inc., Amory, MS. June 8, 2008.
TA–W–71,369; Ramsey Technology, Division of Thermo Fisher Scientific, Leased Workers from Pro Staff, Adecco, Atlantis, etc., Coon Rapids, MN. June 23, 2008.
TA–W–71,447; Applied Materials, Inc., Leased Workers from ADECCO Employment Services, Aerotek, Inc., Austin, TX. June 25, 2008.
TA–W–71,519; Cooper-Standard Automotive, Inc., Cooper-Standard Holdings, Inc./Leased Workers from Robert Half Mgmt Resource, Novi, MI. June 30, 2008.
TA–W–71,586; Mars Petcare US, Inc., a Subsidiary of Mars, Inc., Vernon, CA. July 7, 2008.
TA–W–71,656; Datalogic Scanning, Inc., Selectemp, Express Personnel, Kelly Services, etc., Eugene, OR. July 10, 2008.
TA–W–71,659; Technicolor Business Group, Technicolor Home Entertainment Services Division, Camarillo, CA. July 6, 2008.
TA–W–71,671; Rockwell Automation, OES Div./Leased Workers from Volt, and Victory Personnel, Milwaukee, WI. July 8, 2008.
TA–W–71,679; Acu-Rite Companies, Inc., Jamestown, NY. July 10, 2008.
TA–W–71,720; Yanagawa of South Carolina, Inc., Olstein Staffing, Kelly Services, Performance Staffing, Manning, SC. July 6, 2008.
TA–W–71,754; RR Donnelley, Kelly Services, Spanish Fork, UT. July 17, 2008.
TA–W–71,761A; Tempstar, Weave Corporation, Denver, PA. July 15, 2008.
TA–W–71,761B; Weave Corporation, Hackensack, NJ. July 15, 2008.
TA–W–71,761C; Weave Corporation, New York, NY. July 15, 2008.
TA–W–71,761; Weave Corporation, Manufacturing Division, Denver, PA. July 27, 2009.
TA–W–71,767; General Electric Lighting-Ravenna Lamp Plant, Light Division, Leased Wkrs from Devore Technologies, Ravenna, OH. July 10, 2008.
TA–W–71,772; Hospira, Inc., Leased Wkrs from Kelly Services, Morgan Hill, CA. June 23, 2008.
TA–W–71,841; Vital Signs Minnesota, Inc., Masterson Personnel and MRCI Worksource, Burnsville, MN. July 29, 2008.
TA–W–71,853; Best Top Inc., Formerly known as Global Accessories Inc., Fremont, OH. August 19, 2008.
TA–W–71,866; Belden, Inc., Mohawk Division, Adecco Express, Robert Half, etc., Leominster, MA. July 29, 2008.
TA–W–71,896; Skyjack Manufacturing, Inc., Subsidiary of Skyjack, Inc., Emmetsburg, IA. July 31, 2008.
TA–W–71,913; Siemens Energy and Automation, Norwood Motor Facility, Leased Workers from Guidant, Norwood, OH. August 3, 2008.
TA–W–71,947; Luvata Franklin, Inc., ACR Tubes Division/Leased Wkrs from Robert Half Mgt. Resources, Franklin, KY. August 5, 2008.
TA–W–71,961; Caps Group Acquisition LLC, NK Graphics Division, Black Dot Group, West Chesterfield, NH. August 4, 2008.
TA–W–71,965; Pioneer Automotive Technologies, Inc., Springboro, OH. August 7, 2008.
TA–W–72,053; Allied Air Enterprises, Inc., Gallman Personnel Services, Blackville, SC. August 20, 2008.
TA–W–72,058; Gardner Denver, Thomas Products Div., Sheboygan, WI. August 13, 2008.
TA–W–72,126; Medtronic, Inc., Arizona Device Manufacturing, Kelly Project, Tempe, AZ. August 24, 2008.
TA–W–72,140; Par Springer-Miller Systems, Inc., Stowe, VT. August 18, 2008.
TA–W–72,190; Electronic Data Systems, a Hewlett-Packard Company, Capital Markets Segment, Applications and Financial Services Sector, Montvale, NJ. September 1, 2008.
TA–W–70,609; FMC Manufacturing, LLC, Midwest Motorcycle Supply, Monmouth, IL. May 22, 2008.
TA–W–70,720; BIC Consumer Products Manufacturing Company, Inc., a Subsidiary of BIC USA, Inc., Fountain Inn, SC. May 18, 2008.
TA–W–71,492; Cholestech Corporation, Inverness Medical Innovations, Leased Wkrs from Payrolling, TAC Worldwide, Hayward, CA. June 29, 2008.
TA–W–71,668; Permacel, Pleasant Prairie, WI. July 14, 2008.
TA–W–71,898; Kaiser Foundation Hospitals, KP–IT Division, Silver Spring, MD. July 31, 2008.
TA–W–72,046; The McClatchy Group, The Miami Herald Media Company, Collections Division, Miami, FL. August 13, 2008.
TA–W–70,576; AT&T Services, Inc., Performance Evaluation, APC Workforce Solutions, etc., Saginaw, MI. May 21, 2008.
TA–W–71,009; Experian, Marketing Services Division, Leased Workers from Tapfin, Lincoln, NE. June 3, 2008.
TA–W–71,310; Littelfuse, Inc., Corp. Resources, Ltd., Aerotek, Ernst & Young & Brooksource, Chicago, IL. June 18, 2008.
TA–W–71,366; Hewlett Packard Company, Enterprise Storage and Networks, Supply Chain Division, Boise, ID. May 19, 2008.
TA–W–71,475; Akzo Nobel Coatings, Inc., Car Refinishes, Color Div., Akzo Nobel, Leased Wkrs from Adecco Employment, Troy, MI. June 29, 2008.
TA–W–71,487A; Work Skills Corporation, Brighton, MI. June 17, 2008.
TA–W–71,487; Work Skills Corporation, Ypsilanti, MI. June 17, 2008.
TA–W–71,748; Jockey International, Inc., Carlisle, KY. July 20, 2008.
TA–W–71,794; Behr America, Inc., Troy, MI. July 15, 2008.
TA–W–71,846; ACS Consultant Company, Inc., Cheshire, CT. July 7, 2008.
TA–W–71,854; Infineon Technologies North America Corp., Wireless Solutions-Mobile Phone Platforms, Ultimate, Allentown, PA. June 24, 2008.
TA–W–71,855; Freescale Semiconductor, Technical

Information Center, Inc., Tempe, AZ. July 23, 2008.
TA–W–70,547; Acxiom Corporation, Information Security Team, Downers Grove, IL. May 17, 2008.
TA–W–71,060; Carhartt, Inc., Marrowbone Sortation, Marrowbone, KY. June 6, 2008.
TA–W–71,775; Warner Brothers Entertainment, Warner Brothers Theatrical Enterprises, Burbank, CA. July 20, 2008.
TA–W–71,830; S&B Industry Technologies, L.P., Fort Worth, TX. July 22, 2008.
TA–W–71,876; Direct Brands, Terre Haute, IN. July 29, 2008.
TA–W–72,153; MedQuist, Inc., Including Workers throughout the United States, Mount Laurel, NJ. August 27, 2008.

The following certifications have been issued. The requirements of Section 222(b) (adversely affected workers in public agencies) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–70,712; Cummings Filtration, Leased Workers from Alternative Management, Findlay, OH. May 27, 2008.
TA–W–70,060; Greif Brothers Services Corporation, Culloden, WV. May 18, 2008.
TA–W–70,116; Mullican Lumber Company, LP, a Sub. of Baillie Lumber Company, Employment, Ronceverte, WV. May 18, 2008.
TA–W–70,122; Oviso Manufacturing, Leased Workers from Aerotek, Concord, CA. May 18, 2008.
TA–W–70,350; Vin-Tex Sealers, Inc., Labor Network, Itasca, IL. May 18, 2008.
TA–W–70,370; Danfoss Scroll Technologies, LLC, Leased Wkrs from Firststaff, Arkadelphia, AR. May 18, 2008.
TA–W–70,376; Kaiser Aluminum Fabricated Products, LLC, Kaiser Aluminum-Greenwood Forge Div./ Staff Source, Greenwood, SC. May 19, 2008.
TA–W–70,391; Consolidated Metco, Inc., Leased Workers from Friday's, Canton, NC. May 18, 2008.
TA–W–70,450; Derby Cellular Products, Inc., Derby, CT. May 20, 2008.
TA–W–70,488A; Xenia Manufacturing, Inc.—Olney, Olney, IL. May 18, 2008.
TA–W–70,488B; Xenia Manufacturing, Inc.—Flora, Flora, IL. May 18, 2008.
TA–W–70,488; Xenia Manufacturing, Inc., Xenia, IL. May 18, 2008.
TA–W–70,597; Metaldyne Corporation, Middleville Division/Leased Workers from Williamson Staffing, Middleville, MI. May 18, 2008.
TA–W–70,622; V & E Components, Inc., High Point, NC. May 18, 2008.
TA–W–70,774; Sychip Inc., Leased Workers from Adminstaff, Plano, TX. May 27, 2008.
TA–W–70,776; Ravenswood Rolled Products, a Subsidiary of Pechiney Metals, LLC, PSA Personnel, Ravenswood, WV. May 28, 2008.
TA–W–70,791; Pace Industries, FKA Est Company, Leased Wkrs from Seek Careers Staffing, Grafton, WI. May 27, 2008.
TA–W–71,139; Techne, Inc., a/b/c Techne Engineering, Leased Workers from Manpower, Inc., Scottsburg, IN. June 4, 2008.
TA–W–71,378A; BorgWarner Diversified Transmission Products, Leased Wkrs at BorgWarner Diversified Transmission Products, Muncie, IN. June 22, 2008.
TA–W–71,378; BorgWarner Diversified Transmission Products, Torqtransfer Systems Division, Muncie, IN. June 30, 2008.
TA–W–71,437; Imperial Fabricating of Washington, A Subsidiary of Accuride Corporation, Chehalis, WA. June 23, 2008.
TA–W–71,512; Allegheny Tool and Manufacturing Company, Inc., Meadville, PA. June 29, 2008.
TA–W–71,581; Global Engine Manufacturing Alliance, A Subsidiary of the Chrysler Group, LLC, Premier, Dundee, MI. July 6, 2008.
TA–W–71,867; Fortis Plastics, LLC, Booneville, MS. June 25, 2008.
TA–W–71,980; Montezuma Manufacturing, Cosma Int'l, Leased Workers from Temp Associates, Montezuma, IA. August 5, 2008.
TA–W–70,480; Auto Truck Transport, Portland, OR. May 20, 2008.
TA–W–70,697; Sunbelt Furniture Xpress, Hickory, NC. May 26, 2008.
TA–W–70,803; LT Logging, Eureka, MT. May 27, 2008.
TA–W–71,541; Minority Auto Handling Specialist, T.V. Minority Company, Fenton, MO. July 1, 2008.
TA–W–71,583; Data2Logistics, Grand Blanc, MI. June 30, 2008.
TA–W–71,648; Innovion Corporation, Chandler, AZ. July 8, 2008.
TA–W–71,762; A. Schadt Woodcarving and Design, High Point, NC. July 17, 2008.
TA–W–71,837; Texturing Services, Inc., Martinsville, VA. July 28, 2008.
TA–W–71,839A; Negevtech, Inc., Boise, ID. July 2, 2008.
TA–W–71,839B; Negevtech, Inc., c/o IMFT, Lehi, UT. July 2, 2008.
TA–W–71,839C; Negevtech, Inc., c/o Spansion, Inc., Austin, TX. July 2, 2008.
TA–W–71,839D; Negevtech, Inc., c/o Micron Technology, Inc., Manassas, VA. July 2, 2008.
TA–W–71,839; Negevtech, Inc., Santa Clara, CA. July 2, 2008
TA–W–72,027; Straightaway Fabrications, Ltd., Ashland, OH. August 12, 2008.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W–72,259; DuPont Teijin Films, Schenkers Logistics, Inc., Florence, SC. September 9, 2008.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W–70,625; Springs Window Fashions, LLC, Taylorsville, NC.
TA–W–71,818; Suntrust Bank, Inc., Suntrust Online (Call Center), Miami, FL.
TA–W–72,046A; The McClatchy Group, Call Center Division, Miami, FL.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

None.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–70,027; Ram Rod Industries, LLC, Prentice, Prentice, WI.
TA–W–70,104; Van Buren Pipe Corporation, North American Pipe Corporation (NAPCO), Van Buren, AR.

TA–W–70,109; Modern Woodcrafts, LLC, Lewiston, ME.
TA–W–70,201; Tivoly, Inc., Derby Line, VT.
TA–W–70,309; Mt. Vernon Mills-LaFrance Industries, LaFrance Industries, Defender Services, LaFrance, SC.
TA–W–70,375; Mohawk Industries, Inc., Residential Yarn Division, Calhoun Falls, SC.
TA–W–70,454; Graphite Engineering and Sales Company, Greenville, MI.
TA–W–70,591; Symmco, Inc., Leased Workers from Spherion, Sykesville, PA.
TA–W–70,663; Corning, Inc., Environmental Technologies Division, Christiansburg, VA.
TA–W–70,745; Fujicolor Processing Inc., Williamsport, MD.
TA–W–70,118; J.D.M. Import Company, Inc., Leased Workers from Prestige Employee Administrators, New York, NY.
TA–W–70,314; Jeld-Wen, Inc., Administration Division, Klamath Falls, OR.
TA–W–70,344; Atlantic Southeast Airlines, Skywest, Inc./Leased Workers of Delta Global Services, Inc., Fort Smith, AR.
TA–W–70,493; Hyatt Regency Albuquerque, Hyatt Hotels Corporation, Accounting Department, Albuquerque, NM.
TA–W–70,519; Blue Cross Blue Shield of Michigan, Blue Care Network, Detroit, MI.
TA–W–71,564; Bob King, Inc., d/b/a Bob King Mazda, Winston-Salem, NC.
TA–W–71,856; SER Enterprise, Webb City, MO.
TA–W–71,903; JP Morgan Chase and Company, JP Morgan Investment Banking, Global Corporate Financial Operations, New York, NY.
TA–W–72,287; Blue Cross Blue Shield of Michigan, Grand Rapids, MI.
TA–W–70,012; Sappi Fine Paper N.A., Westbrook, ME.
TA–W–70,406; Greenville Metals, Inc., Powder Division, Transfer, PA.

The investigation revealed that the criteria under paragraphs (b)(2) and (b)(3) (public agency acquisition of services from a foreign country) of section 222 have not been met.

TA–W–72,179; Licking County Department of Job and Family Service, Newark, OH.

The investigation revealed that criteria of Section 222(c)(2) have not been met. The workers' firm (or subdivision) is not a Supplier to or a Downstream Producer for a firm whose workers were certified as eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *September 21 through October 2, 2009.* Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 5, 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance .

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *September 21 through October 2, 2009.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group

eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–70,070; Maverick Tube LLC, Doing Business as Tenarishickman, Blytheville, AR. May 18, 2008

TA–W–70,142; United States Steel Corporation, Great Lakes Works, Great Lakes Recovery, Tube City, Ecorse, MI. May 18, 2008

TA–W–70,245; Caye Upholstery, Inc., Caye Home Furnishings, LLC, New Albany, MS. May 18, 2008

TA–W–70,292; BHP Copper Inc., Pinto Valley Operations & San Manuel Arizona Railroad Co, BHP Billiton Ltd, Miami, AZ. May 19, 2009

TA–W–70,431; Marlo Electronics, Inc., Ft. Lauderdale, FL. May 19, 2008

TA–W–70,675; Grove US, LLC, Manitowoc Crane Company, Inc. Advance, etc, Shady Grove, PA. May 20, 2008

TA–W–70,689; Penn-Union Corporation, Advanced Placemane Services, Edinboro, PA. May 21, 2008

TA–W–70,726; Newport Corporation, Photonics and Precision Technologies Div., Irvine, CA. May 21, 2008

TA–W–71,662; TRW Integrated Chassis Systems, Div. of TRW Automotive/ Leased Workers from ADECCO, Kelly, Aerotek Auto, Volt, Saginaw, MI. June 26, 2008

TA–W–71,683; Sabic Innovative Plastics Mount Vernon, Sabic Innovative Plastics US, Mount Vernon, IN. July 13, 2008

TA–W–71,711A; Superior Technical Resources, On-Site at OSRAM Sylvania, Lighting Div., St. Marys, PA. July 1, 2008

TA–W–71,711; Osram Sylvania, Consumer Lighting Div./Superior Technical Resources, St. Marys, PA. July 1, 2008

TA–W–71,798; Time Savers, Inc., Maple Grove, MN. July 21, 2008

TA–W–71,877; American Furniture Manufacturing, Inc., Ecru, MS. July 29, 2008

TA–W–70,049; Dan Draexlmaier Automotive North America LLC, Aerotek, Duncan, SC. May 18, 2008

TA–W–71,328; Interdent Service Corporation, Billing and Collections Department, El Segundo, CA. June 11, 2008

TA–W–71,462; Corporate Services Group, Inc., Colville, WA. June 29, 2008

TA–W–70,004; Boralex Sherman, LLC, A Subsidiary of Boralex U.S. Development, Inc., Stacyville, ME. May 18, 2008

TA–W–70,022; Wausau Paper Specialty Products, LLC, Specialty Products Division, Paper Machine 11, A Subsidiary of Wausau Paper, Jay, ME. May 18, 2008

TA–W–70,043; Koch Originals, Inc., Evansville, IN. May 18, 2008

TA–W–70,084; Vishay Intertechnology, Vishay Dale Electronics, Columbus, NE. May 18, 2008

TA–W–70,113; Maine Wood Recycling, Inc, Ashland, ME. May 18, 2008

TA–W–70,226; Egide USA, Inc., Cambridge, MD. May 19, 2008

TA–W–70,247; Panel Crafters, Inc., White City, OR. May 18, 2008

TA–W–70,265; Grayling ILevel-Weyerhaeuser Engineering Wood Products, Grayling, MI. May 18, 2008

TA–W–70,284; Plains Cotton Cooperative Association, American Cotton Growers, Littlefield, TX. May 18, 2009

TA–W–70,322; Steelscape, A Subsidiary of Bluescope Steel, Rancho Cucamonga, CA. May 18, 2008

TA–W–70,328; Gaston Electronics, LLC, Leased Workers from American Staffing and Lincoln Staffing, Mount Holly, NC. May 18, 2008

TA–W–70,596; Dietech North America, LLC, Roseville, MI. May 18, 2008

TA–W–70,650; Tyco Electronics Corporation, Leased Workers from Kelly Services, Greensboro, NC. May 19, 2008

TA–W–70,735; Arete Prime Products Inc, Converse, IN. May 28, 2008

TA–W–70,767; Smurfit-Stone Container Corporation, Containerboard Mill Div./Leased Workers from Nelson Personnel, Puritan Cleaning and Securitas, Missoula, MT. May 26, 2008

TA–W–70,848; Atwood Mobile Products, LLC, Antwerp/Spec-Tem Division, Antwerp, OH. May 29, 2008

TA–W–70,937; Viscotec Automotive Products, LLC, Leased Workers From Catawba Valley Staffing, Morganton, NC. May 29, 2008

TA–W–71,271; North American Hoganas High Alloys, LLC, North America Business, Manpower, At Work, Johnstown, PA. June 16, 2008

TA–W–71,784; Mancor Indiana, Inc., Anderson, IN. July 22, 2008

TA–W–71,800; Dana Holding Corporation, Light Vehicle Drive Div., Adecco, Aerotek, MSI, Orangeburg, SC. July 23, 2008

TA–W–71,844; Clarcor Air Filtration Products, Inc, Workplace, Inc., Rockford, IL. July 28, 2008

TA–W–71,910; Pacific Steel Casting, Leased Workers of Aerotek and Ledgent, Berkeley, CA. July 24, 2008.

TA–W–71,975; Parker Hannifin, Pneumatic Division North America, Canton, PA. July 27, 2008.

TA–W–72,072; Byer California, San Francisco, CA. August 11, 2008.

TA–W–70,551; Nabors Drilling USA, Williston, ND. May 19, 2008.

TA–W–70,142A; Great Lakes Recovery Systems, Inc., On-Site at US Steel, Great Lakes Works, Ecorse, MI. May 18, 2009.

TA–W–70,142B; Tube City IMS, Inc., On Site at US Steel Corp., Ecorse, MI. May 18, 2008.

TA–W–70,975A; B&C Corporation, Jr. Engineering Division, B&C Services, Barberton, OH. June 2, 2008.

TA–W–70,975; B&C Corporation, Jr Wheel Div./Leased Workers of B&C Services, Inc., Norton, OH. June 2, 2008.

TA–W–70,250; Jagger Brothers, Inc., Springvale, ME. May 18, 2008.

TA–W–70,397; Weyerhaeuser NR Company, I Level, Emerson Veneer Division, Emerson, AR. May 19, 2008.

TA–W–70,691; Fairystone Fabrics, LLC, dba Fairystone Fabrics, Inc., Burlington, NC. May 19, 2008.

TA–W–71,981; Bailey Knit Corporation, Fort Payne, AL. August 5, 2008.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W–70,057; Rockwell Automation, Inc., Richland Center, WI. May 18, 2008.

TA–W–70,063; AIT, American Integrated Technologies, Pflugerville, TX. May 18, 2008.

TA–W–70,269; KGP Telecommunications, Inc., Express Personnel and Work Connection, Faribault, MN. May 18, 2008.

TA–W–70,316; O'Neal Steel, Inc., Leased Workers from Alpha Omega, Roanoke, VA. May 19, 2008.

TA–W–70,351; National Semiconductor Corporation, Arlington Manufacturing Site, GCA, CMPA, Arlington, TX. May 18, 2008.

TA–W–70,377; Morgan Advanced Materials and Technology, Inc., A Subsidiary of Morgan Crucible PLC, Coudersport, PA. May 20, 2008.

TA–W–70,408; DJ Fashions, LLC, New York, NY. May 8, 2008.

TA–W–70,430; UGL–Unnico, Northeast, Leased Workers at Fairchild Semiconductor, South Portland, ME. May 19, 2008.

TA–W–70,467; Fortis Plastics, LLC, Fort Smith, AR. May 20, 2008.

TA–W–70,504; Seagate Technology, LLC, Recording Head Operations, Leased workers from Spherion, Bloomington, MN. May 18, 2008.

TA–W–70,640; Leggett and Platt, Inc., Simpsonville, KY. May 19, 2008.

TA–W–70,647; Dana Holding Corporation, Sealing Products Division, Westaff, Robinson, IL. May 26, 2008.

TA–W–70,690; Nilfisk Advance, Inc., Plymouth, MN. May 19, 2008.

TA–W–70,834; Celerity, Inc., Leased Workers from Spherion, Austin, TX. May 28, 2008.

TA–W–70,838; The Berry Company LLC, Local Insight Media Holdings, Kelly Services, Office Team PSI, Dayton, OH. June 1, 2008.

TA–W–70,893; Alpha Sintered Metals, Inc., Ridgway, PA. June 1, 2008.

TA–W–70,927; Ingersoll-Rand, Security Technologies Div./Adecco, Colorado Springs, CO. June 1, 2008.

TA–W–71,075; Umicore Cobalt Specialty Materials, Umicore USA, Olsted Staffing, Wow Service, Richard, Maxton, NC. September 9, 2008.

TA–W–71,246; True Temper Sports, Inc., Amory, MS. June 8, 2008.

TA–W–71,369; Ramsey Technology, Division of Thermo Fisher Scientific, Leased Workers Pro Staff, Adecco, Atlantis, etc, Coon Rapids, MN. June 23, 2008.

TA–W–71,447; Applied Materials, Inc., Leased Workers from ADECCO Employment Services, Aerotek, Inc., Austin, TX. June 25, 2008.

TA–W–71,519; Cooper-Standard Automotive, Inc., Cooper-Standard Holdings, Inc./Leased Workers from Robert Half Mgmt Resources, Novi, MI. June 30, 2008.

TA–W–71,586; Mars Petcare US, Inc., A Subsidiary of Mars, Inc., Vernon, CA. July 7, 2008.

TA–W–71,656; Datalogic Scanning, Inc., Selectemp, Express Personnel, Kelly Service, etc, Eugene, OR. July 10, 2008.

TA–W–71,659; Technicolor Business Group, Technicolor Home Entertainment Services Division, Camarillo, CA. July 6, 2008.

TA–W–71,671; Rockwell Automation, OES Div./Leased Workers from Volt, and Victory Personnel, Milwaukee, WI. July 8, 2008.

TA–W–71,679; Acu-Rite Companies, Inc., Jamestown, NY. July 10, 2008.

TA–W–71,720; Yanagawa of South Carolina, Inc., Olstein Staffing, Kelly Services, Performance Staffing, Manning, SC. July 6, 2008.

TA–W–71,754; RR Donnelley, Kelly Services, Spanish Fork, UT. July 17, 2008.

TA–W–71,761A; Tempstar, Weave Corporation, Denver, PA. July 15, 2008.

TA–W–71,761B; Weave Corporation, Hackensack, NJ. July 15, 2008.

TA–W–71,761C; Weave Corporation, New York, NY. July 15, 2008.

TA–W–71,761; Weave Corporation, Manufacturing Division, Denver, PA. July 27, 2009.

TA–W–71,767; General Electric Lighting-Ravenna Lamp Plant, Light Division, Leased Wkrs From Devore Technologies, Ravenna, OH. July 10, 2008.

TA–W–71,772; Hospira, Inc., Leased Wkrs Kelly Services, Morgan Hill, CA. June 23, 2008.

TA–W–71,841; Vital Signs Minnesota, Inc., Masterson Personnel and MRCI Worksource, Burnsville, MN. July 29, 2008.

TA–W–71,853; Best Top Inc., Formerly known as Global Accessories Inc., Fremont, OH. August 19, 2008.

TA–W–71,866; Belden, Inc., Mohawk Division, Adecco Express, Robert Half, etc, Leominster, MA. July 29, 2008.

TA–W–71,896; Skyjack Manufacturing, Inc., Subsidiary of Skyjack, Inc., Emmetsburg, IA. July 31, 2008.

TA–W–71,913; Siemens Energy and Automation, Norwood Motor Facility, Leased Workers from Guidant, Norwood, OH. August 3, 2008.

TA–W–71,947; Luvata Franklin, Inc, ACR Tubes Division/Leased Wkrs From Robert Half Mgt. Resources, Franklin, KY. August 5, 2008.

TA–W–71,961; Caps Group Acquisition LLC, NK Graphics Division, Black Dot Group, West Chesterfield, NH. August 4, 2008.

TA–W–71,965; Pioneer Automotive Technologies, Inc., Springboro, OH. August 7, 2008.

TA–W–72,053; Allied Air Enterprises, Inc., Gallman Personnel Services, Blackville, SC. August 20, 2008.

TA–W–72,058; Gardner Denver, Thomas Products Div., Sheboygan, WI. August 13, 2008.

TA–W–72,126; Medtronic, Inc., Arizona Device Manufacturing, Kelly, Project, Tempe, AZ. August 24, 2008.

TA–W–72,140; Par Springer-Miller Systems, Inc., Stowe, VT. August 18, 2008.

TA–W–72,190; Electronic Data Systems, A Hewlett-Packard Company, Capital Markets Segment, Applications and Financial Services Sector, Montvale, NJ. September 1, 2008.
TA–W–70,609; FMC Manufacturing, LLC, Midwest Motorcycle Supply, Monmouth, IL. May 22, 2008.
TA–W–70,720; BIC Consumer Products Manufacturing Company, Inc., A Subsidiary of BIC USA, Inc., Fountain Inn, SC. May 18, 2008.
TA–W–71,492; Cholestech Corporation, Inverness Medical Innovations, Leased Wkrs Payrolling, TAC Worldwide, Hayward, CA. June 29, 2008.
TA–W–71,668; Permacel, Pleasant Prairie, WI. July 14, 2008.
TA–W–71,898; Kaiser Foundation Hospitals, KP–IT Division, Silver Spring, MD. July 31, 2008.
TA–W–72,046; The McClatchy Group, The Miami Herald Media Company, Collections Division, Miami, FL. August 13, 2008.
TA–W–70,576; AT&T Services, Inc., Performance Evaluation, APC Workforce Solutions, etc, Saginaw, MI. May 21, 2008.
TA–W–71,009; Experian, Marketing Services Division, Leased Workers From Tapfin, Lincoln, NE. June 3, 2008.
TA–W–71,310; Littelfuse, Inc, Corp. Resources, Ltd, Aerotek, Ernest & Young & Brooksource, Chicago, IL. June 18, 2008.
TA–W–71,366; Hewlett Packard Company, Enterprise Storage and Networks, Supply Chain Division, Boise, ID. May 19, 2008.
TA–W–71,475; Akzo Nobel Coatings, Inc., Car Refinishes, Color Div., Akzo Nobel, Leased Wkrs Adecco Employment, Troy, MI. June 29, 2008.
TA–W–71,487A; Work Skills Corporation, Brighton, MI. June 17, 2008.
TA–W–71,487; Work Skills Corporation, Ypsilanti, MI. June 17, 2008.
TA–W–71,748; Jockey International, Inc., Carlisle, KY. July 20, 2008.
TA–W–71,794; Behr America, Inc., Troy, MI. July 15, 2008.
TA–W–71,846; ACS Consultant Company, Inc., Cheshire, CT. July 7, 2008.
TA–W–71,854; Infineon Technologies North America Corp, Wireless Solutions-Mobile Phone Platforms, Ultimate, Allentown, PA. June 24, 2008.
TA–W–71,855; Freescale Semiconductor, Technical Information Center, Inc., Tempe, AZ. July 23, 2008.
TA–W–70,547; Acxiom Corporation, Information Security Team, Downers Grove, IL. May 17, 2008.
TA–W–71,060; Carhartt, Inc., Marrowbone Sortation, Marrowbone, KY. June 6, 2008.
TA–W–71,775; Warner Brothers Entertainment, Warner Brother Theatrical Enterprises, Burbank, CA. July 20, 2008.
TA–W–71,830; S&B Industry Technologies, L.P., Fort Worth, TX. July 22, 2008.
TA–W–71,876; Direct Brands, Terre Haute, IN. July 29, 2008.
TA–W–72,153; MedQuist, Inc., Including Workers Throughout The United States, Mount Laurel, NJ. August 27, 2008.

The following certifications have been issued. The requirements of Section 222(b) (adversely affected workers in public agencies) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W–70,712; Cummings Filtration, Leased Workers from Alternative Management, Findlay, OH. May 27, 2008.
TA–W–70,060; Greif Brothers Services Corporation, Culloden, WV. May 18, 2008.
TA–W–70,116; Mullican Lumber Company, LP, A Sub. Of Baillie Lumber Company, Employment, Ronceverte, WV. May 18, 2008.
TA–W–70,122; Oviso Manufacturing, Leased Workers from Aerotek, Concord, CA. May 18, 2008.
TA–W–70,350; Vin-Tex Sealers, Inc., Labor Network, Itasca, IL. May 18, 2008.
TA–W–70,370; Danfoss Scroll Technologies, LLC, Leased Wkrs From Firststaff, Arkadelphia, AR. May 18, 2008.
TA–W–70,376; Kaiser Aluminum Fabricated Products, LLC, Kaiser Aluminum-Greenwood Forge Div./ Staff Source, Greenwood, SC. May 19, 2008.
TA–W–70,391; Consolidated Metco, Inc., Leased Workers From Friday's, Canton, NC. May 18, 2008.
TA–W–70,450; Derby Cellular Products, Inc., Derby, CT. May 20, 2008.
TA–W–70,488A; Xenia Manufacturing, Inc.—Olney, Olney, IL. May 18, 2008.
TA–W–70,488B; Xenia Manufacturing, Inc.—Flora, Flora, IL. May 18, 2008.
TA–W–70,488; Xenia Manufacturing, Inc., Xenia, IL. May 18, 2008.
TA–W–70,597; Metaldyne Corporation, Middleville Division/Leased Workers From Williamson Staffing, Middleville, MI. May 18, 2008.
TA–W–70,622; V & E Components, Inc., High Point, NC. May 18, 2008.
TA–W–70,774; Sychip Inc, Leased workers from Adminstaff, Plano, TX. May 27, 2008.
TA–W–70,776; Ravenswood Rolled Products, A Subsidiary of Pechiney Metals, LLC, PSA Personnel, Ravenswood, WV. May 28, 2008.
TA–W–70,791; Pace Industries, FKA Est Company, Leased Wkrs of Seek Careers Staffing, Grafton, WI. May 27, 2008.
TA–W–71,139; Techne, Inc., a/b/c Techne Engineering, Leased Workers from Manpower, Inc., Scottsburg, IN. June 4, 2008.
TA–W–71,378A; BorgWarner Diversified Transmission Products, Leased Wkrs at BorgWarner Diversified Transmission Products, Muncie, IN. June 22, 2008.
TA–W–71,378; BorgWarner Diversified Transmission Products, Torqtransfer Systems Division, Muncie, IN. June 30, 2008.
TA–W–71,437; Imperial Fabricating of Washington, A Subsidiary of Accuride Corporation, Chehalis, WA. June 23, 2008.
TA–W–71,512; Allegheny Tool and Manufacturing Company, Inc., Meadville, PA. June 29, 2008.
TA–W–71,581; Global Engine Manufacturing Alliance, A Subsidiary of the Chrysler Group, LLC, Premier, Dundee, MI. July 6, 2008.
TA–W–71,867; Fortis Plastics, LLC, Booneville, MS. June 25, 2008.
TA–W–71,980; Montezuma Manufacturing, Cosma Int'l, Leased Workers from Temp Associates, Montezuma, IA August 5, 2008.
TA–W–70,480; Auto Truck Transport, Portland, OR. May 20, 2008.
TA–W–70,697; Sunbelt Furniture Xpress, Hickory, NC. May 26, 2008.
TA–W–70,803; LT Logging, Eureka, MT. May 27, 2008.
TA–W–71,541; Minority Auto Handling Specialist, T.V. Minority Company, Fenton, MO. July 1, 2008.
TA–W–71,583; Data2Logistics, Grand Blanc, MI. June 30, 2008.
TA–W–71,648; Innovion Corporation, Chandler, AZ. July 8, 2008.
TA–W–71,762; A. Schadt Woodcarving and Design, High Point, NC. July 17, 2008.
TA–W–71,837; Texturing Services, Inc., Martinsville, VA. July 28, 2008.
TA–W–71,839A; Negevtech, Inc., Boise, ID. July 2, 2008.
TA–W–71,839B; Negevtech, Inc., c/o IMFT, Lehi, UT. July 2, 2008.

TA–W–71,839C; Negevtech, Inc., c/o Spansion, Inc., Austin, TX. July 2, 2008.
TA–W–71,839D; Negevtech, Inc., c/o Micron Technology, Inc., Manassas, VA. July 2, 2008.
TA–W–71,839; Negevtech, Inc., Santa Clara, CA. July 2, 2008.
TA–W–72,027; Straightaway Fabrications, Ltd., Ashland, OH. August 12, 2008.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W–72,259; DuPont Teijin Films, Schenkers Logistics, Inc., Florence, SC. September 9, 2008.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W–70,625; Springs Window Fashions, LLC, Taylorsville, NC.
TA–W–71,818; Suntrust Bank, Inc., Suntrust Online (Call Center), Miami, FL.
TA–W–72,046A; The McClatchy Group, Call Center Division, Miami, FL.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

None.

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–70,027; Ram Rod Industries, LLC, Prentice, Prentice, WI.
TA–W–70,104; Van Buren Pipe Corporation, North American Pipe Corporation (NAPCO), Van Buren, AR.
TA–W–70,109; Modern Woodcrafts, LLC, Lewiston, ME.
TA–W–70,201; Tivoly, Inc., Derby Line, VT.
TA–W–70,309; Mt. Vernon Mills-LaFrance Industries, LaFrance Industries, Defender Services, LaFrance, SC.
TA–W–70,375; Mohawk Industries, Inc., Residential Yarn Division, Calhoun Falls, SC.
TA–W–70,454; Graphite Engineering and Sales Company, Greenville, MI.
TA–W–70,591; Symmco, Inc., Leased Workers from Spherion, Sykesville, PA.
TA–W–70,663; Corning, Inc., Environmental Technologies Division, Christiansburg, VA
TA–W–70,745; Fujicolor Processing Inc., Williamsport, MD
TA–W–70,118; J.D.M. Import Company, Inc., Leased Wkrs from Prestige Employee Administrators, New York, NY
TA–W–70,314; Jeld-Wen, Inc., Administration Division, Klamath Falls, OR
TA–W–70,344; Atlantic Southeast Airlines, Skywest, Inc./Leased Workers of Delta Global Services, Inc., Fort Smith, AR
TA–W–70,493; Hyatt Regency Albuquerque, Hyatt Hotels Corporation, Accounting Department, Albuquerque, NM
TA–W–70,519; Blue Cross Blue Shield of Michigan, Blue Care Network, Detroit, MI
TA–W–71,564; Bob King, Inc., d/b/a Bob King Mazda, Winston-Salem, NC
TA–W–71,856; SER Enterprise, Webb City, MO
TA–W–71,903; JP Morgan Chase and Company, JP Morgan Investment Banking, Global Corporate Financial Operations, New York, NY
TA–W–72,287; Blue Cross Blue Shield of Michigan, Grand Rapids, MI
TA–W–70,012; Sappi Fine Paper N.A., Westbrook, ME
TA–W–70,406; Greenville Metals, Inc., Powder Division, Transfer, PA

The investigation revealed that the criteria under paragraphs (b)(2) and (b)(3) (public agency acquisition of services from a foreign country) of section 222 have not been met.

TA–W–72,179; Licking County Department of Job And Family Service, Newark, OH.

The investigation revealed that criteria of Section 222(c)(2) has not been met. The workers' firm (or subdivision) is not a Supplier to or a Downstream Producer for a firm whose workers were certified as eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *September 21 through October 2, 2009.* Copies of these determinations are available for inspection in Room N–5428, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 5, 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27535 Filed 11–16–09; 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 27, 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 27, 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 5th day of November 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 10/26/09 and 10/30/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72665	Federal-Mogul Sintered Products (State)	Waupun, WI	10/26/09	10/23/09
72666	Jana's Classics (Wkrs)	Tualatin, OR	10/26/09	09/01/09
72667	Fastenal Company (Comp)	Heath, OH	10/26/09	10/23/09
72668	AEES (Comp)	Farmington Hills, MI	10/26/09	10/20/09
72669	A&H Sportswear (Wkrs)	Pen Argyl, PA	10/26/09	10/23/09
72670	Ericsson (Wkrs)	Research Triangle Park, NC	10/26/09	10/22/09
72671	Stein Inc. (Wkrs)	Broadview Heights, OH	10/26/09	10/23/09
72672	Concord Steel (Wkrs)	Warren, OH	10/26/09	10/14/09
72673	Weather Shield Manufacturing, Inc (Wkrs)	Medford, WI	10/26/09	10/23/09
72674	Faurecia Seating (Comp)	Auburn Hills, MI	10/26/09	10/20/09
72675	Kenco Logistic Services, LLC (Wkrs)	Chattanooga, TN	10/26/09	10/21/09
72676	Christensen Shipyard LTD (Wkrs)	Vancouver, WA	10/26/09	10/13/09
72677	GE Oil & Gas Operations, LLC (Wkrs)	Oshkosh, WI	10/26/09	10/22/09
72678	Sand Dollar Drilling, LP (Wkrs)	San Angelo, TX	10/27/09	10/21/09
72679	Logistics Management Services, Inc. (LMSI) (State)	Fenton, MO	10/27/09	10/26/09
72680	Goodwill Printing (Union)	Ferndale, MI	10/27/09	10/26/09
72681	Weyerhaeuser Company (Comp)	Roseburg, OR	10/27/09	10/23/09
72682	Toshiba America Consumer Products (Union)	Lebanon, TN	10/27/09	10/26/09
72683	McConway & Torley (Wkrs)	Pittsburgh, PA	10/27/09	10/26/09
72684	McMullin Chevrolet Pontiac (Wkrs)	Dallas, OR	10/27/09	10/23/09
72685	First Data Corporation (State)	Daytona Beach, FL	10/27/09	05/18/09
72686	Citi (Wkrs)	Fort Lauderdale, FL	10/27/09	10/16/09
72687	Pratt N Whitney Engine Services (Wkrs)	Plattsburgh, NY	10/27/09	10/26/09
72688	P.S. Stix, Inc. (Wkrs)	Costa Mesa, CA	10/27/09	10/06/09
72689	Freescale Semiconductor (Wkrs)	Austin, TX	10/27/09	10/19/09
72690	Whirlaway Cinn. Corporation (Wkrs)	Hamilton, OH	10/28/09	10/01/09
72691	Moog Aircraft Group—Salt Lake Operations (Comp)	Salt Lake City, UT	10/28/09	10/20/09
72692	Illinois Tool Works (Wkrs)	Frackville, PA	10/28/09	10/27/09
72693	Jim Walter Homes, Inc. (Comp)	Tampa, FL	10/28/09	10/27/09
72694	AMDOCS (Wkrs)	St. Louis, MO	10/28/09	10/26/09
72695	Hanesbrands (Wkrs)	Galax, VA	10/28/09	10/27/09
72696	Reed Manufacturing Company, Inc. (Comp)	Tupelo, MS	10/28/09	10/27/09
72697	Lucite International (State)	Nederland, TX	10/28/09	10/26/09
72698	Designs Now (Comp)	Kettering, OH	10/28/09	10/27/09
72699	EMCOR Facility Services (Comp)	Yardley, PA	10/28/09	10/27/09
72700	The H. B. Smith Company, Inc. (Comp)	Westfield, MA	10/28/09	10/27/09
72701	BRP US, Inc. (Comp)	Sturtevant, WI	10/28/09	10/16/09
72702	Benchmark Electronics, Beaverton Division (Comp)	Beaverton, OR	10/28/09	10/16/09
72703	Young Touchstone (Wkrs)	Lexington, TN	10/29/09	10/27/09
72704	Starwood Hotels & Resorts Worldwide, Inc. (Comp)	Braintree, MA	10/29/09	09/30/09
72705	Foam Tech, Inc. (Comp)	Lexington, NC	10/29/09	10/28/09
72706	Berry Company (Wkrs)	Erie, PA	10/29/09	06/22/09
72707	Airways (Wkrs)	Hamilton, IN	10/29/09	10/23/09
72708	Phylrich International (Comp)	Burbank, CA	10/29/09	10/26/09
72709	Master Lock Company, LLC (Union)	Oak Creek, WI	10/29/09	10/28/09
72710	EDS, HP company (State)	Fairfield Twnship, OH	10/29/09	10/28/09
72711	Wire Products Company, Inc (Wkrs)	Cleveland, OH	10/29/09	10/27/09
72712	Quality Spring/Togo, Inc. (Union)	Coldwater, MI	10/29/09	10/26/09
72713	Jones Lang LaSalle Americas (Wkrs)	Chicago, IL	10/30/09	10/29/09
72714	General Motors Corporation (Wkrs)	Troy, MI	10/30/09	10/29/09
72715	Bogner of America (Comp)	Newport, VT	10/30/09	10/28/09
72716	Freeport-McMoran (Wkrs)	Safford, AZ	10/30/09	10/21/09
72717	QRS Music Technologies, Inc. (Comp)	Seneca, PA	10/30/09	10/28/09
72718	Briggs & Stratton Power Products Group, LLC (Comp)	Jefferson (Watertown), WI	10/30/09	10/29/09
72719	Voith Fabrics (Union)	Appleton, WI	10/30/09	10/26/09
72720	Philips Healthcare Systems (Wkrs)	Cleveland, OH	10/30/09	10/28/09
72721	Arquest (State)	Camden, AR	10/30/09	10/29/09
72722	Arcelor/Mittal (Wkrs)	Shelby, OH	10/30/09	10/22/09
72723	AMDOCS, Inc. (Wkrs)	San Ramon, CA	10/30/09	10/27/09

[FR Doc. E9–27428 Filed 11–16–09; 8:45 am]
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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 27, 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 27, 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 5th day of November 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 10/26/09 and 10/30/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72665	Federal-Mogul Sintered Products (State)	Waupun, WI	10/26/09	10/23/09
72666	Jana's Classics (Wkrs)	Tualatin, OR	10/26/09	09/01/09
72667	Fastenal Company (Comp)	Heath, OH	10/26/09	10/23/09
72668	AEES (Comp)	Farmington Hills, MI	10/26/09	10/20/09
72669	A&H Sportswear (Wkrs)	Pen Argyl, PA	10/26/09	10/23/09
72670	Ericsson (Wkrs)	Research Triangle Park, NC	10/26/09	10/22/09
72671	Stein Inc. (Wkrs)	Broadview Heights, OH	10/26/09	10/23/09
72672	Concord Steel (Wkrs)	Warren, OH	10/26/09	10/14/09
72673	Weather Shield Manufacturing, Inc (Wkrs)	Medford, WI	10/26/09	10/23/09
72674	Faurecia Seating (Comp)	Auburn Hills, MI	10/26/09	10/20/09
72675	Kenco Logistic Services, LLC (Wkrs)	Chattanooga, TN	10/26/09	10/21/09
72676	Christensen Shipyard LTD (Wkrs)	Vancouver, WA	10/26/09	10/13/09
72677	GE Oil & Gas Operations, LLC (Wkrs)	Oshkosh, WI	10/26/09	10/22/09
72678	Sand Dollar Drilling, LP (Wkrs)	San Angelo, TX	10/27/09	10/21/09
72679	Logistics Management Services, Inc. (LMSI) (State)	Fenton, MO	10/27/09	10/26/09
72680	Goodwill Printing (Union)	Ferndale, MI	10/27/09	10/26/09
72681	Weyerhaeuser Company (Comp)	Roseburg, OR	10/27/09	10/23/09
72682	Toshiba America Consumer Products (Union)	Lebanon, TN	10/27/09	10/26/09
72683	McConway & Torley (Wkrs)	Pittsburgh, PA	10/27/09	10/26/09
72684	McMullin Chevrolet Pontiac (Wkrs)	Dallas, OR	10/27/09	10/23/09
72685	First Data Corporation (State)	Daytona Beach, FL	10/27/09	05/18/09
72686	Citi (Wkrs)	Fort Lauderdale, FL	10/27/09	10/16/09
72687	Pratt N Whitney Engine Services (Wkrs)	Plattsburgh, NY	10/27/09	10/26/09
72688	P.S. Stix, Inc. (Wkrs)	Costa Mesa, CA	10/27/09	10/06/09
72689	Freescale Semiconductor (Wkrs)	Austin, TX	10/27/09	10/19/09
72690	Whirlaway Cinn. Corporation (Wkrs)	Hamilton, OH	10/28/09	10/01/09
72691	Moog Aircraft Group—Salt Lake Operations (Comp)	Salt Lake City, UT	10/28/09	10/20/09
72692	Illinois Tool Works (Wkrs)	Frackville, PA	10/28/09	10/27/09
72693	Jim Walter Homes, Inc. (Comp)	Tampa, FL	10/28/09	10/27/09
72694	AMDOCS (Wkrs)	St. Louis, MO	10/28/09	10/26/09
72695	Hanesbrands (Wkrs)	Galax, VA	10/28/09	10/27/09
72696	Reed Manufacturing Company, Inc. (Comp)	Tupelo, MS	10/28/09	10/27/09
72697	Lucite International (State)	Nederland, TX	10/28/09	10/26/09
72698	Designs Now (Comp)	Kettering, OH	10/28/09	10/27/09
72699	EMCOR Facility Services (Comp)	Yardley, PA	10/28/09	10/27/09
72700	The H. B. Smith Company, Inc. (Comp)	Westfield, MA	10/28/09	10/27/09
72701	BRP US, Inc. (Comp)	Sturtevant, WI	10/28/09	10/16/09
72702	Benchmark Electronics, Beaverton Division (Comp)	Beaverton, OR	10/28/09	10/16/09
72703	Young Touchstone (Wkrs)	Lexington, TN	10/29/09	10/27/09
72704	Starwood Hotels & Resorts Worldwide, Inc. (Comp)	Braintree, MA	10/29/09	09/30/09
72705	Foam Tech, Inc. (Comp)	Lexington, NC	10/29/09	10/28/09
72706	Berry Company (Wkrs)	Erie, PA	10/29/09	06/22/09
72707	Airways (Wkrs)	Hamilton, IN	10/29/09	10/23/09
72708	Phylrich International (Comp)	Burbank, CA	10/29/09	10/26/09
72709	Master Lock Company, LLC (Union)	Oak Creek, WI	10/29/09	10/28/09
72710	EDS, HP company (State)	Fairfield Twnship, OH	10/29/09	10/28/09
72711	Wire Products Company, Inc (Wkrs)	Cleveland, OH	10/29/09	10/27/09

APPENDIX—Continued

[TAA petitions instituted between 10/26/09 and 10/30/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72712	Quality Spring/Togo, Inc. (Union)	Coldwater, MI	10/29/09	10/26/09
72713	Jones Lang LaSalle Americas (Wkrs)	Chicago, IL	10/30/09	10/29/09
72714	General Motors Corporation (Wkrs)	Troy, MI	10/30/09	10/29/09
72715	Bogner of America (Comp)	Newport, VT	10/30/09	10/28/09
72716	Freeport-McMoran (Wkrs)	Safford, AZ	10/30/09	10/21/09
72717	QRS Music Technologies, Inc. (Comp)	Seneca, PA	10/30/09	10/28/09
72718	Briggs & Stratton Power Products Group, LLC (Comp)	Jefferson (Watertown), WI	10/30/09	10/29/09
72719	Voith Fabrics (Union)	Appleton, WI	10/30/09	10/26/09
72720	Philips Healthcare Systems (Wkrs)	Cleveland, OH	10/30/09	10/28/09
72721	Arquest (State)	Camden, AR	10/30/09	10/29/09
72722	Arcelor/Mittal (Wkrs)	Shelby, OH	10/30/09	10/22/09
72723	AMDOCS, Inc. (Wkrs)	San Ramon, CA	10/30/09	10/27/09

[FR Doc. E9–27534 Filed 11–16–09; 8:45 am]

BILLING CODE 4510–FN–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 23, 2009 via conference call. The meeting will begin at 2 p.m. (ET), and continue until conclusion of the Board's agenda.

LOCATION: 3333 K Street, NW., Washington, DC 20007—3rd Floor Conference Center.

STATUS OF MEETING: *Open*. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location identified above. Members of the public wishing to listen to the meeting by telephone should call 202.295.1626 to obtain access information to the meeting. To enhance the quality of your listening experience as well as that of others and to eliminate background noises that interfere with the audio recording of the proceedings, please mute your telephone during the meeting.

Matters To Be Considered

1. Approval of the agenda.
2. Consider and act on Board of Directors' response to the Inspector General's Semiannual Report to Congress for the period of April 1, 2009 through September 30, 2009.
3. Public comment.
4. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: November 12, 2009.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E9–27657 Filed 11–13–09; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that nine meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Learning in the Arts (application review): November 30–December 4, 2009 in Room 716. A portion of this meeting, from 3:30 p.m. to 4 p.m. on December 3rd, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on November 30th–December 2nd, from 9 a.m. to 3:30 p.m. and 4 p.m. to 6 p.m. on December 3rd, and from 9 a.m. to 4:30 p.m. on December 4th, will be closed.

Folk and Traditional Arts (application review): December 2–4, 2009 in Room 714. A portion of this meeting, from 10:30 a.m. to 11:30 a.m. on December 4th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on December 2nd, from 8:30 a.m. to 5:30 p.m. on December 3rd, and from 8:30 a.m. to 10:30 a.m. and 11:30 a.m. to 12 p.m. on December 4th, will be closed.

Design (application review): December 3–4, 2009 in Room 730. A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on December 4th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on December 3rd and from 9 a.m. to 1:30 p.m. and 2:30 p.m. to 4:30 p.m. on December 4th, will be closed.

Theater (application review): December 8–11, 2009 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on December 8th, from 9 a.m. to 6 p.m. on December 9th and 10th, and from 9 a.m. to 3 p.m. on December 11th, will be closed.

Literature (application review): December 9–10, 2009 in Room 714. This meeting, from 9 a.m. to 6 p.m. on December 9th and from 9 a.m. to 6:30 p.m. on December 10th, will be closed.

Literature (application review): December 11, 2009 in Room 714. This meeting, from 9 a.m. to 5 p.m., will be closed.

American Masterpieces/Visual Arts Touring (application review): December 11, 2009 in Room 716. This meeting, from 9 a.m. to 4 p.m., will be closed.

Arts on Radio and Television (application review): December 14–16, 2009 in Room 716. This meeting, from 9 a.m. to 5:45 p.m. on December 14th, from 9 a.m. to 6 p.m. on December 15th, and from 9 a.m. to 4 p.m. on December 16th, will be closed.

Museums (application review): December 15–18, 2009 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on December 15th, from 9 a.m. to 6 p.m.

on December 16th and 17th, and from 9 a.m. to 4 p.m. on December 18th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202–682–5691.

Dated: November 12, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E9–27531 Filed 11–16–09; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0498]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 22, 2009 to November 4, 2009. The last biweekly notice was published on November 3, 2009 (74 FR 56882).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's

right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The Meta-System Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a

balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 9, 2009.

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3/4.9.7, ''Crane Travel—Fuel Handling Building,'' to permit certain operations needed for dry cask storage of spent nuclear fuel. Specifically, the proposed change to this TS (while continuing to prohibit travel of a heavy load over irradiated fuel assemblies in the spent fuel pool) would permit travel of loads in excess of 2,000 pounds (lbs) over a transfer cask containing irradiated fuel assemblies, provided a single-failure-proof handling system is used.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The FHB [fuel handling building] cask crane will be upgraded to meet the applicable single-failure-proof criteria of NUREG 0554 (Reference 7.10 [NUREG–0554, Single-Failure-Proof Cranes for Nuclear Power Plants, U.S. Nuclear Regulatory Commission, May 1979]) and NUREG 0612 (Reference 7.13 [NUREG–0612, Control of Heavy Loads at Nuclear Power Plants, U.S. Nuclear Regulatory Commission, July 1980 (ADAMS Accession No. ML070250180)] for the modification of the existing non single-failure-proof crane. Due to the reliability of this upgraded handling system, a load drop accident will not be considered a credible event. While loads in excess of 2000 lbs shall continue to be prohibited from travel over irradiated fuel assemblies in the spent fuel pool by the WF3 [Waterford 3] Technical Specifications, heavy loads will be permitted to travel over irradiated fuel assemblies in a transfer cask, using a single-failure-proof handling system as described in NUREG–0800 Section 9.1.5 Paragraph III.4.C (Reference 7.9 [NUREG–0800 Section 9.1.5 Rev. 1, Standard Review Plan for Overhead Heavy Load Handling Systems, March 2007 (ADAMS Accession No. ML062260190)]), to enable the conduct of dry cask storage loading/unloading operations. Specifically, this will enable the MPC [multi-purpose canister] lid and its associated lifting apparatus to travel over irradiated fuel assemblies in a MPC basket. The probability of dropping a load that weighs in excess of 2000 lbs onto an irradiated fuel assembly is not increased as a result of the reliability of the single-failure-proof handling system.

The proposed change does not affect the consequences of any accidents previously evaluated in the WF3 UFSAR [Updated Final Safety Analysis Report] (Reference 7.1 [Waterford Steam Electric Station Unit No. 3, Updated Final Safety Analysis Report, Revision 302, December 2008]). The change involves the travel of heavy loads over irradiated fuel assemblies in a transfer cask using a single-failure-proof handling system. Under these circumstances, no new load drop accidents are postulated and no changes to the probabilities or consequences of accidents previously evaluated are involved.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Section 9.1 of the WF3 UFSAR evaluates fuel storage and handling operations. Section 15.7.3.4 of the WF3 UFSAR discusses the analysis of design basis fuel handling accidents involving drop of an irradiated assembly resulting in multiple fuel rod failures and consequent release of radioactivity. The change involves the travel of heavy loads over irradiated fuel assemblies in a transfer cask using a single-failure-proof handling system. Under these circumstances, no new or different load drop accidents are postulated to occur and there are no changes in any of the load drop accidents previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The revised Technical Specification changes do not involve a reduction in any margin of safety. Technical Specification 3/4.9.7 currently prohibits travel of heavy loads over irradiated fuel assemblies in the FHB. Proposed changes to this specification will continue to restrict FHB cask crane movements so that travel of heavy loads over irradiated fuel assemblies in the FHB are not permitted, with the single exception of heavy loads over irradiated fuel assemblies in a transfer cask, in order to enable dry cask storage operations. This operation is only permitted when the heavy load is handled using a single-failure-proof handling system. Due to the reliability of this upgraded handling system that complies with the guidance of NUREG–0800 Section 9.1.5 Paragraph III.4.C (Reference 7.9) for a single-failure-proof handling system, a load drop accident is not considered a credible event. Under these circumstances, no new load drop accidents are postulated and no reductions in margins of safety are involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 30, 2009.

Description of amendment request: The proposed amendment would modify a Surveillance Requirement (SR) regarding the start time tests for the Division 3 Emergency Diesel Generator (EDG) to provide consistency with existing similar Technical Specification (TS) SRs and the time provided in the licensing basis emergency core cooling system analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment corrects and makes consistent the acceptance criteria for the [Perry Nuclear Power Plant] PNPP TS SR pertaining to the Division 3 EDG. The EDGs mitigate the consequences of previously evaluated accidents involving a loss of offsite power. The EDGs are used to support mitigation of the consequences of an accident, but they are not considered as the initiator of any previously analyzed accident.

The proposed amendment will continue to ensure the EDGs perform their function when called upon to mitigate the consequences of events. The proposed revision to the TS SRs will continue to maintain the capability of the Division 3 [High Pressure Core Spray] HPCS system to respond within the times assumed in the Emergency Core Cooling System (ECCS) analyses.

The proposed amendment does not affect the design of the EDGs, the interfaces between the EDGs and other plant systems, or the function and reliability of the EDGs. Thus, the EDGs will continue to be capable of performing their accident mitigation function and there is no impact to the radiological consequences determined in any accident analysis.

As such, the proposed amendment continues to provide adequate assurance of an operable EDG and does not involve any increase to the probability or to the consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is an amendment that introduces no new mode of plant operation and it does not involve physical modification to the plant. New equipment is not installed with the proposed amendment, nor does the proposed amendment cause existing equipment to be operated in a new or different manner.

Since the proposed amendment does not involve a change to the plant design or operation, no new system interactions are created by this change. The proposed amendment does not produce any parameters or conditions that could contribute to the initiation of accidents different from those already evaluated in the Updated Safety Analysis Report. The change to the affected TS SR does not affect the assumed accident performance of the EDG, nor any plant structure, system or component previously evaluated.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change is an amendment that does not impact EDG performance as incorporated in the design basis analyses, including the capability for the EDG to attain and maintain required voltage and frequency for accepting and supporting plant safety loads should an EDG start signal be received. The operability of the EDG continues to be determined as required to provide emergency power to plant equipment that mitigates the consequences of a transient or accident, and maintains the HPCS system's capability to respond within the time assumed in the accident analyses.

The proposed amendment does not introduce changes to setpoints or limits established in the accident analysis. As a result of the above considerations, it is concluded that implementation of the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Branch Chief: Stephen J. Campbell.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: September 14, 2009.

Description of amendment request: The proposed amendment would correct editorial items in the Technical Specifications (TS) and the Facility Operating License (FOL).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to TS and the FOL are administrative in nature that correct typographical errors, correct format errors, correct inconsistencies between Units, or delete historical requirements that have expired. These changes do not affect the intent of any TS requirements.

The proposed change does not have any impact on structures, systems and components (SSCs) of the plant, and no effect on plant operations. The proposed change does not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility. Therefore, this proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to TS and the FOL are administrative in nature that correct typographical errors, correct format errors, correct inconsistencies between Units, or delete historical requirements that have expired. These changes do not affect the intent of any TS requirements.

The proposed change does not involve a modification to the physical configuration of the plant (i.e., no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally, there is no change in the types or increases in the amounts of any effluent that may be released off-site and there is no increase in individual or cumulative occupational exposure. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to TS and the FOL are administrative in nature that correct typographical errors, correct format errors, correct inconsistencies between Units, or delete historical requirements that have expired. These changes do not affect the intent of any TS requirements.

The proposed change incorporates corrections to the TS and FOL and results in improved accuracy of these licensing documents. There is no change to any design basis, licensing basis or safety limit, no change to any parameters; consequently no safety margins are affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Vincent Zabielski, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

PSEG Nuclear LLC, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: September 21, 2009.

Description of amendment request: The proposed amendment would revise Technical Specification 6.8.4.f, ''Primary Containment Leakage Rate Testing Program,'' to allow a one-time extension of the containment Type A integrated leakage rate test interval from 10 to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would revise Technical Specification (TS) 6.8.4.f, ''Primary Containment Leakage Rate Testing Program,'' to permit a one-time extension of the containment Type A Integrated Leak Rate Test (ILRT) from ten to fifteen years.

The function of the containment is to isolate and contain fission products released from the reactor coolant system following a design basis Loss of Coolant Accident (LOCA) and to confine the postulated release of radioactive material to within limits. The test interval associated with the performance of containment leakage testing is not an initiating event for any accident previously evaluated. There are no physical changes being made to the containment structure and no change made to the containment allowable leakage rate specified in Technical Specifications.

During the extended test interval, containment integrity will continue to be assured by programs for local leak rate testing and containment inspections are routinely performed as required by [the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (Code)] which demonstrates the structural integrity of the primary containment. The proposed changes do not affect performance of the containment, reactor operations or accident analysis.

The risk assessment of the proposed change has concluded that there is not a significant increase in the consequences of an accident as measured by the Large Early Release Frequency, Population Dose, and Conditional Containment Failure Frequency. These results show that an ILRT test extension will not represent a significant increase in the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change for a one-time, five-year extension of the Type A test makes no physical changes to the plant or to plant operations. No credible new failure mechanisms, malfunctions or accident initiators are being introduced by the proposed change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The integrity of the containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak tight integrity of the containment is verified by a Type A ILRT, as required by [Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50], Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' The proposed change does not affect the method or acceptance criteria for Type A, B and C testing. During the extended test interval, containment inspections performed in accordance with the requirements of the [ASME Code], Section XI, ''Inservice Inspection,'' and 10 CFR 50.65, ''[Requirements for monitoring the effectiveness of maintenance at nuclear power plants],'' provide assurance that the containment will not degrade in a manner that is only detectable by Type A testing.

The effect of the proposed change on Large Early Release Frequency, person-rem, and Conditional Containment Failure Frequency was determined not to be significant.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Vincent Zabielski, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: August 10, 2009.

Description of amendment request: The amendments would revise Technical Specification 3.7.5, ''Auxiliary Feedwater (AFW) System,'' to allow a 7-day Completion Time for the turbine-driven AFW pump if the inoperability occurs in MODE 3, following a refueling outage and if MODE 2 had not been entered. This change is based on the U.S. Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) traveler, TSTF–340, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to Technical Specification 3.7.5 would allow a seven day Completion Time for Condition A for the turbine-driven Auxiliary Feedwater (AFW) pump if the inoperability occurs in MODE 3 following a refueling outage, if MODE 2 had not been entered. Extending the Completion Time does not involve a significant increase in the probability or consequences of an accident previously evaluated because: (1) The proposed amendment does not represent a change to the system design, (2) the proposed amendment does not prevent the safety function of the AFW system from being performed, since the other fully redundant essential trains are required to be operable, (3) the proposed amendment does not alter, degrade, or prevent action described or assumed in any accident described in the San Onofre Nuclear Generating Station (SONGS) Updated Final Safety Analysis Report (UFSAR) from being performed since the other trains of AFW are required to be operable, (4) the proposed amendment does not alter any assumptions previously made in evaluating radiological consequences, and (5) the proposed amendment does not affect the integrity of any fission product barrier. No other safety related equipment is affected by the proposed change.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to Technical Specification 3.7.5 would allow a seven day Completion Time for Condition A for the turbine-driven AFW pump if the inoperability occurs in MODE 3 following a refueling outage, if MODE 2 had not been entered. Extending the Completion Time does not create the possibility of a new or different kind of accident from any accident previously evaluated because: (1) The proposed amendment does not represent a change to the system design, (2) the proposed amendment does not alter how equipment is operated or the ability of the system to deliver the required AFW flow, and (3) the proposed amendment does not affect any other safety related equipment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not involve a significant reduction in a margin of safety.

The SONGS safety analysis credits AFW pump delivery of 500 [gallons per minute] gpm at a steam generator pressure of 1097 [pounds per square inch absolute] psia and 700 gpm at a steam generator pressure of 890 psia to meet Accident Analysis flow requirements.

The proposed amendment to Technical Specification 3.7.5 would allow a seven day Completion Time for Condition A for the turbine-driven AFW pump if the inoperability occurs in MODE 3 following a refueling outage, if MODE 2 had not been entered. Extending the Completion Time does not involve a significant reduction in a margin of safety because: (1) During a return to power operations following a refueling outage, decay heat is at its lowest levels, (2) the other AFW trains are required to be OPERABLE when MODE 3 is entered, [and] (3) the motor-driven AFW train can provide sufficient flow to remove decay heat and cool the unit to Shutdown Cooling System entry conditions from power operations.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: October 20, 2009.

Description of amendment request: The proposed amendment would delete paragraph d of Technical Specification 5.2.2, ''Unit Staff,'' superseded by Title 10 of the *Code of Federal Regulations* Part 26, Subpart I.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change removes Technical Specification (TS) restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. Worker fatigue is not an initiator of any accident previously evaluated. Worker fatigue is not an assumption in the consequence mitigation of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Working hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not unnecessarily restrict working hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or effect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not involve any physical changes to plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Removal of plant-specific TS administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego Count, New York

Date of application for amendment: July 2, 2009, as supplemented October 5, 2009.

Brief description of amendment: The proposed amendment would revise the Technical Specifications (TS) by removing position indication for the relief valves from TS 3.6.11, ''Accident Monitoring Instrumentation.'' The proposed amendment would also correct an editorial error in the title of Table 4.6.11.

Date of publication of individual notice in ***Federal Register:*** October 14, 2009 (74 FR 52826).

Expiration date of individual notice: December 14, 2009.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: September 18, 2009.

Brief description of amendment: The proposed amendment would modify Technical Specification 3.2.9.1 and

4.2.7.1, ''Primary Coolant System Pressure Isolation Values,'' to incorporate requirements that are consistent with Section 3.4.5 of the Improved Standard TSs, NUREG–1433, Revision 3.

Date of publication of individual notice in ***Federal Register:*** October 14, 2009 (74 FR 52824).

Expiration date of individual notice: December 14, 2009.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert Cliffs Independent Spent Fuel Storage Installation, Docket No. 72–8, Calvert County, Maryland

Date of application for amendments: January 22, 2009, as supplemented by letters dated February 26, April 8, June 25, July 27, October 15, 19, 25 (two letters) 26, and 28, 2009.

Brief description of amendments: The amendments conform the licenses to reflect the direct transfer of Calvert Cliffs Nuclear Power Plant, Inc. to Calvert Cliffs Nuclear Power Plant, LLC, as approved by Commission Order dated October, 2009. Transfer of the license will also authorize Calvert Cliffs Nuclear Power Plant, LLC to store spent fuel in the Calvert Cliffs independent spent fuel storage installation.

Date of issuance: October 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 295 and 271.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License.

Date of initial notice in ***Federal Register:*** May 7, 2009 (74 FR 21413).

The letters dated February 26, April 8, June 25, July 27, October 15, October 19, October 25 (two letters), October 26, and October 28, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 2009.

No significant hazards consideration comments received: The NRC received comments from a member of the public on May 22, 2009. The comments did not provide any information additional to that in the application, nor did they provide any information contradictory to that provided in the application.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 14, 2008.

Brief description of amendments: The amendments implemented Technical Specification Task Force (TSTF) Changes Travelers TSTF–479, Revision 0, ''Changes to Reflect Revision of [Title 10 of the *Code of Federal Regulations*] 10 CFR 50.55a,'' and TSTF–497, Revision 0, ''Limit Inservice Testing [IST] Program SR [Surveillance Requirements] 3.0.2 Application to Frequencies of 2 Years or Less.'' TSTF–479 and TSTF–497 revised the Technical Specification Administrative Controls section pertaining to requirements for the IST Program, consistent with the requirements of 10 CFR 50.55a(f)(4) for pumps and valves which are classified as American Society of Mechanical Engineers, *Boiler and Pressure Vessel Code,* Class 1, Class 2, and Class 3.

Date of issuance: October 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 252 and 247.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the licenses and the technical specifications. The amendment also authorizes revisions to the Updated Facility Safety Analysis Report.

Date of initial notice in ***Federal Register:*** April 7, 2009 (74 FR 15769).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 2009.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 8, 2008, supplemented by letter dated May 5, 2009.

Brief description of amendments: The amendments revised the Technical Specifications (TSs) by removing and updating portions of the TSs which are out of date or are obsolete including footnotes and references.

Date of issuance: October 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 253 and 248.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the licenses and the TSs.

Date of initial notice in ***Federal Register:*** April 7, 2009 (74 FR 15769). The supplement dated May 5, 2009 provided additional information that clarified the application, did not expand

the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 2009.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., (Entergy) Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: March 25, 2009.

Brief description of amendment: The amendment added two Emergency Core Cooling System (ECCS) valves to Technical Specifications (TS) Surveillance Requirement (SR) 3.5.2.1 for checking valve position every 7 days. The TS SR is designed to verify that ECCS valves whose single failure could cause loss of the ECCS function are in the required position with ac power removed so that misalignment or single failure cannot prevent completion of the ECCS function.

Date of issuance: October 29, 2009.

Effective date: As of the date of issuance, and shall be implemented prior to entering Mode 4 during startup from 2R19.

Amendment No.: 263.

Facility Operating License Nos. DPR–26 and DPR–64: The amendment revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 19, 2009 (74 FR 23444).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 2009.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 5, 2009.

Brief description of amendment: The proposed amendment would revise the Technical Specification (TS) Section 6.7.C to change requirements related to the schedule for performing the 10 CFR Part 50, Appendix J, Type A test. Specifically, the proposed change would change the TS from requiring the test ''no later than April 2010'' to ''prior to startup from the April 2010 refuel outage.''

Date of Issuance: October 28, 2009.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 240.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** June 30, 2009 (74 FR 31320).

The Commission's related evaluation of the amendment is contained in a safety evaluation dated October 28, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: October 22, 2007, as supplemented by letters dated January 12 and October 22, 2009.

Brief description of amendment: The amendment added a new license condition 2.c.(10) on the control room envelope (CRE) habitability program; revised the Technical Specification (TS) requirements related to the CRE habitability in TS 3.7.9, ''Control Room Emergency Ventilation System (CREVS)''; and added a new administrative controls program, TS 5.5.5, ''Control Room Envelope Habitability Program.'' These changes are consistent with the NRC-approved Industry/TS Task Force (TSTF) change traveler TSTF–448, Revision 3, ''Control Room Envelope Habitability.'' The availability of this TS improvement was published in the **Federal Register** on January 17, 2007 (72 FR 2022), as part of the Consolidated Line Item Improvement Process.

Date of issuance: October 29, 2009.

Effective date: As of its date of issuance and shall be implemented within 30 days from the implementation of the Alternate Source Term license Amendment No. 238.

Amendment No.: 239.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications/license.

Date of initial notice in ***Federal Register:*** December 18, 2007 (72 FR 71708). The supplemental letters dated January 12 and October 22, 2009 provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: October 22, 2007, as supplemented by letter dated January 12, 2009.

Brief description of amendment: The amendment added a new license condition 2.c.(11) on the control room envelope (CRE) habitability program; revised Technical Specification (TS) requirements related to the CRE habitability in TS 3/4.7.6, ''Control Room Emergency Ventilation and Air Conditioning System''; and added a new administrative controls program, TS 6.5.12, ''Control Room Envelope Habitability Program.'' These changes are consistent with the NRC-approved Industry/TS Task Force (TSTF) change traveler TSTF–448, Revision 3, ''Control Room Envelope Habitability.'' The availability of this TS improvement was published in the **Federal Register** on January 17, 2007 (72 FR 2022), as part of the Consolidated Line Item Improvement Process.

Date of issuance: October 29, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of the implementation of the Alternate Source Term license Amendment No. 238 for Arkansas Nuclear One, Unit No. 1.

Amendment No.: 288.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

Date of initial notice in ***Federal Register:*** December 18, 2007 (72 FR 71710). The supplemental letter dated January 12, 2009 provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 3, 2009, as supplemented by letters dated September 22 and October 6, 2009.

Brief description of amendment: The amendment modified the departure from nucleate boiling ratio (DNBR) safety limit in Technical Specification

(TS) 2.1.1.1, ''DNBR,'' based upon the Combustion Engineering 16x16 Next Generation Fuel design and the associated departure from nucleate boiling correlations.

Date of issuance: November 3, 2009.

Effective date: As of the date of issuance and shall be implemented after the current cycle (Cycle 16) is completed and prior to the start of Cycle 17.

Amendment No.: 224.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** July 14, 2009 (74 FR 34047). The supplements dated September 22 and October 6, 2009 provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register.**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 2009.

No significant hazards consideration comments received: No.

Exelon Generating Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 9, 2008, as supplemented by letters dated March 30, 2009 and September 4, 2009.

Brief description of amendment: The amendment revised Surveillance Requirement 4.2.D to decrease the frequency of performing control rod drive rod notch testing from weekly to once per 31 days.

Date of issuance: October 22, 2009.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 275.

Renewed Facility Operating License No. DPR–16: The amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** August 12, 2008 (73 FR 46928). The supplements dated March 30, 2009 and September 4, 2009 provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 2009.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: April 22, 2009.

Brief description of amendment: The amendment would revise the inservice testing (IST) requirements from the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (BPV) Code, Section XI, to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) and applicable addenda. This change would eliminate the ASME Code inconsistency between the IST program and the TS as required by Title 10 of the *Code of Federal Regulations* (10 CFR) 50.55a(f)(5)(ii). Additionally, the amendment would extend the applicability of surveillance requirement (SR) 3.0.2 provisions to other normal and accelerated frequencies specified as 2 years or less in the IST program. Finally, the amendment will remove the phrase ''including applicable supports'' from TS Section 5.5.6. TS Section 5.5.6, IST Program, and the associated TS Bases would be revised under this TS amendment.

Date of issuance: October 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 189.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** August 11, 2009 (74 FR 40238).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 2009.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 9, 2007, as supplemented by letter dated January 30, 2009.

Brief description of amendments: The amendments modify the technical specifications to risk-inform requirements regarding selected Required Action End States as provided in Technical Specification Task Force (TSTF) Change Traveler TSTF–423, Revision 0, ''Technical Specifications End States, NEDC–32988–A, Revision 2.''

Date of issuance: October 21, 2009.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 245/240.

Renewed Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** December 14, 2005 (70 FR 74037).

The January 30, 2009, supplement contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 2009.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: July 23, 2009, as supplemented by letters dated September 30 and October 26, 2006.

Brief description of amendments: The amendments revise the inspection scope and repair requirments of Technical Specification (TS) 6.8.4.j, ''Steam Generator (SG) Program'' and to the reporting requirements of TS 6.9.1.8, ''Steam Generator (SG) Tube Inspection Report.''

Date of issuance: October 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 241 and 236.

Renewed Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 28, 2009 (74 FR 44405).

The supplements dated September 30 and October 26, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 2009.

No significant hazards consideration comments received: No.

FPL Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: November 25, 2008 as supplemented by letters dated March 4, April 8, and September 15, 2009.

Brief description of amendments: Amend Renewed Operating Licenses DPR–24 and DPR–27 for Point Beach Nuclear Plant Units 1 and 2 to incorporate new Large-Break LOCA (LBLOCA) analyses using the realistic LBLOCA methodology contained in Nuclear Regulatory Commission-approved WCAP–16009–P–A, ''Realistic Large-Break LOCA Evaluation Methodology Using Automated Statistical Treatment of Uncertainty Method (ASTRUM),'' and to revise Technical Specification (TS) 5.6.4.b to include reference to WCAP–16009–P–A.

Date of issuance: October 29, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: Unit 1—235, Unit 2—239.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications/License.

Date of initial notice in ***Federal Register:*** January 13, 2009 (74 FR 1714).

The March 4, April 8, and September 15, 2009, supplements, contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 2009.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of application for amendment: July 9, 2009.

Brief description of amendment: The amendment revised Technical Specification (TS) 1.1, ''Definitions;'' TS 3.1.8, ''Rod Position Indication;'' TS 3.2.1, ''Heat Flux Hot Channel Factor;'' TS 3.2.4, ''Quadrant Power Tilt Ratio (QPTR);'' and TS 3.3.1, ''Reactor Trip System (RTS) Instrumentation.''

Date of issuance: October 27, 2009.

Effective date: As of the date of issuance and shall be implemented no later than October 31, 2010.

Amendment No.: 82.

Facility Operating License No. NPF–90: Amendment revised TSs 1.1, 3.1.8, 3.2.1, 3.2.4, and 3.3.1.

Date of initial notice in ***Federal Register:*** August 25, 2009 (74 FR 42930).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 2009.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: October 9, 2008, as supplemented by letters dated November 17, 2008, and December 10, 2008.

Brief Description of amendments: These amendments revise the Technical Specifications to (1) delete TS 3.19, ''Main Control Room Bottled Air System,'' (2) add new TS 3.7F, ''MCR/ESGR Envelope Isolation Actuation Instrumentation'', to provide operability requirements for the manual initiation of the MCR/ESGR envelope isolation actuation instrumentation, (3) replace existing TS 3.10.A.12 and TS 3.10. B.5, which include operability requirements for the MCR bottled air system during refueling operations and irradiated fuel movement, respectively, with TS operability requirements for manual actuation of the MCR/ESGR envelope isolation actuation instrumentation during these conditions, (4) replace existing Item 15, ''Control Room Bottled Air Test,'' of TS Table 4.1–2A, ''Minimum Frequency for Equipment Tests,'' with new item 15, ''MCR/ESGR Envelope Isolation Actuation Instrumentation—Manual,'' surveillance requirements, (5) revise TS 6.4.R, ''Main Control Room/Emergency Switchgear Room (MCR/ESGR) Envelope Habitability Program,'' to delete reference to the MCR bottled air system and the emergency habitability system, (6) delete Specification 3.19, ''Main Control Room Bottled Air System,'' from the TS Table of Contents.

Date of issuance: October 29, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 266, 265.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** December 16, 2008 (73 FR 76415).

The supplements dated November 17, 2008 and December 10, 2008 provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 2009.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: March 26, July 8, 16, and 24, 2009.

Brief description of amendment: The amendments increase each unit's rated thermal power (RTP) level from 2893 megawatts thermal (MWt) to 2940 MWt, and made technical specification changes as necessary to support operation at the uprated power level. The change is an increase in RTP of approximately 1.6 percent.

Date of issuance: October 22, 2009.

Effective date: This license amendment is effective as of its date of issuance and shall be implemented by July 14, 2010. Accordingly, scheduled completion dates listed in License Condition 2.H., shall be completed to the satisfaction of the Commission within the stated time periods following the issuance of the condition and shall determine the environmental qualification service life of the excore detectors and incorporate changes in the qualified lifetime of this equipment into environmental qualification program documentation, prior to operating above the current maximum operating level of 2893 MWt, as described in Virginia Electric and Power Company's letters dated March 26, 2009, July 8, 2009, and July 24, 2009.

Amendment Nos.: 257 and 238.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments changed the licenses and the technical specifications.

Date of initial notice in ***Federal Register:*** May 19, 2009 (74 FR 23449).

The supplements dated July 8, 16, and 24, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 22, 2009.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 6th day of November 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–27406 Filed 11–13–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0503l; Docket No. 50–315]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit 1; Exemption

1.0 Background

The Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–58, which authorizes operation of the Donald C. Cook Nuclear Plant, Unit 1 (CNP–1). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Berrien County in Michigan.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), part 26, section 205(d)(4) [10 CFR 26.205(d)(4)] provides that during the first 60 days of a unit outage, licensees need not meet the requirements of 10 CFR 26.205(d)(3) for individuals specified in 10 CFR 26.4(a)(1) through 10 CFR 26.4(a)(4), while those individuals are working on outage activities. However, 10 CFR 26.205(d)(4) also provides that the licensee shall ensure that the individuals specified in 10 CFR 26.4(a)(1) through (a)(3) have at least 3 days off in each successive (i.e., non-rolling) 15-day period and that the individuals specified in 10 CFR 26.4(a)(4) have at least 1 day off in any 7-day period.

The less restrictive requirements of 10 CFR 26.205(d)(4) would be applied following a period of normal plant operation in which the workload and overtime levels are controlled by 10 CFR 26.205(d)(3). As stated in 10 CFR 26.205(d)(4), the less restrictive work hour requirements are permitted during the first 60 days of a unit outage. Since the current CNP–1 extended outage commenced in September 2008, the first 60 days of the unit outage have already elapsed.

The licensee adopted the regulations of 10 CFR 26, subpart I, on October 1, 2009, and has been controlling work hours accordingly. The proposed scheduler exemption would allow the less restrictive working hours of 10 CFR 26.205(d)(4) during a 60-day period beginning within three days of issuance of the exemption, rather than during the first 60 days of the current unit outage (which commenced in September 2008). The exemption would include those operations and maintenance personnel required to support outage-related activities, including preparations for unit restart. The licensee would ensure that the affected individuals in these departments would not work excessive overtime during the period immediately preceding the application of 10 CFR 26.205(d)(4).

The exemption would continue to serve the underlying purpose of 10 CFR 26, subpart I, in that assurance would be provided such that cumulative fatigue of individuals to safely and competently perform their duties will not be compromised.

3.0 Discussion

Pursuant to 10 CFR 26.9, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 26 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, are consistent with the common defense and security, and are otherwise in the public interest.

Authorized by Law

This scheduler exemption would allow the licensee to use the less restrictive working hour limitations provided in 10 CFR 26.205(d)(4) during a 60 day period beginning within three days of issuance of the exemption. Because CNP–1 was already in an extended outage during the implementation of 10 CFR part 26, Subpart I, the licensee has not been able to apply the less restrictive working hours provided for in 10 CFR 26.205(d)(4). This scheduler exemption would merely place CNP–1 in a similar position as licensees with outages that commenced after implementing Subpart I. As stated above, 10 CFR 26.9 allows the NRC to grant exemptions from the requirements of 10 CFR Part 26. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 26.205(d)(4) is to provide licensees flexibility in scheduling required days off while accommodating the more intense work schedules associated with a unit outage, while assuring that cumulative fatigue does not compromise the abilities of individuals to safely and competently perform their duties. Therefore, no new accident precursors are created by invoking the less restrictive work hour limitations on a date commensurate with the start of those activities supporting the restart of CNP–1, provided that the licensee has effectively managed fatigue for the affected individuals prior to this date. Thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed scheduler exemption would allow for the use of the less restrictive work hour requirements of 10 CFR 26.205(d)(4) for operations and maintenance personnel to support restart activities for CNP–1, which has been in an extended outage since September 20, 2008. This change to the operation of the plant has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Consistent With the Public Interest

The proposed scheduler exemption would allow the licensee to implement the less restrictive work hour requirements of 10 CFR 26.205(d)(4) to allow flexibility in scheduling required days off while accommodating the more intensive work schedules that accompany a unit outage. During the CNP–1 restart period, the workload for operations and maintenance personnel will undergo a temporary but significant increase due to filling, venting, flushing, calibration, and testing evolutions necessitated by the repairs to the secondary and electrical generation systems and components. These evolutions are in addition to the normal unit startup activities involving operation and surveillance testing of primary systems and components. Ensuring a sufficient number of qualified personnel are available to support these activities is in the interest of overall public health and safety. Therefore, this scheduler exemption is consistent with the public interest.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 26.9, the exemption is authorized by law, will not endanger life or property nor present an undue risk to the public health and safety, is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Indiana Michigan Power Company an exemption from the requirements of 10 CFR 26.205(d)(4) for the Donald C. Cook Nuclear Plant, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (74 FR 58063).

This exemption is effective upon issuance, and implementation of the work hour limitations as specified in 10 CFR 26.205(d)(4) for CNP–1 operations and maintenance personnel working on outage activities associated with unit restart will commence no later than November 13, 2009. The licensee may implement the work hour provisions of 10 CFR 26.205(d)(4) for 60 days or until completion of the current CNP–1 forced outage, whichever is shorter. The licensee may implement the provisions of 10 CFR 26.205(d)(6), if applicable.

Dated at Rockville, Maryland, this 10th day of November 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–27527 Filed 11–16–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on December 3–5, 2009, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, October 14, 2009, (74 FR 52829–52830).

Thursday, December 3, 2009, Conference Room T2–B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: License Renewal Application for the Prairie Island Nuclear Generating Plant, Units 1 and 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Northern States Power Company regarding the license renewal application for the Prairie Island Nuclear Generating Plant, Units 1 and 2, the associated NRC staff's final Safety Evaluation Report (SER), and related matters.

10:15 a.m.–12:15 p.m.: Draft Final Regulatory Guide 1.205, ''Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' and Draft Final Standard Review Plan (SRP) Section 9.5.1.2, ''Risk-Informed, Performance-Based Fire Protection'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the industry regarding draft final Regulatory Guide 1.205, ''Risk-Informed, Performance-Based Fire Protection for existing Light-Water Nuclear Power Plants,'' draft final SRP Section 9.5.1.2, ''Risk-Informed, Performance-Based Fire Protection,'' NRC staff's resolution of public comments, and related matters.

1:15 p.m.–3:15 p.m.: Long-Term Core Cooling Approach for the Economic Simplified Boiling Water Reactor (ESBWR) Design (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and General Electric—Hitachi Nuclear Energy (GEH) regarding the long-term core cooling approach for the ESBWR design. [**Note:** A portion of this session may be closed to protect information that is proprietary to GEH or its contractors pursuant to 5 U.S.C. 552b (c)(4).]

3:30 p.m.–5 p.m.: Draft Final Revision 1 to Regulatory Guide 1.151 (DG–1178), ''Instrument Sensing Lines'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft final Revision 1 to Regulatory Guide 1.151 (DG–1178), ''Instrument Sensing Lines,'' NRC staff's resolution of public comments, and related matters.

5:15 p.m.–5:45 p.m.: Subcommittee Reports (Open)—The Committee will hear reports by and hold discussions with the Chairmen of the Reliability & PRA and the AP1000 Subcommittees regarding: NRC's proposed policy statement on Safety Culture, and Chapters 7 and 9 of the draft SER associated with the AP1000 Design Control Document Amendment that were discussed on November 12, and November 19–20, 2009, respectively.

5:45 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Friday, December 4, 2009, Conference Room T2–B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:15 a.m.: Discussion of topics for Meeting with the Commission (Open)—The Committee will discuss the following topics scheduled for the meeting with the Commission: Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)/Design Acceptance Criteria (DAC) Closure Process; Amendment to the AP1000 Design Control Document; Three-Dimensional Finite Element Analysis of the Oyster Creek Drywell Shell; Beaver Valley Containment Liner Corrosion; and Cyber Security Programs for Nuclear Power Plants.

9:30 a.m.–11:30 a.m.: Meeting with the Commission—Commissioner's Conference Room, One White Flint North (Open)—The Committee will meet with the Commission to discuss topics listed under the previous item.

1:15 p.m.–2:30 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, including anticipated workload and member assignments, and related matters. [**Note:** A portion of this session may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

2:30 p.m.–2:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

2:45 p.m.–3 p.m.: Election of ACRS Officers for CY–2010 (Open)—The Committee will elect the Chairman and Vice-Chairman for the ACRS and

Member-at-Large for the Planning and Procedures Subcommittee for CY–2010.

3:15 p.m.–5:15 p.m.: Draft ACRS Report on the NRC Safety Research Program (Open)—The Committee will discuss the draft ACRS report on the NRC Safety Research Program.

5:30 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, December 5, 2009, Conference Room T2–B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12:30 p.m.–1 p.m. Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 52829–52830). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Thirty-five hard copies of each presentation or handout should be provided to the Designated Federal Official (DFO) 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it may be necessary to close portions of this meeting to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(2) and (6), as well as to discuss information proprietary to GEH or its contractors pursuant to 5 U.S.C. 552b(c)(4).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Girija Shukla, cognizant ACRS staff (301–415–6855), between 7:15 a.m. and 5 p.m. (ET). ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: *November 10, 2009.*

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E9–27529 Filed 11–16–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of November 16, 23, 30, December 7, 14, 21, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 16, 2009

Tuesday, November 17, 2009

9:25 a.m. Affirmation Session (Public Meeting) (Tentative). a. Detroit Edison Co. (Fermi Nuclear Power Plant, Unit 3), LBP–09–16 (July 31, 2009) (Ruling on Standing and Contention Admissibility) (Tentative.) b. In the Matter of David Geisen, Docket No. IA–05–052; Staff Application for Stay of the Effectiveness of LBP–09–24 Pending Commission Review (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting), (Contact: Elva Bowden Berry, 301–415–1536).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 23, 2009—Tentative

There are no meetings scheduled for the week of November 23, 2009.

Week of November 30, 2009—Tentative

Friday, December 4, 2009

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards, (Public Meeting) (Contact: Antonio Dias, 301–415–6805).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 7, 2009—Tentative

Tuesday, December 8, 2009

9:30 a.m. Briefing on the Proposed Rule: Enhancements to Emergency Preparedness Regulations (Public Meeting), (Contact: Lauren Quiñones, 301–415–2007).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of December 14, 2009—Tentative

There are no meetings scheduled for the week of December 14, 2009.

Week of December 21, 2009—Tentative

There are no meetings scheduled for the week of December 21, 2009.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/about-nrc/policy-making/schedule.html.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: November 12, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–27646 Filed 11–13–09; 4:15 pm]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity financing to Genius.com, Inc., 1400 Fashion Island Blvd., Suite 500, San Mateo, CA 94404. The financing is contemplated for working capital and general operating purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., Associates of Emergence Capital Partners SBIC, L.P., own more than ten percent of Genius.com, Inc., and therefore Genius.com, Inc. is considered an Associate of Emergence Capital Partners SBIC, L.P. as detailed in § 107.50 of the Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: October 15, 2009.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. E9–27455 Filed 11–16–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0635]

Trumpet SBIC Partners, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Trumpet SBIC Partners, L.P., 110 East 59th Street, Suite 2100, New York, NY, 10022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Trumpet SBIC Partners, L.P. proposes to provide debt financing to SOI Holdings, Inc., 5260 Parkway Plaza Boulevard, Suite 2100, Charlotte, NC 28217. The financing is contemplated to refinance outstanding debt.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Trumpet Investors, LP, an Associate of Trumpet SBIC Partners, L.P., owns more than ten percent of SOI Holdings, Inc.

Therefore, this transaction is considered a financing of an Associate requiring an exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: October 27, 2009.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. E9–27457 Filed 11–16–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60960; File No. SR–FINRA–2009–061]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, To Require Members To Report OTC Transactions in Equity Securities Within 30 Seconds of Execution

November 6, 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 September 16, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change SR–FINRA–2009–061 as described in Items I, II, and III below, which Items have been prepared by FINRA. On October 30, 2009, FINRA filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA trade reporting rules to (1) Require that members report over-the-counter (''OTC'') equity transactions[3] to FINRA within 30 seconds of execution; (2) require that members report secondary market transactions in non-exchange-listed direct participation program (''DPP'') securities to FINRA within 30 seconds of execution; and (3) make certain conforming changes to the rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Specifically, OTC equity transactions are: (1) transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS, effected otherwise than on an exchange, which are reported through the Alternative Display Facility (''ADF'') or a Trade Reporting Facility (''TRF''); and (2) transactions in ''OTC Equity Securities,'' as defined in FINRA Rule 6420 (*e.g.,* OTC Bulletin Board and Pink Sheets securities), which are reported through the OTC Reporting Facility (''ORF''). The ADF, TRFs and ORF are collectively referred to herein as the ''FINRA Facilities.''

relating to the OTC Reporting Facility (''ORF'').

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

30–Second Reporting Requirement

Under FINRA trade reporting rules, members generally must report OTC equity transactions that are executed during the hours that the FINRA Facilities are open within 90 seconds of execution.[4] Last sale information for such trades is publicly disseminated on a real-time basis. There are certain limited exceptions to this general requirement, including for trades in non-exchange-listed DPP securities, as discussed below.[5] The 90-second reporting requirement has been in effect since 1982, when OTC trading was more manual in nature. As trading has become increasingly automated, however, the vast majority of trades are now reported in a much shorter period of time. For example, during the period of February 23 through February 27, 2009, overall member compliance with the current 90-second reporting requirement was 99.95% (for all trades submitted to a FINRA Facility for public dissemination), and 99.90% of trades were reported in 30 seconds or less.

FINRA is proposing to amend the trade reporting rules to require that members report OTC equity transactions to FINRA within 30 seconds of execution. Specifically, the trade reporting rules would be amended to replace the references to 90 seconds with 30 seconds.[6] Trades not reported within 30 seconds, unless expressly subject to a different reporting requirement or excluded from the trade reporting rules altogether, would be late. Although members would have 30 seconds to report, FINRA reiterates that—as is the case today—members must report trades as soon as practicable and cannot withhold trade reports, e.g., by programming their systems to delay reporting until the last permissible second.

Because of the automated nature of trade reporting today, FINRA believes that in the vast majority of circumstances members should have no difficulty complying with the proposed 30-second reporting requirement. However, to better understand the potential limitations some members may face, FINRA is requesting that the SEC solicit comments specifically on whether there are any categories of trades (*e.g.*, trades that are manual in nature) or any firm structures (*e.g.*, smaller firms that may not have automated systems for trade reporting) that may justify a longer reporting time frame under FINRA rules.[7]

FINRA believes that the proposed rule change will promote consistent and timely reporting by all members and enhance market transparency and price discovery by ensuring that trades are disseminated closer in time to execution. Timely reporting has become even more critical with the implementation of Regulation NMS. A delay in the reporting and dissemination of a transaction could potentially appear to other market participants as a violation of the Regulation NMS Order Protection Rule; if a trade is not reported and disseminated until a full 90 seconds after execution, the best displayed market could have changed between the time of execution and ultimate dissemination of the trade. Additionally, the proposed rule change will ensure that members do not withhold important market information from investors and other market participants for competitive or other improper reasons.[8]

Reporting Requirements Applicable to Trades in Non-Exchange-Listed DPP Securities

Pursuant to FINRA Rule 6643(a)(1), members are required to report trades in non-exchange-listed DPP securities to the ORF by 1:30 p.m. Eastern Time on the next business day (T+1) after the date of execution; members that have the operational capability to report transactions within 90 seconds of execution may do so at their option. Transaction information for such trades is not disseminated on a real-time trade-by-trade basis, but is included in end-of-day summary information disseminated twice daily. By contrast, under FINRA rules, OTC trades in exchange-listed DPP securities are reported to a TRF or the ADF and are subject to the 90-second reporting requirement (just like any other OTC trade in an NMS stock).[9] The inconsistency in the reporting and dissemination of DPPs can create confusion for market participants, especially when an exchange-listed DPP is delisted and dissemination of trading in the security goes from real-time to only twice daily.

FINRA is proposing to amend the trade reporting rules to require that transactions in non-exchange-listed DPP securities be reported within 30 seconds of execution to conform to the reporting requirements applicable to other OTC transactions, including those in exchange-listed DPP securities. Specifically, the proposed rule change would delete the FINRA Rule 6640 Series (Reporting Transactions in Direct Participation Program Securities) in its entirety, and secondary market transactions in non-exchange-listed DPPs would be reported to FINRA as any other OTC Equity Security pursuant to the FINRA Rule 6620 and 7300 Series. In addition, the proposed rule change would amend (1) FINRA Rule 6610 to clarify that secondary market transactions in non-exchange-listed

[4] *See, e.g.*, FINRA Rules 6282(a), 6380A(a), 6380B(a) and 6622(a).

[5] Additionally, FINRA notes that transactions in PORTAL securities, as defined in FINRA Rule 6631, are not subject to the 90-second reporting requirement, but must be reported to the ORF by the end of the day. *See* FINRA Rule 6633.

[6] *See* FINRA Rules 6282(a); 6380A(a) and (g); 6380B(a) and (f); 6622(a) and (f); 7130(b); 7230A(b); 7230B(b); and 7330(b).

FINRA also is proposing to amend FINRA Rules 6181 and 6623 to replace the reference to 90 seconds with a more general reference to ''the required time period'' to clarify that these provisions also apply to trades that are subject to a different reporting requirement (e.g., certain trades executed outside normal market hours).

[7] FINRA notes that smaller firms that route their orders to another member firm for handling or execution do not have the trade reporting obligation under the ''executing party'' trade reporting structure that became effective on August 3, 2009. For transactions between members, the ''executing party'' (which is defined as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction) has the obligation to report the trade to FINRA. *See Regulatory Notice* 09–08 (January 2009).

[8] FINRA reiterates the importance of timely reporting and reminds members that a pattern and practice of late reporting may be considered inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

[9] *See* FINRA Rules 6282(a), 6380A(a) and 6380B(a).

DPPs are included in the OTC Equity Security transactions that must be reported to the ORF; (2) FINRA Rule 6420 to add ''direct participation program'' as a defined term (the proposed definition is identical to the definition in current FINRA Rule 6642); (3) FINRA Rule 6622 to include as Supplementary Material the definitions of ''date of execution'' and ''time of execution'' for DPP transactions (the proposed definitions are identical to the definitions in current FINRA Rule 6642); and (4) FINRA Rules 6530, 6550, 7310, 7330 and 7410 to delete or replace references to DPPs and the FINRA Rule 6640 Series, as applicable.

FINRA notes that transactions in non-exchange-listed DPPs currently are not subject to regulatory transaction fees under Section 3 of Schedule A to the FINRA By-Laws (''Section 3'') because they are not subject to prompt last sale reporting under FINRA rules.[10] As a result of the proposed rule change, transactions in non-exchange-listed DPPs would become subject to Section 3 regulatory transaction fees.

FINRA believes the proposed rule change would enhance market transparency and promote consistency in trade reporting and dissemination.

Proposed Conforming Amendments

The proposal to reduce the reporting time to 30 seconds requires amendments to a number of subparagraphs within paragraph (a) of FINRA Rule 6622 relating to the ORF. In this filing, FINRA is proposing certain additional changes to these subparagraphs to conform, to the extent practicable, to the rules relating to the ADF and TRFs.

Specifically, FINRA is proposing to reorganize FINRA Rule 6622(a) (When and How Transactions are Reported) to conform to the current format and structure of the rules relating to the ADF and TRFs.[11] The requirements in paragraphs (a)(1) and (a)(2), which apply separately to OTC Market Makers and Non-Market Makers, respectively, would be combined in paragraph (a)(1) and apply to all ''OTC Reporting Facility Participants,'' as defined in proposed paragraph (n) of FINRA Rule 6420. Additionally, consistent with the ADF and TRF rules, FINRA is proposing to amend FINRA Rule 6622(a) to delete the labels (*e.g.*, ''.W'') for the trade report modifiers that members are required to use when reporting trades to the ORF. FINRA Rule 6622(a) would identify the types of transactions that must have a unique modifier associated with them and such modifiers would be labeled in the ORF technical specifications rather than in the rules.

Proposed paragraph (a)(5) of FINRA Rule 6622 would enumerate the transactions for which members must use a special trade report modifier and would clarify that members must include such modifiers on all trade reports, including reports of ''as/of'' trades.[12] In addition, proposed paragraph (a)(5) would expressly provide that in the event that the rules require multiple modifiers on any given trade report, members are to report in accordance with guidance published by FINRA regarding priorities among modifiers.[13] Members that report in accordance with such guidance will not be in violation of the trade reporting rules for failing to use a particular modifier.

FINRA notes that most of the trade report modifiers referred to in proposed paragraph (a)(5) already are required under current FINRA Rule 6622(a). However, proposed subparagraphs (B) through (D) would require members to use special trade report modifiers for Seller's Option, Cash and Next Day trades,[14] and proposed subparagraph (E) would require members to use a special trade report modifier for trades that occur at a price based on an average weighting or another special pricing formula.[15] Although not required under current FINRA Rule 6622(a), members can use these modifiers when reporting to the ORF today. In addition, a separate modifier would be used for Stop Stock Transactions, as defined in FINRA Rule 6420, pursuant to proposed subparagraph (F).[16] Such transactions would be disseminated to the public with the weighted average price modifier, which is consistent with the current dissemination policy with respect to Stop Stock Transactions that are submitted to the ADF and TRFs. Members currently are required to report Stop Stock Transactions with the .W trade report modifier, in accordance with FINRA Rule 6622(a)(8).

Current paragraphs (a)(3), (a)(4), (a)(5), (a)(7) and (a)(9) of FINRA Rule 6622 would be renumbered as paragraphs (a)(2), (a)(3), (a)(4), (a)(6) and (a)(7), respectively, without substantive change.

In addition to the proposed amendments to FINRA Rule 6622, FINRA is proposing to amend FINRA Rule 6420 to add ''normal market hours'' and ''OTC Reporting Facility Participant'' as defined terms.[17]

By conforming the trade reporting requirements to the extent practicable, the proposed rule change will promote more consistent trade reporting by members and a more complete and accurate audit trail. FINRA notes that most of the proposed conforming changes to FINRA Rule 6622(a) are technical in nature; however, some members may need to make systems changes to comply with some of the requirements that are not included expressly in the current rule.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* To allow members sufficient time to make the necessary systems changes, FINRA is proposing that the implementation date will be between six and nine months following the date of Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[18] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will enhance market transparency and price discovery and promote more consistent trade reporting by members.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[10] Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. FINRA obtains its Section 31 fees and assessments from its membership in accordance with Section 3.

[11] *See* FINRA Rules 6282(a), 6380A(a) and 6380B(a).

[12] *See, e.g.,* FINRA Rules 6282(a)(4), 6380A(a)(5) and 6380B(a)(5).

[13] *See, e.g.,* FINRA Rules 6380A(a)(5) and 6380B(a)(5).

[14] *See, e.g.,* FINRA Rules 6282(a)(4)(B)–(D), 6380A(a)(5)(B)–(D) and 6380B(a)(5)(B)–(D).

[15] *See, e.g.,* FINRA Rules 6282(a)(4)(E), 6380A(a)(5)(E) and 6380B(a)(5)(E).

[16] *See, e.g.,* FINRA Rules 6282(a)(4)(F), 6380A(a)(5)(F) and 6380B(a)(5)(F).

[17] *See, e.g.,* FINRA Rules 6320A and 6320B. The proposed definition of ''normal market hours'' is identical to the TRF rules, and the proposed definition of ''OTC Reporting Facility Participant'' is substantially similar to the definition of ''Trade Reporting Facility Participant'' in the TRF rules.

[18] 15 U.S.C. 78*o*–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2009–061 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–061. 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,[19] 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 publicly available. All submissions should refer to File Number SR–FINRA–2009–061 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27463 Filed 11–16–09; 8:45 am]

BILLING CODE 8011–01–P

[19] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/*.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60951; File No. SR–Phlx–2009–95]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Concerning Non Firm Quote Conditions

November 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 29, 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, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 extend, until September 30, 2010, a pilot program under which the Exchange disseminates option quotations with a price of $0.00 or $200,000, and a size of one contract, when the Exchange's disseminated size on one side of the market is exhausted (the ''pilot''). The current pilot is scheduled to expire November 30, 2009.

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 extend the pilot through September 30, 2010.

In June 2009, the Exchange added several significant enhancements to its automated options trading platform (known as PHLX XL II), and adopted rules to reflect those enhancements.[3] As part of the system enhancements, the Exchange proposed to disseminate a quote condition of ''non-firm'' on a single bid quotation or offer quotation when the size associated with such bid or offer was exhausted on the Exchange and there were no new quotations submitted on the exhausted side of the market in the affected series. The non-exhausted side of the Exchange's disseminated quotation would remain firm up to its disseminated size. Currently, however, while the Options

[3] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

Price Reporting Authority (''OPRA'') disseminates option quotations for which both sides of the quotation are marked ''non-firm,'' OPRA currently does not disseminate a ''non-firm'' condition for one side of a quotation while the other side of the quotation remains firm.

Accordingly, the Exchange proposed, for a pilot period scheduled to expire November 30, 2009, to disseminate quotations in such a circumstance with (i) a bid price of $0.00, with a size of one contract if the remaining size is a seller, or (ii) an offer price of $200,000, with a size of one contract if the remaining size is a buyer.

The relevant sections of the following rules are effective for a pilot period scheduled to expire November 30, 2009: Proposed Rules 1082(a)(ii)(B)(3)(b); 1082(a)(ii)(B)(3)(g)(iv)(A)(3); 1082(a)(ii)(B)(3)(g)(iv)(A)(4); 1082(a)(ii)(B)(3)(g)(iv)(B)(2); 1082(a)(ii)(B)(3)(g)(iv)(C); 1082(a)(ii)(B)(4)(b); and 1082(a)(ii)(B)(4)(d)(iv)(E). The Exchange proposes to amend these rules to reflect the extension of the pilot through September 30, 2010.

In its proposed rule change adopting the system enhancements and rules, the Exchange represented that it would work with OPRA during the pilot period to explore the development of a ''non-firm'' condition for one side of a quotation while the other side of the quotation remains firm. The Exchange represents that it has worked with OPRA during the pilot period and currently OPRA does not support the ''non-firm'' condition for one side of a quotation.

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 ensuring the orderly continuity of the pilot.

In the situations described herein where the Exchange disseminates quotations with a price of $0.00 or $200,000 and a size of one contract, the Exchange is relieved of its obligations under the SEC Quote Rule.[6] The fact that there is no quote from any Phlx XL II participant is an unusual market condition which requires the Phlx XL II system to disseminate a market with a price of $0.00 or $200,000 to indicate that there is a non-firm condition on the side of the market that is exhausted. Currently, OPRA disseminates option quotations for which both sides of the quotation are marked ''non-firm.'' OPRA currently does not disseminate a ''non-firm'' condition for one side of a quotation while the other side of the quotation remains firm. The current rule and functionality is simply a method for indicating that one side of the Phlx disseminated market is firm while the other side is in a non-firm condition.

This unusual market condition renders the Exchange incapable of collecting, processing, and making available to vendors the requisite data for a particular option series in a manner that accurately reflects the current state of the market on the Exchange. The $0.00 or $200,000 quote with a size of one contract will notify all ''specified persons'' of the determination that one side of the quotation is in a non-firm condition. Accordingly, in this circumstance, the Exchange is relieved of its obligations under Rules 602(a)(1) [7] and (2) [8] under the Act.[9]

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 [10] and Rule 19b–4(f)(6) [11] 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–Phlx–2009–95 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–2009–95. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 242.602.

[7] 17 CFR 242.602(a)(1).

[8] 17 CFR 242.602(a)(2).

[9] 17 CFR 242.602(a)(3).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

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–2009–95 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27464 Filed 11–16–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60952; File No. SR–NASDAQ–2009–099]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strike Price Intervals of $0.50 for Options on Stocks Trading at or Below $3.00 on the NASDAQ Options Market

November 6, 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 November 3, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposal for the NASDAQ Options Market (''NOM'' or ''Exchange'') to modify the Supplementary Material of Chapter IV, Section 6 of the Exchange's rules, in order to establish strike price intervals of $0.50, beginning at $1, for certain options classes whose underlying security closed at or below $3 in its primary market on the previous trading day.

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the ability of investors to hedge risks associated with stocks trading at or under $3. Currently, Supplementary Material .01 to Chapter IV, Section 6 provides that the interval of strike prices of series of options on individual stocks may be $2.50 or greater where the strike price is $25 or less. Additionally, Supplementary Material .02 to Section 6 allows the Exchange to establish $1 strike price intervals (the ''$1 Strike Program'') on options classes overlying no more than fifty-five individual stocks designated by the Exchange. In order to be eligible for selection into the $1 Strike Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the $1 Strike Program, the Exchange may list strike prices at $1 intervals from $1 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar $1 Strike Program to its own rules.[3] The Exchange is restricted from listing any series that would result in strike prices being within $0.50 of an existing $2.50 strike price.

The Exchange is now proposing to add new section .05 to the Supplementary Material to Chapter IV, Section 6, to establish strike prices of $1, $1.50, $2, $2.50, $3 and $3.50 for certain stocks that trade at or under $3.00.[4] The listing of these strike prices will be limited to options classes whose underlying security closed at or below $3 in its primary market on the previous trading day, and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of $0.50 strike prices would be limited to options classes overlying no more than 5 individual stocks (the ''$0.50 Strike Program'') as specifically designated by the Exchange. The Exchange would also be able to list $0.50 strike prices on any other option classes if those classes were specifically designated by other securities exchanges that employed a similar $0.50 Strike Program under their respective rules.

Currently, the Exchange may list options on stocks trading at $3 at strike prices of $1, $2, $3, $4, $5, $6, $7 and $8 if they are designated to participate in the $1 Strike Program.[5] If these stocks have not been selected for the Exchange's $1 Strike Program, the Exchange may list strike prices of $2.50, $5, $7.50 and so forth as provided in Supplementary Material .01, but not strike prices of $1, $2, $3, $4, $6, $7 and $8.[6]

The Exchange is now proposing to amend the Article IV, Chapter 6 Supplementary Material by adding new section .05 to list strike prices on options on a number of qualifying stocks that trade at or under $3.00, not simply those stocks also participating in the $1 Strike Program, in finer intervals of $0.50, beginning at $1 up to $3.50. Thus, a qualifying stock trading at $3 would have option strike prices established not just at $2.50, $5.00, $7.50 and so forth (for stocks not in the Exchange's $1 Strike Program) or just at $1, $2, $3, $4, $5, $6, $7 and $8 (for stocks designated to participate in the $1 Strike Program), but rather at strike

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange may not list long-term option series (''LEAPS'') at $1 strike price intervals for any class selected for the Program.

[4] The Exchange recently amended Chapter IV, Section 4 (Securities Traded on NOM) of its options rules to eliminate the $3 market price per share requirement for continued approval for an underlying security. The amendment eliminated the prohibition against listing additional series or options on an underlying security at any time when the price per share of such underlying security is less than $3. *See* Securities Exchange Act Release No. 59485 (March 2, 2009), 74 FR 10324 (March 10, 2009) (SR–Nasdaq–2009–16).

[5] Additionally, market participants may be able to trade $2.50 strikes on the same option at another exchange, if that exchange has elected not to select the stock for participation in its own similar $1 Strike Program.

[6] Again, market participants may also be able to trade the option at $1 strike price intervals on other exchanges, if those exchanges have selected the stock for participation in their own similar $1 Strike Program.

prices established at $1, $1.50, $2, $2.50, $3 and $3.50.[7]

The Exchange believes that current market conditions demonstrate the appropriateness of the new strike prices. Recently the number of securities trading below $3.00 has increased dramatically.[8] Unless the underlying stock has been selected for the $1 Strike Program, there is only one possible in-the-money call (at $2.50) to be traded if an underlying stock trades at $3.00. Similarly, unless the underlying stock has been selected for the $1 Strike Program, only one out-of-the-money strike price choice within 100% of a stock price of $3 is available if an investor wants to purchase out-of-the-money calls. Stated otherwise, a purchaser would need over a 100% move in the underlying stock price in order to have a call option at any strike price other than the $5 strike price become in-the-money. If the stock is selected for the $1 Strike Program, the available strike price choices are somewhat broader, but are still greatly limited by the proximity of the $3 stock price to zero, and the very large percent gain or loss in the underlying stock price, relative to a higher priced stock, that would be required in order for strikes set at $1 or away from the stock price to become in-the-money and serve their intended hedging purpose.

As a practical matter, a low-priced stock by its very nature requires narrow strike price intervals in order for investors to have any real ability to hedge the risks associated with such a security or execute other related options trading strategies. The current restriction on strike price intervals, which prohibits intervals of less than $2.50 (or $1 for stocks in the $1 Strike Program) for options on stocks trading at or below $3, could have a negative effect on investors. The Exchange believes that the proposed $0.50 strike price intervals would provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity option positions that are better tailored to meet their investment objectives. The proposed new strike prices would enable investors to more closely tailor their investment strategies and decisions to the movement of the underlying security. As the price of stocks decline below $3 or even $2, the availability of options with strike prices at intervals of $0.50 could provide investors with opportunities and strategies to minimize losses associated with owning a stock declining in price.

With regard to the impact on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] 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 expanding the ability of investors to hedge risks associated with stocks trading at or under $3. The proposal should create greater trading and hedging opportunities and flexibility, and provide customers with the ability to more closely tailor investment strategies to the price movement of the underlying stocks, trading in many of which is highly liquid.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

The Exchange has requested that the Commission waive the 30-day operative delay to permit the Exchange to compete effectively with other exchanges that have implemented similar rules permitting $0.50 strike price intervals for certain options classes.[13] The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2009–099 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–099. This

[7] The option on the qualifying stock could also have strike prices set at $5, $7.50 and so forth at $2.50 intervals (pursuant to Commentary .05(a)(ii) to Phlx Rule 1012) or, if it has been selected for the $1 Strike Program, at $4, $5, $6, $7 and $8.

[8] As of October 20, 2009, stocks trading at or below $3 include CIT Group Inc., E-trade Financial Corp. and Evergreen Solar Inc. Options overlying these stocks trade on NOM.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] *See, e.g.,* Securities Exchange Act Release No. 60694 (September 18, 2009), 74 FR 49048 (September 25, 2009) (SR–Phlx–2009–65) (order approving a $0.50 strike program substantially the same as the $0.50 Strike Program proposed by Nasdaq).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–099 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27465 Filed 11–16–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60961; File No. SR–Phlx-2009–84]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Conduct of Business on the Exchange

November 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 29, 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, II, and III, below, which Items have been prepared by the Exchange. On November 6, 2009, the Exchange filed Amendment No. 1. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rules to: (i) Create an expedited hearing process for members posing an immediate threat to the safety of persons or property, seriously disrupting Exchange operations, or are in possession of a firearm on the Exchange trading floor; (ii) increase the time period a member may be physically excluded from the trading floor; (iii) increase the maximum amount a member may be charged pursuant to Rule 60; (iv) amend language applicable to contesting citations and create a forum fee of $100 for contesting citations; (v) add clarifying language to prohibit alcohol and illegal controlled substances on the trading floor; (vi) increase fines for various regulations; (vii) require non-member visitors who are performing contract work at the Exchange to provide a certificate of insurance and add a fee schedule for failure to provide such proof of insurance; (viii) add a new rule to limit exchange liability and require reimbursement of certain expenses; (ix) amend the disciplinary rules to allow Enforcement Staff to request a hearing; and (x) increase the limit on fees from $5,000 to $10,000 and add additional clarifying language to Rule 970.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* 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

Order and Decorum Regulations

The purpose of the proposed rule change is to ensure the efficient, undisrupted conduct of business on the Exchange and provide a trading floor environment free from conduct that could distract or interfere with market activity. Additionally, the Exchange proposes to provide a fair process for members to be heard with respect to removals.

Currently, the Exchange may summarily remove a member from the floor for breaches of regulations that relate to the administration of order, decorum, health, safety and welfare on the Exchange (''order and decorum'' regulations). Exchange By-Law Article VIII, Section 8–1, provides ''[t]he Exchange shall make and enforce rules and regulations relating to order, decorum, health, safety and welfare on the options trading floor and the immediately adjacent premises of the Exchange and shall be empowered to impose penalties for violations thereof. For breaches of order, the President and his designated staff may exclude Members, participants and Member Organizations and participant organizations (as applicable) and employees from the trading floor and the immediately adjacent premises, or may impose fines consistent with Exchange rules, or both. They shall administer the provisions of these By-Laws and the Rules of the Exchange pertaining to the trading floor and the immediately adjacent premises of the Exchange.'' [3] Removal from the trading floor is not the exclusive sanction for breaches of order and decorum and the regulations thereunder. In addition to removal, a member could also be subject to a fine or the matter could also be referred to the Business Conduct Committee where it would proceed in accordance with Rules 960.1 through 960.12.[4] Removal occurs when a

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this proposed Rule, the premises immediately adjacent to the trading floor shall include the following: (1) All premises other than the trading floor that are under Exchange control; and (2) premises in the building where the Exchange maintains its principal office and place of business, namely 1900 Market Street, Philadelphia, Pennsylvania. *See* Exchange Rule 60 (b)(iii).

[4] These rules provide the jurisdiction, procedures and process by which an Exchange member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization may be charged with a violation within the disciplinary

Continued

member poses an immediate threat to the safety of persons or property, seriously disrupts Exchange operations, or is in possession of a firearm. When a member is removed under any of these circumstances, the current rule provides that the member is removed for the remainder of the trading day. Removal is ordered only for the serious types of breaches of order and decorum. The Exchange currently has the ability to exclude a member for multiple days. Each day a determination is made as to whether the member poses a continued threat. The Exchange believes that this process of making daily determinations after an incident has occurred is disruptive and poses a risk in permitting members to return to the trading floor only to possibly be removed again once that member can be evaluated in the event that the threat is serious and ongoing.

The Exchange proposes to amend Rule 60, Sanctions for Breach of Regulations, to exclude a member up to five (5) business days to ensure that it is able to provide a trading floor environment free from conduct that could distract or interfere with market activity. The Exchange believes that exclusion for the remainder of the trading day is not a serious deterrent to violating the most serious order and decorum rules, especially where members violate such rules near the end of a trading day. While the disciplinary rules may provide for discipline of such members, the immediate threat that is posed to other members and Exchange staff as well as the order of the operation of the trading floor is not alleviated by a same day suspension. The Exchange acknowledges that removal may result in a loss of business for the member and therefore has proposed an expedited hearing to create a fair procedure for the immediate removal.[5] The proposal would allow for an expedited hearing to take place within two full working days hours [sic] after the member's exclusion from the trading floor. This would initially exclude the member in all removal circumstances for the forty-eight hour period, which the Exchange believes would serve as a ''cooling down'' period. The member would be provided with written notice of the hearing, including the date, time and place of the hearing. The member may be represented by counsel. The Expedited Hearing Officer or his or her designee would conduct the hearing. The Expedited Hearing Officer would make a determination if the removal should continue and if so would determine for what period of time, not to exceed a total of five (5) business days. The determination of the Hearing Officer would be based on the severity of the threat posed to persons on the trading floor, the disruptiveness caused by the member and the safety and welfare of persons on the trading floor. A ruling would be made at the time of the hearing and a written decision would be provided afterwards, within two (2) business days. The exclusion would only apply to the particular member's physical presence on the trading floor.

The Exchange proposes to amend Commentary (a) to Rule 60 to increase the maximum amount of a pre-set fine for order and decorum violations. The Exchange believes that the proposed increase from a maximum of $5,000.00 to a maximum of $10,000.00 is appropriate and warranted considering the types of violations that may arise from violations of order and decorum. The Exchange believes that the fines should be increased where the safety and welfare of members are at issue and further that the fines should deter members from engaging in certain conduct.

Additionally, the proposal seeks to further clarify the contested citation process. Specifically, the Hearing Director may decide that: (i) The citation should be overturned; (ii) the citation is valid as issued; or (iii) the citation as issued should be modified to specify either a higher or lower fine than the one on the notice as issued. Further, the Exchange proposes to add a forum fee of $100 if a fine is contested pursuant to Rule 60 and the citation is upheld by the reviewing body.[6] The Exchange also proposes to add language to Rule 60 Commentary (a) .07 to make clear that a report would not be made to the Securities and Exchange Commission (''Commission'') in the case of a contested citation where the fine is less than $1,000 and the Hearing Director found in favor of the appellant. The addition of the words ''and the Hearing Director finds in favor of the appellant'' is only to clarify an existing practice. The Exchange believes that the additional language is clarifying language with respect to the findings of the Hearing Director. The forum fee will assist the Exchange in defraying costs associated with conducting contested citation hearings.

The Exchange proposes to further specify two categories within Rule 60 Regulations, namely alcohol and illegal controlled substances. While the Exchange believes that these violations are currently prohibited under its current regulations, the Exchange proposes to specifically state in Regulations 1, Smoking, and 4, Order, respectively, that alcoholic beverages and illegal controlled substances are specifically prohibited on the trading floor or on the premises immediately adjacent to the trading floor. The Exchange believes that specifically stating that alcoholic beverages and illegal controlled substances are not permitted on the trading floor is a clear statement which eliminates ambiguity. The Exchange believes that this language reinforces already existing policies. The Exchange proposes to amend the title of Regulation 1 to state ''Smoking and Alcohol'' and set a fine schedule for violations of Regulation 1 relating to alcohol. The Exchange proposes a $1,000.00 fine for the 1st occurrence and thereafter referral to the Business Conduct Committee. The Exchange proposes to amend Regulation 4 to set a $5,000.00 fine for possession of an illegal controlled substance and thereafter referral to the Business Conduct Committee. The Exchange believes that these fines are appropriate given the nature of the acts and that the fines would serve as a deterrent for members with regard to the presence of those substances on the trading floor. Similarly, the Exchange proposes to add restitution to the vandalism fine schedule to clarify that members are required to make restitution to the Exchange for any vandalism in addition to the fine. The Exchange believes this added language will likewise reinforce an existing policy.

With respect to fines related to Regulation 1, Smoking, Regulation 2, Foods, Liquids and Beverages, Trash, Litter and Vandalism, and Regulation 4, Order, the Exchange proposes increasing those fines to create a deterrent in further prohibiting such activity. The fines in Regulation 1 would be increased from an Official Warning for the 1st occurrence, $250.00 for the 2nd occurrence and $500.00 for the 3rd occurrence to $250.00 for the 1st occurrence, $500.00 for the 2nd occurrence, and $1,000.00 for the 3rd occurrence. The fines in Regulation 2 for Foods, Liquids and Beverages would

jurisdiction of the Exchange. Reports to the Securities and Exchange Commission are made pursuant to Rule 19d–1(c) under the Act. *See also* Exchange Rule 60 (b)(iv).

[5] The removal would not impact other associated persons of the member organization, only the member that was involved in the conduct at issue. Also, the member that is subject to the removal would not be denied any electronic access to the Exchange.

[6] The Exchange currently charges a fee to review disputes pursuant to Exchange Rule 124. *See also* Securities Exchange Act Rel. No. 46600 (October 4, 2002), 67 FR 63480 (October 11, 2002) (SR–CBOE–2002–39) (CBOE has a similar rule imposing a forum fee against persons contesting citations).

be increased from $100.00 for a 1st occurrence, $200.00 for a 2nd occurrence, and $300.00 for a 3rd occurrence to $250.00 for a 1st occurrence, $500.00 for a 2nd occurrence and $1,000 for a 3rd occurrence. The Vandalism fines would be increased from $250.00 for a 1st occurrence, $500.00 for a 2nd occurrence and $1,000.00 for a 3rd occurrence to $3,000.00 and restitution for the 1st occurrence, $5,000.00 and restitution for the 2nd occurrence, $10,000.00 and restitution for the 3rd occurrence. Regulation 4 fines would be increased for fines resulting from indecorous conduct from $250.00 for the 1st occurrence, $500.00 for the 2nd occurrence, and $1,000.00 for the 3rd occurrence to $500.00 for the 1st occurrence, $1,000.00 for the 2nd occurrence and $2,500.00 for the 3rd occurrence. Regulation 4 fines for threatening, abusive, harassing or intimidating speech or conduct would be increased from $1,000.00 for the 1st occurrence, $2,500.00 for the 2nd occurrence and $5,000.00 for the 3rd occurrence to $2,500.00 for the 1st occurrence, $5,000.00 for the 2nd occurrence and the 3rd occurrence would be a referral to the Business Conduct Committee. The Exchange believes these increased fines [7] are necessary to create an adequate deterrence to prevent certain conduct on the trading floor. In addition, the process of issuing citations and holding hearings for appeals can significantly divert Exchange time and resources away from the regulatory purposes of the Exchange. In addition, the goal of maintaining order and decorum on the trading floor is best accomplished when floor members are deterred by such conduct [sic], rather than when violations occur and fines are simply paid. The Exchange believes that by increasing fees, members will be deterred from violating the order and decorum rules which exist for the safety and welfare of Exchange members and employees alike. Finally, the Exchange believes that the fine increases are commensurate with the possible threat such conduct creates to the safety and welfare of others on the trading floor.

The Exchange proposes amending Regulation 5, Visitors, to require non-member visitors who are performing contract work at the Exchange on behalf of a member to provide a certificate of insurance evidencing Professional Liability Insurance. This would include non-member visitors performing any type of work at the Exchange or utilizing building facilities. The Exchange leases its premises and this requirement would assist the Exchange in shifting costs that arise from any liability to the Exchange as a result of damage or loss caused by a contractor or other person engaged by a member. The Exchange proposes a fine schedule as follows: $1,000.00 for the 1st occurrence, $5,000.00 for the 2nd occurrence and referral to the Business Conduct Committee thereafter. The Exchange believes that by imposing a fine for violations of the obligation to require contractors hired by members to produce a certificate of insurance will deter such behavior and thereby benefit the Exchange and its members by having only insured contractors at the Exchange and thereby avoiding unnecessary costs.

Limitation of Exchange Liability and Reimbursement of Certain Expenses

The Exchange proposes the addition of a new rule 652. The purpose of this new rule is to limit the liability of the Exchange and obtain reimbursement of legal costs incurred to defend litigation brought against the Exchange. Legal proceedings can significantly divert staff resources away from the Exchange's regulatory and business purposes. In addition, these proceedings often require the Exchange to secure outside counsel, a costly undertaking. The Exchange believes that establishing a rule that limits liability, seeks reimbursement of costs related to document production and seeks reimbursement of other legal costs may reduce non merit-based or vexatious legal proceedings against the Exchange by member litigants and help protect against the Exchange's resources being unnecessarily diverted from regulatory and business objectives, thus strengthening the overall organization.

The Exchange proposes to limit liability for any damages sustained by a member, member organization, or person associated with any of the foregoing, arising out of or relating to the use or enjoyment by such person or entity of Exchange facilities. Further, the Exchange proposes to add language to state that in the event that an action or proceeding is brought or a claim made to impose liability on the Exchange for an alleged failure on its part to prevent or to require action by a member, member organization, or person associated with any of the foregoing, such person or entity may, in the discretion of the Exchange, be required to reimburse the Exchange for: All expenses, including counsel fees incurred in connection with said action, proceeding or claim; recovery if any against the Exchange upon a final determination that the Exchange was liable for the damage sustained; any payment made by the Exchange, with the approval of the member, member organization or person associated with any of the foregoing in connection with any settlement; provided that no member, member organization or person associated with any of the foregoing shall be required to reimburse the Exchange for any fine or any other civil penalty imposed on the Exchange by the Commission or other governmental entity for a violation by the Exchange of any provision of the Act or of any Commission Regulation, or where indemnification would otherwise be prohibited. Also Rule 652 provides that in the event that a member, member organization, or person associated with any of the foregoing fails to remit any amount due the Exchange under this rule or Rule 651 [8] such person shall be responsible for all costs of collection incurred by the Exchange, including counsel fees.[9] The Exchange proposes to shift the cost of producing records, where legally required, to the member or member organization where such records relate to the business of affairs of a member, member organization or person associated with a member or member organization. The Exchange receives many requests for record production which are time consuming and increase the costs of operating the Exchange when staff resources are diverted away from Exchange business to meet the deadlines of legal document production related to member disputes and other legal proceedings involving members. The Exchange believes that this cost will assist the Exchange in reducing these costs. Also, the Exchange receives requests for documents from non-members who seek the documents from the Exchange instead of issuing a subpoena to a member, who may also have such documents. The Exchange seeks to bill the members who are responsible for the request to produce

[7] The Exchange increased the maximum amount of a pre-sent fine for order and decorum violations from $1,000 to $5,000 in 2002. See Securities Exchange Act Release No. 45905 (May 10, 2002), 67 FR 34978 (May 16, 2002) (SR–Phlx–2002–09).

[8] Rule 651 requires members, member organizations, foreign currency options participants, foreign currency options participant organizations, or persons associated with any of the foregoing who bring legal proceedings against the Exchange to reimburse the Exchange for all costs associated with defending such proceedings, only when such persons or entities do not prevail and the Exchange 's costs exceed a specified amount. *See* Securities Exchange Act Release Nos. [sic] 50159 (August 5, 2009), 69 FR 49933 (August 12, 2004) (SR–Phlx–2004–47).

[9] This would not apply to any objection or appeal by a member, member organization, or person associated with any of the foregoing considered by the Exchange or the Commission, or any appeal from a decision of the Commission.

documents received by the Exchange. The Exchange believes that requests for production of documents shift the burden of gathering and producing litigation materials from the member to the Exchange and the Exchange desires to shift the burden back to the member litigant. Rule 652(d) would apply to any costs incurred by the Exchange only after the rule becomes effective.

Minor Rule Plan

The Exchange proposes amending Rule 970, Floor Procedure Advices: Violations, Penalties, and Procedures, to increase the limit on fees from $5,000 to $10,000. Currently in lieu of commencing a disciplinary proceeding, the Exchange may impose a fine not to exceed $5,000 on any member, member organization, or any partner, director or person employed by or associated with any member or member organization, for any violation of a Floor Procedure Advice of the Exchange, which violation the Exchange shall have determined is minor in nature, subject to the other requirements contained in Rule 970. The Exchange proposes to raise the amount of the fine from $5,000 to $10,000. Additionally, the Exchange has added additional language clarifying when fines are to be publically reported to the Commission. Any fine imposed pursuant to this Rule, and not exceeding $2,500, and not contested shall not be publicly reported to the members except as may be required by Rule 19d–1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority. Any fine imposed pursuant to this Rule which exceeds $2,500 shall be publicly reported to the members and as required by Rule 19d–1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority. The Exchange believes that increasing the cap on fines which are not subject to a disciplinary proceeding will provide for a more efficient operation of the minor rule plan and allow certain Option Floor Procedure Advices to be increased without incurring the costs and resources of the regulatory staff to commence disciplinary proceedings. The Exchange believes that fines that are capped at $2,500 may not create a deterrent and this increase will provide Exchange staff the ability to consider larger fines for violations of Floor Procedure Advices. The proposed language further explains the requirements for reporting fines to the Commission when the fine exceeds a certain amount.

Disciplinary Rules

The Exchange proposes to amend Rule 960.5 to add language to allow Enforcement Staff to request a hearing. Currently, a hearing on the Statement of Charges shall at the request of either Respondent or upon motion of the Business Conduct Committee be held before a Hearing Panel. The Exchange proposes modifying this process to allow Enforcement Staff to request a hearing. There are circumstances where the Respondent may not request a hearing and Enforcement staff may desire such a hearing. The Exchange believes that an opportunity to present information to the Hearing Panel aside from a Wells Notice and response may benefit the Hearing Panel in making a determination. The Exchange desires to afford the Enforcement Staff the opportunity to make such a request when they deem it necessary.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] 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, because the proposal should facilitate prompt, appropriate, and effective discipline for violations of Rule 60 and the regulations thereunder designed to maintain order on the Exchange. In addition, the Exchange believes that the proposed rule is consistent with section 6(b)(6) of the Act [12] which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, by imposing increased fine amounts for breaches of order and decorum to better reflect the severity of the violation and provide an appropriate form of deterrence for violation of Rule 60 and the regulations thereunder. The Exchange believes that the proposal to exclude members up to five (5) days and conduct an expedited hearing would provide a fair process for members to present their arguments surrounding a removal, while also allowing the Exchange to operate without disruption and threat of safety to members on the trading floor. The increase in the maximum amount of a pre-set fine for order and decorum violations is appropriate to serve as a deterrent to members in violating the order and decorum regulations which are necessary for the orderly operation of the market. The increased fines should create further deterrents in preventing certain activity on the trading floor which disrupts the orderly operation of the floor. The minor rule plan assists the regulatory staff in protecting its market to the benefit of customers. Also, the clarifying language and addition of fine schedules related to alcohol and illegal controlled substances to the Regulations should further clarify the order and decorum rules for members. The proposed language requiring non-member visitors to carry insurance should assist the Exchange in limiting its resources [sic] as well as proposed Rule 652 which is designed to conserve Exchange resources, which can be easily diverted to defending litigation claims and responding to non-Exchange related litigation matters on behalf of its members. Proposed Rule 652 is meant to prevent the Exchange from diverting valued resources away from its main regulatory responsibilities and instead being consumed in litigation designed to siphon Exchange monies and staff. The Exchange believes that raising the amount of the fines that are subject to the minor rule plan will assist the Exchange in enforcing its rules in an efficient and expedited manner will [sic] still deterring members from committing ongoing violations. Finally, the Exchange believes that the amendments to the Hearing rule benefits [sic] the disciplinary process by allowing Exchange staff the opportunity to request hearings. The efficient operation of the disciplinary process allows for fair hearings of its members.

In addition, the Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(4) of the Act [14] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this proposal is equitable in that the forum fee would apply to all members equally. The addition of the forum fee will help the Exchange offset costs associated with reviewing contested citations.

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

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(6).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

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

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 shall: (a) By order approve such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2009–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–84 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60971; File No. SR–NYSEArca–2009–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of ETFS Palladium Trust

November 9, 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 20, 2009, NYSE Arca, Inc. (''NYSE Arca'' 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 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, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to list and trade shares of the ETFS Palladium Trust (the ''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade ETFS Palladium Shares (''Shares'') of the Trust under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.''[3] The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 of other issues of Commodity-Based Trust Shares. The Commission has approved listing on the Exchange of the streetTRACKS Gold Trust and iShares COMEX Gold Trust.[4] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (''NYSE'') and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC (now known as ''NYSE Amex LLC'').[5] In

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[4] *See* Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[5] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE); Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.[6] The Commission also has approved listing of the iShares Silver Trust on the Exchange[7] and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC.[8]

The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of palladium, less the expenses of the Trust's operations.[9] ETFS Services USA LLC is the sponsor of the Trust (''Sponsor''), The Bank of New York Mellon is the trustee of the Trust (''Trustee'')[10], and HSBC Bank USA, N.A. is the custodian of the Trust (''Custodian'').[11]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[12]

The investment objective of the Trust is for the Shares to reflect the performance of the price of physical palladium, less the Trust's expenses. The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in palladium. An investment in physical palladium requires expensive and sometimes complicated arrangements in connection with the assay, transportation, warehousing and insurance of the metal. Although the Shares will not be the exact equivalent of an investment in palladium, they provide investors with an alternative that allows a level of participation in the palladium market through the securities market.

Platinum Group Metals

Platinum and palladium are the two best known metals of the six platinum group metals (PGMs). Platinum and palladium have the greatest economic importance and are found in the largest quantities. The other four—iridium, rhodium, ruthenium and osmium—are produced only as co-products of platinum and palladium.

PGMs are found primarily in South Africa and Russia. Russia is the largest producer of palladium and most production is concentrated in the Norilsk region. South Africa is the world's leading platinum producer and the second largest palladium producer. All of South Africa's production is sourced from the Bushveld Igneous Complex, which hosts the world's largest resource of PGMs. Together, South Africa and Russia accounted for 78% of total platinum group metals supply in 2008.

Suppliers of Palladium

The main supplier of palladium is Russia. However, its contribution has fallen from 65% in 1999 to 44% of total supply in 2008. South Africa is the second largest source of supply, accounting for 29% of total supply in 2008. Similar to platinum, Russia's contribution to palladium supply has been variable while South Africa has consistently increased over the past ten years. North America contributes approximately 11% to supply while the recovery of palladium from autocatalysts has increased more than five-fold over the past ten years to account for 13% of supply in 2008.

Demand for Palladium

Autocatalysts are the largest component of palladium demand, with total demand increasing to 55% of total supply by the end of 2008. Industrial demand (electronics, dentistry, and chemical) has fallen to a low of 23% of total demand in 2001 to 28% of total demand in 2008. Jewelry demand for palladium has increased by the largest of all the key sectors, rising by 232% over the past ten years and contributing a total of 9% of total demand in 2008.[13]

The investment sector for palladium includes the investment and trading activities of both professional and private investors and speculators. These participants range from large hedge and mutual funds to day-traders on futures exchanges, and retail-level coin collectors. The fabrication and manufacturing sector for palladium represents all the commercial and industrial users of palladium for whom palladium is a daily part of their business. The auto catalyst and jewelry industries are the largest users of palladium.

Physical palladium prices performed strongly in early 2008, rising from an opening $370 to a peak of $588 in March—the highest prices since 2001. However, speculative fund interests in the palladium market were amply demonstrated in the third quarter as large fund sales sent the price of physical palladium spiraling to only $199 per ounce at the close of the quarter, the lowest price since October 2005. Prices continued at these low levels as the price of palladium ended

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[6] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[7] *See* Securities Exchange Act Release Nos. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing on the Exchange of the iShares Silver Trust)).

[8] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[9] *See* Amendment No. 2 to the Registration Statement for the ETFS Palladium Trust on Form S–1, filed with the Commission on October 20, 2009 (No. 333–15830) (''Registration Statement''). The descriptions of the Trust, the Shares and the palladium market contained herein are based on the Registration Statement.

[10] The Trustee is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Trustee's principal responsibilities include (1) transferring the Trust's palladium as needed to pay the Sponsor's Fee in palladium (palladium transfers are expected to occur approximately monthly in the ordinary course), (2) valuing the Trust's palladium and calculating the NAV of the Trust and the NAV per Share, (3) receiving and processing orders from Authorized Participants to create and redeem Baskets and coordinating the processing of such orders with the Custodian and DTC, (4) selling the Trust's palladium as needed to pay any extraordinary Trust expenses that are not assumed by the Sponsor, (5) when appropriate, making distributions of cash or other property to Shareholders, and (6) receiving and reviewing reports from or on the Custodian's custody of and transactions in the Trust's palladium.

[11] The Custodian is responsible for safekeeping for the Trust palladium deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian is also responsible for selecting the Zurich Sub-Custodians and its other direct sub-custodians, if any. The Custodian facilitates the transfer of palladium in and out of the Trust through the unallocated palladium accounts it will maintain for each Authorized Participant and the unallocated and allocated palladium accounts it will maintain for the Trust. The Custodian is responsible for allocating specific plates or ingots of physical palladium to the Trust's allocated palladium account. The Custodian will provide the Trustee with regular reports detailing the palladium transfers in and out of the Trust's unallocated and allocated palladium accounts and identifying the palladium plates or ingots held in the Trust's allocated palladium account.

[12] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Securities Exchange of 1934 (''Act'') (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[13] The Registration Statement includes a table with data regarding World Palladium Supply and demand 1999–2008. According to the Registration Statement, the table illustrates that the palladium supply over the past ten years has averaged 8.1 million ounces with the majority of production from Russia. Production from Russia, on average accounts for approximately 50% of total production from 1999 to 2008. There is a 24% increase in palladium supply when comparing the average five-year periods ended 2003 and 2008, at 7.3 million ounces and 9.0 million ounces, respectively. The biggest source of demand for palladium output over the period shown has come from the autocatalyst sector which has accounted for an approximate average of 58% of all demand from 1999 to 2008. However, autocatalyst demand has decreased in 2008 from its 2001 peak of 72% of total demand to 55% by 2008. The annual demand for palladium over the past 10 years has averaged approximately 7.5 million ounces.

the year at $184 per ounce in December 2008.

Operation of the Palladium Market

The global trade in palladium consists of Over-the-Counter (OTC) transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The OTC market trades on a 24-hour per day continuous basis and accounts for most global palladium trading.

Market makers, as well as others in the OTC market, trade with each other and with their clients on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. Market makers include the market-making members of the The London Platinum Palladium Market (''LPPM''), the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the LPPM. The four market-making members of the LPPM are: J.Aron & Company (a division of Goldman Sachs International), Engelhard Metals Limited, HSBC Bank USA, N.A. (through its London branch), and Standard Bank. The OTC market provides a relatively flexible market in terms of quotes, price, size, destinations for delivery and other factors. Bullion dealers customize transactions to meet clients' requirements. The OTC market has no formal structure and no open-outcry meeting place.

According to the Registration Statement, the main centers of the OTC market are London, New York, Hong Kong and Zurich. Mining companies, manufacturers of jewelry and industrial products, together with investors and speculators, tend to transact their business through one of these market centers. Centers such as Dubai and several cities in the Far East also transact substantial OTC market business, typically involving jewelry and small plates or ingots (1 kilogram or less) and will hedge their exposure by selling into one of these main OTC centers. Precious metals dealers have offices around the world and most of the world's major bullion dealers are either members or associate members of the London Bullion Market Association and/or the LPPM. In the OTC market, the standard size of palladium trades between market makers is 1,000 ounces.

Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's ''buy'' and ''sell'' prices. The period of greatest liquidity in the palladium market generally occurs at the time of day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York and other centers coincides with futures and options trading on the NYMEX. This period lasts for approximately four hours each New York business day morning.

The London Palladium Market

Although the market for physical palladium is distributed globally, most OTC market trades are cleared through London. In addition to coordinating market activities, the LPPM acts as the principal point of contact between the market and its regulators. A primary function of the LPPM is its involvement in the promotion of refining standards by maintenance of the ''London/Zurich Good Delivery Lists,'' which are the lists of LPPM accredited melters and assayers of palladium.[14] The LPPM also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.

Palladium is traded generally on a loco Zurich basis, meaning the precious metal is physically held in vaults in Zurich or is transferred into accounts established in Zurich. The basis for settlement and delivery of a loco Zurich spot trade is payment (generally in U.S. dollars) two business days after the trade date against delivery. Delivery of the palladium can either be by physical delivery or through the clearing systems to an unallocated account.

The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams is equivalent to 32.1507465 troy ounces, and one troy ounce is equivalent to 31.1034768 grams. A London/Zurich good delivery plate or ingot is acceptable for delivery in settlement of a transaction on the OTC market. Typically referred to as Good Delivery, a plate or ingot must contain between 32 and 192 troy ounces of palladium with a minimum fineness (or purity) of 999.5 parts per 1,000 (99.95%), be of good appearance, and be easy to handle and stack. The palladium content of a palladium plate or ingot is calculated by multiplying the gross weight (expressed in units of 0.025 troy ounces) by the fineness of the plate or ingot. A Good Delivery plate or ingot must also bear the stamp of one of the melters and assayers who are on the LPPM approved list. Unless otherwise specified, the palladium spot price always refers to that of Good Delivery Standards. Business is generally conducted over the phone and through electronic dealing systems.

Twice daily during London trading hours there is a fix which provides reference palladium prices for that day's trading. Many long-term contracts will be priced on the basis of either the morning (a.m.) or afternoon (p.m.) London fix, and market participants will usually refer to one or the other of these prices when looking for a basis for valuations. The London fix is the most widely used benchmark for daily palladium prices and is quoted by various financial information sources.

Formal participation in the London fix is traditionally limited to four members, each of which is a bullion dealer and a member of the LPPM. The chairmanship now rotates annually among the four member firms. The morning session of the fix starts at 9:45 a.m. London time and the afternoon session starts at 2 p.m. London time. The members of the LPPM fixing are currently: J.Aron & Company (a division of Goldman Sachs International), Engelhard Metals Limited, HSBC Bank USA N.A. (London branch), and Standard Bank London Limited. Any other market participant wishing to participate in the trading on the fix is required to do so through one of the four palladium fixing members.

Orders are placed either with one of the four fixing members or with another precious metals dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a ''trying price,'' reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms which have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The palladium price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. The London fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

Futures Exchanges

The most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange (''TOCOM''). The NYMEX is the largest exchange in the world for trading precious metals futures and options and

[14] Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

has been trading palladium since 1974. The TOCOM has been trading palladium since 1982. Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. The NYMEX operates through a central clearance system. On June 6, 2003, TOCOM adopted a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

Market Regulation

The global palladium markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and participants. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LPPM, falls under the authority of the Financial Services Authority (''FSA'') as provided by the Financial Services and Markets Act 2000 (''FSM Act''). Under this act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls.

The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of palladium not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England.

The TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices. To act as a Futures Commission Merchant Broker, a broker must obtain a license from Japan's Ministry of Economy, Trade and Industry (METI), the regulatory authority that oversees the operations of the TOCOM.

The Trust will not trade in palladium futures contracts on the NYMEX or on any other futures exchange. The Trust will only take delivery of physical palladium that complies with the NYMEX palladium delivery rules or the LPPM palladium delivery rules. Because the Trust will not trade in palladium futures contracts on any futures exchange, the Trust with not be regulated by the Commodity Futures Trading Commission (''CFTC'') under the Commodity Exchange Act [15] (''CEA'') as a ''commodity pool,'' and will not be operated by a CFTC-regulated commodity pool operator.

Custody of the Trust's Palladium

Custody of the physical palladium deposited with and held by the Trust will be provided by the Custodian at its London, England vaults, by Zurich Sub-Custodians selected by the Custodian in their Zurich vaults and by other sub-custodians on a temporary basis only. The Custodian is a market maker, clearer and approved weigher under the rules of the LPPM. The Custodian is the custodian of the physical palladium credited to Trust Allocated Account in accordance with the Custody Agreements. The Custodian will segregate the physical palladium credited to the Trust Allocated Account from any other precious metal it holds or holds for others by entering appropriate entries in its books and records, and will require any Zurich Sub-Custodian it appoints to also segregate the physical palladium of the Trust from the other palladium held by them for other customers of the Custodian and the Zurich Sub-Custodian's other customers. The Custodian will require any Zurich Sub-Custodian it appoints to identify in such Zurich Sub-Custodian's books and records the Trust as having the rights to the physical palladium credited to its Trust Allocated Account.

The Custodian, as instructed by the Trustee, is authorized to accept, on behalf of the Trust, deposits of palladium in unallocated form. Acting on standing instructions specified in the Custody Agreements, the Custodian will or will require a Zurich Sub-Custodian to allocate palladium deposited in unallocated form with the Trust by selecting plates or ingots of physical palladium for deposit to the Trust Allocated Account. All physical palladium allocated to the Trust must conform to the rules, regulations, practices and customs of the LPPM.

The process of withdrawing palladium from the Trust for a redemption of a Basket will follow the same general procedure as for depositing palladium with the Trust for a creation of a Basket, only in reverse. Each transfer of palladium between the Trust Allocated Account and the Trust Unallocated Account connected with a creation or redemption of a Basket may result in a small amount of palladium being held in the Trust Unallocated Account after the completion of the transfer. In making deposits and withdrawals between the Trust Allocated Account and the Trust Unallocated Account, the Custodian will use commercially reasonable efforts to minimize the amount of palladium held in the Trust Unallocated Account as of the close of each business day.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act of 1940 [16] and is not required to register under such act. The Trust will not hold or trade in commodity futures contracts regulated by the CEA, as administered by the CFTC. The Trust is not a commodity pool for purposes of the CEA, and neither the Sponsor nor the Trustee is subject to regulation by the CFTC as a commodity pool operator or a commodity trading advisor in connection with the Shares.

Sponsor's Estimate of Expected Size of the Trust

The Sponsor has made representations to the Commission regarding the expected size of the Trust and the expected impact of the offering of the Shares on the global palladium market.[17] In the May 15, 2009 Letter, the Sponsor has stated its expectation that the Trust's assets under management (''AUM'') would be between $100 million and $200 million after three years of the Trust's operation, and using the palladium spot market price of $242.00 per ounce as of May 8, 2009, the Trust would be expected to be acquiring between approximately 138,000 to 275,000 ounces of palladium on an annual basis.[18] The Sponsor has represented that it does not believe that the currently expected size of the Trust will have a meaningful effect on the global supply or demand for palladium, and that the Trust's highest forecast palladium acquisitions would represent 3.4% and 3.6%, respectively, of the 10-year average annual supply and demand for palladium through the end of 2008.[19] The Sponsor, therefore, has stated its belief that, in view of the amount of Shares sought to be registered, the Trust believes there will be a market neutral impact given that the Shares can be a

[15] 7 U.S.C. 1 *et seq.*

[16] 15 U.S.C. 80a.

[17] *See* Supplemental Comment Response regarding the Trust, dated May 15, 2009, from Peter J. Shea, Katten Muchin Rosenman LLP, to the Commission (submitted via EDGAR) (''May 15, 2009 Letter'').

[18] The Exchange notes that ETF Securities Ltd., the Sponsor's parent entity, has sponsored ETFS Palladium ETP, traded on the London Stock Exchange (ticker symbol: PHPD), which had AUM of approximately $61.4 million as of May 8, 2009.

[19] *See* note 13, *supra.*

current source of supply at then current prices through redemptions.[20]

In the May 15, 2009 Letter, the Sponsor also states that it expects that the offering of the Shares will not have a meaningful impact on the global palladium market, founded on the Sponsor's belief that the present Share offering is limited to an appropriate size and that arbitrage opportunities between palladium market prices and the Trust's net asset value together with the low cost creation and redemption process utilizing physical metal will neutralize any impact of the Trust on the broader palladium market.[21]

According to the Registration Statement, since there is no limit on the amount of palladium that the Trust may acquire, the Trust, as it grows, may have an impact on the supply and demand of palladium that ultimately may affect the price of the Shares in a manner unrelated to other factors affecting the global market for palladium.

Secondary Market Trading

While the Trust's investment objective is for the Shares to reflect the performance of palladium, less the expenses of the Trust, the Shares may trade in the secondary market on the NYSE Arca at prices that are lower or higher relative to their net asset value (''NAV'') per Share. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the NYMEX and London. While the Shares will trade on the NYSE Arca until 8 p.m. New York time, liquidity in the global palladium market will be reduced after the close of the NYMEX at 1 p.m. New York time. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Trust Expenses

The Trust's only ordinary recurring expense is expected to be equal to the Sponsor's Fee. In exchange for the Sponsor's Fee, the Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: The Trustee's monthly fee and out-of-pocket expenses, the Custodian's fee, Exchange listing fees, SEC registration fees, printing and mailing costs, audit fees and up to $100,000 per annum in legal expenses. The Sponsor will also pay the costs of the Trust's organization and the initial sale of the Shares, including the applicable SEC registration fees.

The Sponsor's Fee will accrue daily at an annualized rate equal to a specified percentage of the adjusted net asset value of the Trust and will be payable monthly in arrears. The Sponsor, from time to time, may temporarily waive all or a portion of the Sponsor's Fee at its discretion for a stated period of time.

The Trust will deliver palladium to the Sponsor to pay the Sponsor's Fee and sell palladium to raise the funds needed for the payment of all Trust expenses not assumed by the Sponsor. The purchase price received as consideration for such sales will be the Trust's sole source of funds to cover its liabilities. The Trust will not engage in any activity designed to derive a profit from changes in the price of palladium.

Creation and Redemption Procedures

The Trust will create and redeem Shares in one or more Baskets (a Basket equals a block of 50,000 Shares). The creation and redemption of Baskets will only be made ''in-kind'' in exchange for the delivery to the Trust or the distribution by the Trust of the amount of palladium and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received. The creation and redemption of Baskets may occur daily.

Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions that are exempt from registration as broker-dealers to engage in securities transactions and (2) participants in DTC. To become an Authorized Participant, a person must enter into an Authorized Participant Agreement with the Sponsor and the Trustee. The Authorized Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of the palladium and any cash required for such creations and redemptions.

According to the Registration Statement, certain Authorized Participants are expected to have the facility to participate directly in the physical palladium market and the palladium futures market. In some cases, an Authorized Participant may from time to time acquire palladium from or sell palladium to its affiliated palladium trading desk, which may profit in these instances. Certain Authorized Participants will be regulated under federal and state banking laws and regulations. Each Authorized Participant will have its own set of rules and procedures, internal controls and information barriers as it determines is appropriate in light of its own regulatory regime. Shareholders who are not Authorized Participants will only be able to redeem their shares by an Authorized Participant.

All palladium will be delivered to the Trust and distributed by the Trust in unallocated form through credits and debits between Authorized Participant Unallocated Accounts and the Trust Unallocated Account. Palladium transferred from an Authorized Participant Unallocated Account to the Trust in unallocated form will first be credited to the Trust Unallocated Account. Thereafter, the Custodian will allocate specific plates or ingots of palladium representing the amount of palladium credited to the Trust Unallocated Account (to the extent such amount is representable by whole palladium plates or ingots) to the Trust Allocated Account. The movement of palladium is reversed for the distribution of palladium to an Authorized Participant in connection with the redemption of Baskets.

All physical palladium represented by a credit to any Authorized Participant Unallocated Account and to the Trust Unallocated Account and all physical palladium held in the Trust Allocated Account with the Custodian must be of at least a minimum fineness (or purity) of 999.5 parts per 1,000 (99.95%) and otherwise conform to the rules, regulations practices and customs of the LPPM, including the specifications for a Good Delivery plate or ingot.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. Creation and redemption orders will be accepted on ''business days'' when the NYSE Arca is open for regular trading. Settlements of such orders requiring receipt or delivery, or confirmation of receipt or delivery, of palladium in the United Kingdom, Zurich or another jurisdiction will occur on ''business days'' when (1) banks in the United Kingdom, Zurich or such other jurisdiction and (2) the London/Zurich

[20] The Sponsor states that it intends to recast its analysis each time it seeks to register additional Shares of the Trust in the future to ensure that additional Trust offerings will not be disruptive to palladium supply and demand. May 15, 2009 Letter at p. 4. As stated in the May 15, 2009 Letter, the Registration Statement seeks to register 12,880,000 Shares, and that, at an estimated palladium acquisition rate of 275,000 ounces per year, the Trust would complete its Share offering in approximately 4.7 years.

[21] May 15, 2009 Letter at p. 5.

or such other palladium markets are regularly open for business. If such banks or the London/Zurich palladium markets are not open for regular business for a full day, such a day will only be a ''business day'' for settlement purposes if the settlement procedures can be completed by the end of such day. Settlement of palladium deliveries, which occur loco Zurich, may be delayed for longer than three business days. Settlement of orders requiring receipt or delivery, or confirmation of receipt or delivery, of Shares will occur, after confirmation of the applicable palladium delivery, on ''business days'' when the NYSE Arca is open for regular trading. Purchase orders must be placed by 4 p.m. or the close of regular trading on the NYSE Arca, whichever is earlier. The day on which the Trustee receives a valid purchase order is the purchase order date.

By placing a purchase order, an Authorized Participant agrees to deposit palladium with the Trust, or a combination of palladium and cash, as described below. Prior to the delivery of Baskets for a purchase order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the purchase order.

Determination of Required Deposits

The total deposit required to create each Basket (Creation Basket Deposit) will be an amount of palladium and cash, if any, that is in the same proportion to the total assets of the Trust (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to purchase is properly received as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. The Sponsor anticipates that in the ordinary course of the Trust's operations a cash deposit will not be required for the creation of Baskets.

The amount of the required palladium deposit is determined by dividing the number of ounces of palladium held by the Trust by the number of Baskets outstanding, as adjusted for estimated accrued but unpaid fees and expenses as described in the next paragraph.

The amount of any required cash deposit is determined as follows. The estimated unpaid fees, expenses and liabilities of the Trust accrued through the purchase order date are subtracted from any cash held or receivable by the Trust as of the purchase order date. The remaining amount is divided by the number of Shares outstanding immediately before the purchase order date and then multiplied by the number of Shares being created pursuant to the purchase order. If the resulting amount is positive, this amount is the required cash deposit. If the resulting amount is negative, the amount of the required palladium deposit will be reduced by the number of fine ounces of palladium equal in value to that resulting amount, determined at the price of palladium used in calculating the NAV of the Trust on the purchase order date. Fractions of a fine ounce of palladium smaller than 0.001 of a fine ounce which are included in the palladium deposit amount are disregarded. All questions as to the composition of a Creation Basket Deposit will be finally determined by the Trustee. The Trustee's determination of the Creation Basket Deposit shall be final and binding on all persons interested in the Trust.

Delivery of Required Deposits

An Authorized Participant who places a purchase order is responsible for crediting its Authorized Participant Unallocated Account with the required palladium deposit amount by the third business day in Zurich following the purchase order date. Upon receipt of the palladium deposit amount, the Custodian, after receiving appropriate instructions from the Authorized Participant and the Trustee, will transfer on the third business day following the purchase order date the palladium deposit amount from the Authorized Participant Unallocated Account to the Trust Unallocated Account and the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account.

Acting on standing instructions given by the Trustee, the Custodian will transfer the palladium deposit amount from the Trust Unallocated Account to the Trust Allocated Account by transferring palladium plates and ingots from its inventory to the Trust Allocated Account. The Custodian will use commercially reasonable efforts to complete the transfer of palladium to the Trust Allocated Account prior to the time by which the Trustee is to credit the Basket to the Authorized Participant's DTC account; if, however, such transfers have not been completed by such time, the number of Baskets ordered will be delivered against receipt of the palladium deposit amount in the Trust Unallocated Account, and all Shareholders will be exposed to the risks of unallocated palladium to the extent of that palladium deposit amount until the Custodian completes the allocation process.

The Trustee may reject a purchase order or a Creation Basket Deposit if such order or Creation Basket Deposit if [sic] not presented in proper form as described in the Authorized Participant Agreement or if the fulfillment of the order, in the opinion of counsel, might be unlawful.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed by 4 p.m. or the close of regular trading on the NYSE Arca, whichever is earlier. A redemption order so received is effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket, or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust not later than the third business day following the effective date of the redemption order. Prior to the delivery of the redemption distribution for a redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the redemption order.

Determination of Redemption Distribution

The redemption distribution from the Trust will consist of (1) a credit to the redeeming Authorized Participant's Authorized Participant Unallocated Account representing the amount of the palladium held by the Trust evidenced by the Shares being redeemed plus or minus (2) the cash redemption amount. The cash redemption amount is equal to the value of all assets of the Trust other than palladium less all estimated accrued but unpaid expenses and other liabilities, divided by the number of Baskets outstanding and multiplied by the number of Baskets included in the Authorized Participant's redemption order. The Trustee will distribute any positive cash redemption amount through DTC to the account of the Authorized Participant as recorded on DTC's book entry system. If the cash redemption amount is negative, the credit to the Authorized Participant

Unallocated Account will be reduced by the number of ounces of palladium equal in value to the negative cash redemption amount, determined at the price of palladium used in calculating the NAV of the Trust on the redemption order date. The Sponsor anticipates that in the ordinary course of the Trust's operations there will be no cash distributions made to Authorized Participants upon redemptions. Fractions of a fine ounce of palladium included in the redemption distribution smaller than 0.001 of a fine ounce are disregarded. Redemption distributions will be subject to the deduction of any applicable tax or other governmental charges which may be due.

Delivery of Redemption Distribution

The redemption distribution due from the Trust will be delivered to the Authorized Participant on the third business day following the redemption order date if, by 9 a.m. New York time on such third business day, the Trustee's DTC account has been credited with the Baskets to be redeemed. Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

The Custodian will transfer the redemption palladium amount from the Trust Allocated Account to the Trust Unallocated Account and, thereafter, to the redeeming Authorized Participant's Authorized Participant Unallocated Account.

The Trustee may, in its discretion, and will when directed by the Sponsor, suspend the right of redemption, or postpone the redemption settlement date, (1) for any period during which the NYSE Arca is closed other than customary weekend or holiday closings, or trading on the NYSE Arca is suspended or restricted or (2) for any period during which an emergency exists as a result of which delivery, disposal or evaluation of palladium is not reasonably practicable.

The Trustee will reject a redemption order if the order is not in proper form as described in the Authorized Participant Agreement or if the fulfillment of the order, in the opinion of its counsel, might be unlawful.

Creation and Redemption Transaction Fee

To defray the costs incurred by the Trustee in providing services for processing the creation and redemption of Baskets, an Authorized Participant will be required to pay a transaction fee to the Trustee of $500 per order to create or redeem Baskets. An order may include multiple Baskets. The transaction fee may be reduced, increased or otherwise changed by the Trustee with the consent of the Sponsor. The Trustee shall notify DTC of any agreement to change the transaction fee and will not implement any increase in the fee for the redemption of Baskets until 30 days after the date of the notice.

Additional information regarding the Shares and the operation of the Trust, including termination events, risks, and creation and redemption procedures, are described in the Registration Statement.

Termination Events

The Trustee will terminate and liquidate the Trust if the aggregate market capitalization of the Trust, based on the closing price for the Shares, was less than $350 million (as adjusted for inflation) at any time after the first anniversary after the Trust's formation and the Trustee receives, within six months after the last of those trading days, notice from the Sponsor of its decision to terminate the Trust. The Trustee will terminate the Trust if the CFTC determines that the Trust is a commodities pool under the CEA. The Trustee may also terminate the Trust upon the agreement of the owners of beneficial interests in the Shares (''Shareholders'') owning at least 75% of the outstanding Shares.

The Trust expects to create and redeem the Shares from time to time, but only in one or more Baskets (a Basket equals a block of 50,000 Shares). The creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of palladium and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed. The initial amount of palladium required for deposit with the Trust to create Shares is 5,000 ounces per Basket. The number of ounces of palladium required to create a Basket or to be delivered upon the redemption of a Basket will gradually decrease over time, due to the accrual of the Trust's expenses and the sale or delivery of the Trust's palladium to pay the Trust's expenses. Baskets may be created or redeemed only by Authorized Participants, who will pay a transaction fee for each order to create or redeem Baskets and may sell the Shares included in the Baskets they create to other investors.

Additional information regarding the Shares and the operation of the Trust, including termination events, risks, and creation and redemption procedures, are described in the Registration Statement.

Valuation of Palladium, Definition of Net Asset Value and Adjusted Net Asset Value (''ANAV'')

As of the London p.m. Fix on each day that the NYSE Arca is open for regular trading or, if there is no London p.m. Fix on such day or the London p.m. Fix has not been announced by 12 noon New York time on such day, as of 12 noon New York time on such day (Evaluation Time), the Trustee will evaluate the palladium held by the Trust and determine both the ANAV and the NAV of the Trust.

At the Evaluation Time, the Trustee will value the Trust's palladium on the basis of that day's London p.m. Fix or, if no London p.m. Fix is made on such day or has not been announced by the Evaluation Time, the next most recent London palladium price fix (a.m. or p.m.) determined prior to the Evaluation Time will be used, unless the Sponsor determines that such price is inappropriate as a basis for evaluation. In the event the Sponsor determines that the London p.m. Fix or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's palladium is not an appropriate basis for evaluation of the Trust's palladium, it shall identify an alternative basis for such evaluation to be employed by the Trustee. Neither the Trustee nor the Sponsor shall be liable to any person for the determination that the London p.m. Fix or last prior London palladium price fix is not appropriate as a basis for evaluation of the Trust's palladium or for any determination as to the alternative basis for such evaluation provided that such determination is made in good faith.[22]

Once the value of the palladium has been determined, the Trustee will subtract all estimated accrued but unpaid fees, expenses and other liabilities of the Trust from the total value of the palladium and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). The resulting figure is the ANAV of the Trust. The ANAV of the Trust is used to compute the Sponsor's Fee.

To determine the Trust's NAV, the Trustee will subtract the amount of estimated accrued but unpaid fees computed by reference to the ANAV of the Trust and to the value of the palladium held by the Trust from the ANAV of the Trust. The resulting figure

[22] The Exchange, pursuant to NYSE Arca Equities Rule 7.12, has the discretion to halt trading in the Shares if the London Fix is not determined or available for an extended period based on extraordinary circumstances or market conditions.

is the NAV of the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on the NYSE Arca (which includes the net number of any Shares created or redeemed on such evaluation day).

The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include estimated accrued but unpaid fees and expenses). In determining the NAV of the Trust, the Trustee will value the palladium held by the Trust on the basis of the price of an ounce of palladium as set by the afternoon session of the twice daily fix of the price of an ounce of palladium which starts at 2 p.m. London, England time (London p.m. Fix) and is performed by the four members of the London Platinum and Palladium Market (LPPM). The Trustee will determine the NAV of the Trust on each day the NYSE Arca is open for regular trading, at the earlier of the London p.m. Fix for the day or 12 noon New York time. If no London p.m. Fix is made on a particular evaluation day or has not been announced by 12 noon New York time on a particular evaluation day, the next most recent London palladium price fix (a.m. or p.m.) will be used in the determination of the NAV of the Trust, unless the Sponsor determines that such price is inappropriate to use as basis for such determination. The Trustee will also determine the NAV per Share, which equals the NAV of the Trust, divided by the number of outstanding Shares.

The Shares will be book-entry only and individual certificates will not be issued for the Shares.

Liquidity

The Shares may trade at, above or below the NAV per Share. The NAV per Share will fluctuate with changes in the market value of the Trust's assets. The trading price of the Shares will fluctuate in accordance with changes in the NAV per Share as well as market supply and demand. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the major palladium markets. While the Shares will trade on the NYSE Arca until 8 p.m. New York time, liquidity in the market for palladium will be reduced after the close of the major world palladium markets, including London and the NYMEX. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Availability of Information Regarding Palladium Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as palladium, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of palladium price and palladium market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis palladium pricing information based on the spot price for an ounce of palladium from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of palladium and last sale prices of palladium futures, as well as information about news and developments in the palladium market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on palladium prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot palladium, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for palladium futures and options prices traded on the NYMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on palladium, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London a.m. Fix and London p.m. Fix are publicly available at no charge at *http://www.lbma.org.uk/statistics_current.htm* or *http://www.thebulliondesk.com.*

The Trust Web site will provide an intraday indicative value (''IIV'') per share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., New York time). The IIV is calculated by multiplying the indicative spot price of palladium by the quantity of palladium backing each Share. The Trust Web site will also provide the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (a) The NAV as of the close of the prior business day and the mid-point of the bid-ask price [23] at the close of trading in relation to such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the following information: the Creation Basket Deposit, the Trust's prospectus, and the two most recent reports to stockholders. Finally, the Trust Web site will also provide the last sale price of the Shares as traded in the US market. The Exchange will provide on its Web site (*http://www.nyx.com*) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in Rule 8.201(e) for initial and continued listing of the Shares.[24]

A minimum of 100,000 Shares will be required to be outstanding at the start of trading.[25] The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the streetTRACKS Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust and exchange-traded funds. It is anticipated that the initial price of a Share be approximately $22.00. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of

[23] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[24] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to David Liu, Assistant Director, Christopher W. Chow, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated November 9, 2009.

[25] *Id.*

equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying palladium, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying palladium, related futures or options on futures or any other related derivative (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying palladium market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[26]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying palladium, palladium futures contracts, options on palladium futures, or any other palladium derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[27] NYMEX is an ISG member.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of palladium trading during the Core and Late Trading Sessions after the close of the major world palladium markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical palladium, that the Commission has no jurisdiction over the trading of palladium as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of palladium futures contracts and options on palladium futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[28] of the Act, in general, and furthers the objectives of Section 6(b)(5),[29] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[26] *See* NYSE Arca Equities Rule 7.12.

[27] A list of ISG members is available at *http://www.isgportal.org*. The Exchange notes that TOCOM is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market. In addition, the Exchange does not have access to information regarding palladium-related OTC transactions in spot, forwards, options or other derivatives.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–94 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–2009–94. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–94 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27494 Filed 11–16–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60965; File No. SR–NASDAQ–2009–097]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No.1, to Add Seventy-Five Options Classes to the Penny Pilot Program

November 9, 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 28, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposal on November 5, 2009.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposal for the NASDAQ Options Market (''NOM'' or ''Exchange'') to designate seventy-five options classes to be added to the Penny Pilot in options classes in certain issues (''Penny Pilot'' or ''Pilot'') on November 2, 2009.[4] The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.[5]

The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq'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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective November 2, 2009.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,[6] the Exchange proposed expanding the Pilot four times on a

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[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq proposed to correct a technical error in Section III. The change has no effect on the substance of the proposed rule change.

[4] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); and 60874 (October 23, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot).

[5] *See* Chapter VI, Section 5 regarding the Penny Pilot.

[6] *See* Securities Exchange Act Release No. 60874 (October 23, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness).

quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume (''ADV'') for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on November 2, 2009, based on ADVs 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
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

Nat'l ranking	Symbol	Company name
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 that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(i) of the Act [9] and Rule 19b–4(f)(1) thereunder,[10] NASDAQ has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–097. 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–NASDAQ–2009–097 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27499 Filed 11–16–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 C.F.R. 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60969; File No. SR–NYSE–2009–96]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Permitting Affiliation With NYFIX Millennium LLC and NYFIX Securities Corporation

November 9, 2009.

I. Introduction

On September 22, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposing that the Exchange be affiliated with two registered broker-dealer subsidiaries of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

NYFIX, Inc. (''NYFIX''), NYFIX Millennium L.L.C. (''NYFIX Millennium'') and NYFIX Securities Corporation (''NYFIX Securities''), for a period not to exceed six months and subject to certain limitations and obligations. The proposed rule change was published for comment in the **Federal Register** on October 5, 2009.[3] On November 5, 2009, NYSE filed Amendment No. 1 to the proposed rule change, and the Exchange withdrew Amendment No. 1 to the proposed rule change on November 6, 2009. On November 9, 2009, NYSE filed Amendment No. 2 to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change as modified by Amendment No. 2.

II. Overview

On August 26, 2009, NYSE Technologies entered into an Agreement and Plan of Merger (''Merger Agreement'') with NYFIX and CBR Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of NYSE Technologies. Under the terms of the Merger Agreement, CBR Acquisition Corp. will merge with and into NYFIX, with NYFIX surviving the merger as a direct wholly owned subsidiary of NYSE Technologies (''Merger''). Following the Merger, both the Exchange and NYFIX will be indirect wholly owned subsidiaries of NYSE Euronext. Consequently, NYFIX, and its subsidiaries NYFIX Millennium and NYFIX Securities, will be affiliates of the Exchange.

As a result of the Merger, NYSE Technologies will acquire, among other things, NYFIX's Transaction Services Division. In the U.S., the Transaction Services Division is currently composed of two U.S. registered broker-dealer subsidiaries: NYFIX Millennium, which is also an alternative trading system registered under Regulation ATS under the Act;[5] and, NYFIX Securities. In addition to other services provided by NYFIX Millennium and NYFIX Securities, (1) NYFIX Millennium provides routing of orders that are not matched within the NYFIX Millennium matching system to marketplaces such as exchanges, electronic communication networks, and ATSs, which are not operated by NYFIX; and (2) NYFIX Securities provides direct electronic market access and algorithmic trading products (together, ''Routing Services'').

The Exchange proposes to be affiliated with NYFIX Millennium and NYFIX Securities for a period not to exceed six months and subject to certain terms and conditions that the Exchange believes effectively address concerns regarding the (1) the potential for conflicts of interest where an exchange is affiliated with a broker-dealer conducting an order routing business that may interact with the Exchange itself, and (2) the potential for informational advantages that could place such an affiliated broker-dealer at a competitive advantage in comparison with other non-affiliated broker-dealers.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.[8] The proposed relationship raises similar concerns in that the Exchange will be affiliated with two broker-dealers that provide Routing Services for orders that may be routed to the Exchange in competition with Exchange members. The Exchange has requested that the Commission approve its proposed affiliation with NYFIX Millennium and NYFIX Securities on a temporary basis, not to exceed six months, subject to certain conditions designed to address such concerns.

Specifically, so long as the Exchange is affiliated with NYFIX Millennium or NYFIX Securities and with respect to the Routing Services provided by each:[9]

(1) Neither NYFIX Millennium nor NYFIX Securities are members of the Exchange nor will they become members of the Exchange;

(2) NYFIX does not offer order routing services other than the Routing Services, and none of the Routing Services will be modified unless such modification is approved by the Commission;

(3) NYFIX will not engage in proprietary trading;

(4) NYFIX will not accept any new clients for the Routing Services after the Merger;

(5) There will continue to be independent functionality of, and full public access to, NYSE facilities; and

(6) There will be a complete separation between NYFIX, on the one hand, and the Exchange and its affiliates, on the other (*e.g.*, no shared office space, no shared employees, no shared systems).

The Exchange may furnish to NYFIX the same information on the same terms that the Exchange makes available in the normal course of business to any other person. Specifically:

(a) NYFIX must not be provided an information advantage concerning the operation of the Exchange or any of its facilities, particularly regarding changes and improvements to the trading systems, that are not available to the industry generally.

(b) NYFIX will be prevented from having any advance knowledge of proposed changes or modifications to the operations of the Exchange or its facilities, including but not limited to advance knowledge of related filings by

[3] Securities Exchange Act Release No. 60737 (September 29, 2009), 74 FR 51209 (''Notice'').

[4] In Amendment No. 2, the Exchange clarified that, with respect to the conditions on the Exchange's affiliation with NYFIX Millennium and NYFIX Securities, references to NYFIX also refer to its subsidiaries, NYFIX Millennium and NYFIX Securities. This technical amendment does not require notice and comment, as it did not materially affect the substance of the rule filing.

[5] 17 CFR 242.300–303.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See, e.g.*, Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving combination of NYSE and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62) (order approving acquisition of the American Stock Exchange by NYSE Euronext); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

[9] For the conditions set forth below, references to NYFIX also refer to its subsidiaries NYFIX Millennium and NYFIX Securities. *See* Amendment No. 2, *supra* note 4.

the Exchange pursuant to Rule 19b–4 of the Act.[10]

(c) NYFIX will not share employees or databases with the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities, and will be housed in a separate office.

(d) NYFIX will only be notified of any changes or improvements to any of the Exchange's operations or trading facilities in the same manner that other persons are notified of such changes or improvements;

(e) NYFIX will not disclose any system or design specifications, or any other information, to any employees of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities that would give NYFIX an unfair advantage over its competitors.

(f) None of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities will disclose any system or design specifications, or any other information, to any employees of NYFIX or any affiliate of NYFIX that would give the Exchange, any other facility of the Exchange, any other affiliate of the Exchange, or NYFIX an unfair advantage over its competitors.

The Commission also notes that each of NYFIX Millenium and NYFIX Securities has the Financial Industry Regulatory Authority (''FINRA''), an unaffiliated self-regulatory organization (''SRO''), as its designated examining authority and neither broker-dealer is a member of the Exchange.[11]

The Commission finds that the temporary proposed affiliation between the Exchange and NYFIX Millennium and NYFIX Securities, pursuant to the proposed terms and conditions, is consistent with the Act, particularly Section 6(b)(5) thereunder.[12] The Commission continues to be concerned about potential unfair competition and conflicts of interest when an exchange, or one of its affiliates, is the parent company of a broker-dealer that provides Routing Services that may be in competition with services provided by members of that exchange. The Commission believes, however, that the temporary nature of the affiliation, together with the proposed terms and conditions, are reasonably designed to mitigate concern about potential unfair competition and conflicts of interest between the commercial interests of the Exchange or its affiliates, and the Exchange's regulatory responsibilities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–2009–96), as amended, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27501 Filed 11–16–09; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78a.

[11] *See* Notice.

[12] 15 U.S.C. 78(f)(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60978; File No. SR–CBOE–2009–068]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Amend the $1 Strike Program To Allow Low-Strike LEAPS

November 10, 2009.

On September 16, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE's $1 Strike Program. The proposed rule change was published for comment in the **Federal Register** on October 7, 2009.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

LEAPS are long-term equity options that expire from 12 to 39 months from the time they are listed.[4] The proposed rule change expands the Exchange's $1 Strike Program (''Program'') to permit the exchange to list LEAPS with low strike prices [5] and at $1 strike price intervals. Specifically, the Exchange will be able to list LEAPS series having strike prices of $1, $2, $3, $4, and $5 in up to 200 option classes on individual securities that are in the Exchange's Program or another exchange's Program.[6] CBOE believes that deep out-of-the-money put options that could be listed under this proposal are functionally similar to credit default swaps and could be a viable, liquid alternative to OTC-traded credit default swaps.

The margin requirements set forth in Chapter XII of the Exchange's rules and the position and exercise requirements set forth in CBOE Rules 4.11 and 4.12 will apply to these new series, and no changes to those requirements were proposed.

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of an exchange be 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. The Commission believes that the low-strike LEAPS contemplated in this proposal will provide investors with a potentially useful investment choice. The proposal will extend to these options the benefits of a listed exchange market, which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60749 (September 30, 2009), 74 FR 51632.

[4] *See* CBOE Rule 5.8.

[5] CBOE, along with the other options exchanges, recently amended the Options Listing Procedures Plan (''OLPP'') to adopt objective, exercise price range limitations applicable to options on individual equity securities, ETFs, and trust-issued receipts. *See* Securities Exchange Act Release No. 60531 (August 19, 2009), 74 FR 43173 (August 26, 2009) (approving Amendment No. 3 to the OLPP). The exercise price range limitations of paragraph (3)(g) of the OLPP state that the exercise price of each newly listed option on an equity security, ETF, or trust-issued receipt shall be fixed at a price per unit that is reasonably close to the price of the underlying security at or about the time of the series listing. Under paragraph (3)(g)(i), if the price of the underlying security is less than or equal to $20, the exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security; and if the price of the underlying security is greater than $20, the exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. However, paragraph (3)(g)(ii) of the OLPP states that these exercise price range limitations do not apply with regard to, among others, option classes participating in the Program. Therefore, LEAPS series listed under this proposal would not be subject to the exercise price range limitations contained in paragraph (3)(g).

[6] However, if the Exchange already has listed a LEAPS series with a $2.50 strike price, it would be permitted under this proposal to list additional series with strike prices of $1, $4, and $5, but not series with strike prices of $2 or $3. *See* CBOE Rule 5.5, Interpretation .01(a)(3).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

include a centralized forum for price discovery, pre- and post-trade transparency, standardized contract specifications, and the guarantee of the Options Clearing Corporation.

The Commission believes that the proposal strikes a reasonable balance between the Exchange's desire to offer a wider array of products with the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. In approving the proposed rule change, the Commission has relied on the Exchange's representation that it has the necessary systems capacity to support the new options series that will be listed under this proposal. This approval order is conditioned on CBOE's adherence to this representation. The Commission expects the Exchange to continue to monitor for options with little or no open interest and trading activity and to act promptly to delist such options. In addition, the Commission expects that CBOE will monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, the Options Price Reporting Authority's, and vendors' automated systems.

Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2009–068), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27504 Filed 11–16–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60979; File No. SR–NSX–2009–06]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee and Rebate Schedule to Exclude, for Purposes of Calculating the Automatic Execution Mode of Order Interaction (''AutoEx'') Liquidity Adding Displayed Order Rebate, An ETP Holder's Lowest Full Trading Day's Liquidity Adding Volume From The Determination of The ETP Holder's ''Liquidity Adding Average Daily Volume''

November 10, 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 29, 2009, National Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to amend the Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(c) in order to exclude, for purposes of calculating the Automatic Execution Mode of order interaction (''AutoEx'') liquidity adding displayed order rebate with respect to each ETP Holder during each measurement period, such ETP Holder's lowest full trading day's liquidity adding volume from the determination of the ETP Holder's ''liquidity adding average daily volume.''

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to make a change to the Fee and Rebate Schedule (the ''Fee Schedule'') solely with respect to calculation of the rebate for Displayed Orders that add liquidity in AutoEx [3].

An ETP Holder's liquidity adding average daily volume (''Liquidity Adding ADV'') is used, among other things, to determine the amount of an ETP Holder's liquidity adding Displayed Order rebate in AutoEx (''AutoEx Displayed Order Liquidity Adding Rebate''). Explanatory Endnote 3 of the Fee Schedule currently defines ''Liquidity Adding ADV'' as, ''with respect to an ETP Holder [11], the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred.'' The instant rule filing proposes to modify this definition to exclude from such calculation, solely for purposes of calculating the AutoEx Displayed Order Liquidity Adding Rebate, an ETP Holder's lowest full trading day's liquidity adding volume during each measurement period. Thus, solely for purposes of calculating the AutoEx Displayed Order Liquidity Adding Rebate, the ratio used to determine an ETP Holder's Liquidity Adding ADV during each measurement period would be adjusted by (x) excluding from the numerator the ETP Holder's lowest full trading day's volume of shares executed as a liquidity provider, and (y) reducing the denominator by one day.

The proposed rule change would not modify other calculations of average daily volume, volume tiers, or associated fees that are included in the Fee Schedule.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

Rationale

The Exchange has determined that these changes are necessary to accommodate for situations where, due to unusual circumstances [4] during a measurement period, an ETP Holder obtains abnormally low liquidity adding executions at the Exchange. By omitting one day per measurement period which, as a volume outlier, skews downward an ETP Holder's average daily volume for purposes of calculating the AutoEx Displayed Order Liquidity Adding Rebate, the Exchange is responding to the needs of its customers and the realities of order flow.

The Exchange believes that the proposed modification will enhance the Exchange's reputation within the industry as highly responsive to its customers' needs, will assist in attracting additional customers, and will ultimately cause increased volumes of liquidity adding orders at the Exchange, all of which shall serve to increase the revenue of the Exchange and its ability to adequately fund its regulatory and general business functions. The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide liquidity adding orders in AutoEx, and are not discriminatory because such terms apply to all ETP Holders, who are free to elect whether or not to send such orders. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to utilize the proposed revised definition as of November 1, 2009. Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed fee and rebate structure is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding trades and quotes on the same basis, and may do so at their discretion in the daily volumes they choose during the course of the measurement period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and subparagraph (f)(2) of Rule 19b–4 [8] thereunder, because, as provided in (f)(2), it changes ''a due, fee or other charge applicable only to a member'' (known on the Exchange as an ETP Holder). At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSX–2009–06 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–NSX–2009–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–NSX–2009–06 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27505 Filed 11–16–09; 8:45 am]

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[4] Abnormally low liquidity adding volumes may be caused by a variety of factors, including internal problems with an ETP Holder's systems, connections or other technology, as well by occasional abnormally low overall market volumes.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60974; File No. SR–NYSE–2009–111]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 123C to Modify the Procedures for Its Closing Process and Making Conforming Changes to NYSE Rules 13 and 15

November 9, 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 November 9, 2009, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amendments to NYSE Rule 123C (Market On The Close Policy And Expiration Procedures) to modify the procedures for its closing process; and make conforming changes to NYSE Rules 13 (''Definitions of Orders'') and Rule 15. (''Pre-Opening Indications''). 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In October 2008, the NYSE implemented sweeping changes to its market rules and execution technology that were designed to improve execution quality on the Exchange. Among the elements of the enhanced Exchange market model, the NYSE eliminated the function of specialists on the Exchange by creating a new category of market participant, the Designated Market Maker or DMM. The DMMs, like specialists, have affirmative obligations to make an orderly market in assigned securities, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. The NYSE also recognized that in view of the NYSE's electronic execution functionality, the DMM, unlike the specialist, would no longer be deemed the agent for every incoming order. The NYSE also responded to customer demand and created new order types to represent additional undisplayed reserve interest.

The NYSE has also focused on streamlining and improving efficiency of its closing process by implementing a single print close,[3] activating systemic compliance filters for market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders and enhancing the transparency of its informational data feed for imbalances by including d-Quotes[4] and all other e-Quotes[5] containing pegging instructions eligible to participate in the closing transaction in the NYSE Order Imbalance Information datafeed.[6] In continuing the enhancements to the Exchange's market model, the Exchange seeks to amend NYSE Rule 123C to streamline the closing process, enhance transparency on the close[7] and allow for greater customer participation when there is an imbalance in a security prior to the closing transaction. Specifically, the Exchange proposes to amend NYSE Rule 123C to: (i) Extend the time for the entry of MOC and LOC orders[8] from 3:40 p.m. to 3:45 p.m.; (ii) amend the procedures for the entry of MOC/LOC orders in response to imbalance publications and regulatory trading halts; (iii) change to the cancellation time for MOC/LOC orders to 3:58 p.m.; (iv) require only one mandatory imbalance publication; (v) rescind the provisions governing Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements; (vi) modify the dissemination of Order Imbalance Information pursuant to NYSE Rule 123C(6) to commence at 3:45 p.m.; (vii) include additional information in both the pre-opening and pre-closing Order Imbalance Information data feeds; (viii) amend NYSE Rule 13 to create a conditional-instruction limit order type called the Closing Offset Order (''CO order''), which may only be used to offset an existing imbalance of orders on the close; (ix) delete the ''At the Close'' order type from NYSE Rule 13 and replace it with the specific definitions of MOC and LOC orders; and (x) codify the hierarchy of allocation of interest in the closing transaction in NYSE Rule 123(C).

The Exchange notes that similar changes are proposed to the rules of its affiliate, NYSE Amex LLC.[9]

Current Closing Procedures

NYSE Rule 123C prescribes, *inter alia,* the procedure for the entry and execution of MOC and marketable LOC orders and the determination of the closing print(s) to be reported to the Consolidated Tape for each security at the close of trading.

Pursuant to NYSE Rule 123C market participants may enter an MOC order for execution as part of the closing transaction at the price of the close.[10] Similar to a market order, an MOC order is to be executed in its entirety at the closing price; however, if the order is not executed as a result of a trading halt or because of its terms (*e.g.,* buy minus or sell plus), the MOC order is cancelled.[11]

Market participants that seek to have their orders executed on the close but are sensitive to price, may pursuant to NYSE Rule 123C, enter LOC orders that will be eligible for execution in the closing transaction, provided that the closing price is at or within the limit specified.[12] An LOC order is not guaranteed an execution in the closing

[3] *See* Securities Exchange [sic] Release No. 59345 (February 3, 2009), 74 FR 6444 (February 9, 2009) (SR–NYSE–2009–10).

[4] *See* NYSE Rule 70, Supplementary Material .25.

[5] *See* NYSE Rule 70(a).

[6] *See* Securities Exchange [sic] Release No. 60153 (June 19, 2009), 74 FR 30656 (June 26, 2009) (SR–NYSE–2009–49).

[7] Conforming changes related to the information disseminated prior to the opening transaction are also proposed in this filing.

[8] In the NYSE Rules and for the purposes of this discussion, the terms ''market-on-close'' and ''limit-on-close'' are used interchangeably with ''market-at-the-close'' and ''limit-at-the-close''.

[9] *See* SR–NYSEAmex–2009–81.

[10] *See* NYSE Rule 123C(1).

[11] *See Id.*

[12] *See* NYSE Rule 123C(2).

transaction; rather, only an LOC order with a limit price that is better [13] than the closing price is guaranteed an execution.[14] An LOC order limited at the closing price is sequenced with other LOC orders on the NYSE Display Book® [15] (''Display Book'') in time priority of receipt in Exchange systems and is available for execution after all other orders on the Display Book at the closing price are executed, regardless of when such other orders are received.[16]

NYSE Rule 123C(1) and (2) require that all MOC and LOC orders be entered by 3:40 p.m. in any stock on any trading day, unless entered to offset a published imbalance, or on either side of the market if a regulatory halt is in effect at 3:40 p.m. or occurs after that time. Pursuant to NYSE Rule 123C, between 3:40 and 3:50 p.m., MOC/LOC orders are irrevocable, except to correct a legitimate error (*e.g.,* side, size, symbol, price, or duplication of an order) or when a regulatory trading halt is in effect [17] at or after 3:40 p.m. During normal trading conditions, cancellations or reductions in the size of a MOC/LOC orders after 3:50 p.m. are not permitted for any reason, even in the case of legitimate error, except as provided in NYSE Rule 123C(8)(a)(2). Currently, NYSE Rule 123C(8) allows the Exchange to temporarily suspend certain requirements related to the closing of securities, provided certain conditions are met.[18] If a suspension is invoked in a security pursuant to NYSE Rule 123C(8)(a)(2), MOC/LOC interest may be cancelled or reduced after 3:50 p.m.[19]

Exchange systems calculate imbalance of MOC and marketable LOC orders (*i.e.,* more shares to buy than sell or vice versa) by netting the aggregate amount of MOC shares and marketable LOC buy orders against the aggregate amount of MOC shares and marketable LOC sell orders.[20]

Between 3:00 p.m. and 3:40 p.m., if there is an imbalance of MOC/LOC orders, a DMM who has received Floor Official approval may publish an imbalance of any size (''Informational Balance''). If the DMM publishes an Informational Imbalance and at 3:40 p.m. there exists an imbalance of 50,000 shares or more, or any other significant imbalance, the DMM must publish that updated imbalance information as soon as possible after 3:40 p.m. If there is neither a significant imbalance nor one of 50,000 shares or more, the DMM is required to publish a ''no imbalance'' message if an Informational Imbalance was published. If the DMM publishes a ''no imbalance'' message at 3:40 p.m. and a significant imbalance or one of 50,000 shares or more occurs between 3:40 and 3:50 p.m., then the DMM must publish the imbalance information as soon as possible after 3:50 p.m.

In the absence of an Informational Imbalance publication, if at 3:40 p.m. there is an imbalance of 50,000 shares or more of MOC/LOC orders, the DMM is required to publish the imbalance information to the Consolidated Tape in order to solicit contra-side interest.[21] The published imbalance information must be updated again at 3:50 p.m. with the current numerical imbalance or a no imbalance message.[22]

NYSE Rule 123C(6) further allows Exchange systems to disseminate a data feed of real-time order imbalances that accumulate prior to the close of trading on the Exchange (''Order Imbalance Information'').[23] Order Imbalance Information is supplemental information disseminated by the Exchange prior to a closing transaction.[24] Specifically, Order Imbalance Information is disseminated every fifteen seconds between 3:40 p.m. and 3:50 p.m.; thereafter, it is disseminated every five seconds between 3:50 p.m. and 4 p.m.[25]

The mandatory publications are included in both the Order Imbalance Information data feed and on the Consolidated Tape. In addition, commencing at 3:55 p.m., the Order Imbalance Information data feed also includes d-Quotes [26] and all other e-Quotes [27] containing pegging

[13] As used herein, ''better priced than the closing price'' means an order that is lower than the closing price in the case of an order to sell or higher than the closing price in the case of an order to buy.

[14] It should be noted that orders are cancelled if there is a trading halt in the security that is not lifted prior to the close of trading.

[15] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMM, contains order information, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[16] *See* NYSE Rule 123C(2).

[17] In the case of a regulatory halt, MOC orders may be entered until 3:50 p.m. or until the stock reopens, whichever occurs first, even if an imbalance publication occurred prior to the regulatory halt.

[18] *See* Securities Exchange [sic] Release No. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSE–2009–18) (approving the ability of the Exchange to temporarily suspend certain requirements related to the closing of securities on the Exchange with the provisions of NYSE Rule 123(C)(8)(a)(1) operating as a pilot scheduled to end on October 12, 2009); *See also* Securities Exchange [sic] Release No. 60809. (October 9, 2009), 74 FR 53532 (October 19, 2009) (SR–NYSE–2009–104) (extending the Exchange ability to temporarily suspend certain requirements related to the closing of securities on the Exchange with the provisions of NYSE Amex Equities [sic] Rule 123(C)(8)(a)(1) operating as a pilot scheduled to end on December 31, 2009). Pursuant to 123C(8), to avoid closing price dislocation that may result from an order entered into Exchange systems or represented to a DMM orally at or near the close, the Exchange may temporarily suspend the hours during which the Exchange is open for the transaction of business pursuant to NYSE Rule 52. A determination to declare such a temporary suspension is made on a security-by-security basis. The determination, as well as any entry or cancellation of orders or closing of a security pursuant to NYSE Rule 123C(8)(a) must be supervised and approved by either an Executive Floor Governor or a qualified NYSE Euronext employee, as defined under NYSE Rule 46(b)(v), and supervised by a qualified Exchange Officer, as defined in NYSE Rule 48(d).

[19] Pursuant to NYSE Rule 123C(8)(a)(2), with approval of an Executive Floor Governor or a qualified NYSE Euronext employee, MOC/LOC orders may be cancelled or reduced if:

(i) The cancellation or reduction is necessary to correct a legitimate error; and

(ii) (ii) [sic] Execution of such an MOC or LOC order would cause significant price dislocation at the close.

[20] *See* NYSE Rules 116.40(B) and 123C(3)(A).

[21] *See* NYSE Rule 123C(1), (2) and (5). Imbalance publications pursuant to these provisions of the rule are interpreted as the mandatory publications.

[22] At 3:50 p.m., a ''no imbalance message'' indicates that the subsequent imbalance of shares, is less than 50,000 shares and is not significant in relation to the average daily trading volume in the security.

[23] *See* Securities Exchange [sic] Release Nos. 57862 (May 23, 2008), 73 FR 31174 (May 30, 2008) (SR–NYSE–2008–41) and 57861 (May 23, 2008), 73 FR 31905 (June 4, 2008) (SR–NYSE–2008–42). The text of NYSE Rule 123C(6) (to be entitled proposed NYSE Rule 123C paragraphs (1)(g) (Definition: Order Imbalance Information) and (6) (Publication of Order Imbalance Information) was not changed in this rule filing.

[24] *See* NYSE Rule 123C(6). Pursuant to NYSE Rule 15, the Exchange also distributes information about imbalances in real-time at specified intervals prior to the opening transaction. The pre-opening Order Imbalance Information data feed is disseminated (i) every five minutes between 8:30 a.m. and 9 a.m.; (ii) every one minute between 9 a.m. and 9:20 a.m.; and (iii) every 15 seconds between 9:20 a.m. and the opening (or 9:35 a.m. if the opening is delayed).

[25] On any day that the scheduled close of trading on the Exchange is earlier than 4 p.m., the dissemination of Order Imbalance Information prior to the closing transaction will commence 20 minutes before the scheduled closing time. Order Imbalance Information will be disseminated every fifteen seconds for approximately 10 minutes. Thereafter, the Order Imbalance Information will be disseminated ever [sic] five seconds until the scheduled closing time.

[26] This type of Floor broker agency interest contains discretionary instructions as to size and/or price of an e-Quote. *See* NYSE Rule 70 Supplementary Material .25.

[27] Floor brokers are permitted to represent orders electronically through the use of e-Quotes. *See* NYSE Rule 70(a)(i).

instructions [28] eligible to participate in the closing transaction.[29]

The Order Imbalance Information data feed prior to the close calculates the reference price, when the last sale price does not fall within the best bid and the best offer on the Exchange at the time that the Exchange calculates a closing imbalance for a security,[30] as follows:

- If the last sale price is lower than the Bid price, then the Bid Price will serve as the Reference Price.
- If the last sale price is higher than the Offer price, then the Offer Price will serve as the Reference Price.
- If the last sale price falls within the Exchange's best bid and offer for the security, the last sale price will serve as the Reference Price.

Examples:

(1) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the data feed is 100 shares bid at a price of $15.02 and 500 shares offered at a $15.20. The reference price for the NYSE Order Imbalance data feed in XYZ security will be $15.02.

(2) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the data feed is 100 shares bid at a price of $14.91 and 500 shares offered at a $14.99. The reference price for the NYSE Order Imbalance data feed in XYZ security will be $14.99.

(3) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the data feed is 100 shares bid at a price of $14.98 and 500 shares offered at a $15.02. The reference price for the NYSE Order Imbalance data feed in XYZ security will be $15.00.

Only the mandatory indications published pursuant to NYSE Rule 123C(1) control whether a party may enter MOC/LOC interest to offset an imbalance publication.

In executing the closing transaction, Exchange systems calculate the shares of MOC and marketable LOC orders on each side of the market. Where there is an imbalance, the shares constituting the imbalance are executed against the offer side (in case of a buy imbalance) or the bid side (in the case of a sell imbalance).[31] The remaining MOC and marketable LOC buy and sell orders are paired off against each other at the price at which the imbalance shares were executed.[32] The imbalance and the pair off transaction are reported to the Consolidated Tape as a single transaction.[33]

If there is no imbalance, the aggregate buy and sell MOC and marketable LOC orders are paired off at the price of the last sale on the Exchange prior to the close of trading in the security.[34] This transaction is reported to the Consolidated Tape as a single transaction.[35]

Any stop orders that are elected by the closing price in a particular security are automatically and systemically converted into market orders and are included in the total number of MOC orders to be executed at the close for that security.[36]

Interest executed in the closing transaction is allocated pursuant to NYSE Rule 72 (''Priority of Bids and Offers and Allocation of Executions'') and consistent with the hierarchy of interest which currently is only codified in the NYSE Floor Official Manual.[37] In the hierarchy of allocation, better priced interest must receive an execution in whole or in part [38] (''must execute interest'') in order for the security to close. Included in this category are MOC orders without tick restrictions, MOC orders with tick restrictions that are eligible to be executed at a price better than the closing price, better priced limit orders, better priced LOC orders with or without tick restrictions that are eligible for execution at a better price than the closing price and Crowd interest.[39] After the ''must execute interest'' is satisfied, then any limit orders represented in Display Book at the closing price may be used to offset the remaining imbalance. It should be noted that DMM interest, including better priced DMM interest entered into the Display Book prior to the closing transaction, eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction. Next eligible for execution in the hierarchy of allocation for the closing transaction are LOC orders without tick restrictions limited to the closing price, then MOC orders that have tick restrictions which limit the order's price to the price of the closing transaction,[40] followed by LOC orders limited to the price of the closing transaction that have tick restrictions and finally ''G'' orders,[41] including all better priced ''G'' orders.

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[28] This type of Floor broker agency interest contains a distinct instruction that may be used in conjunction with an e-Quote and/or a d-Quote. *See* NYSE Rule 70, Supplementary Material .26. This type of instruction allows the Floor broker to maintain his/her interest in the Exchange Best Bid or Offer (''BBO'') if the quote moves from the orders initial quote price. Pegged interest moves with the Exchange BBO within the designated range. Any discretionary instructions associated with that interest will continue to be applied as long as it is within the Floor broker's designated price range. Buy side e-Quotes will peg to the best bid and sell side e-Quotes will peg to the best offer. The Exchange filed a proposal with the SEC to amend NYSE Rule 70.25 to permit d-Quotes to be active throughout the trading day and to provide for discretionary instructions that a d-Quote will execute only if a minimum trade size (''MTS'') requirement is met, and to amend NYSE Rule 70.26 to provide for e-Quotes and d-Quotes to peg to the National best bid or offer (''NBBO'') rather than the Exchange best bid or offer (''BBO''). See Securities and Exchange [sic] Release No. 60888 (October 27, 2009), 74 FR 56902 (November 3, 2009) (SR–NYSE–2009–106).

[29] Similarly, in the case of the pre-opening Order Imbalance Information data feed, all interest eligible to trade in the opening transaction, excluding odd-lot orders and the odd-lot portion of partial round-lot orders, are included in the data feed. Floor broker interest includes all interest except non-displayed reserve interest marked do not display. Customer interest includes all interest except for non-displayed reserve interest. DMM interest is not included in the pre-opening Order Imbalance Information data feed.

[30] The reference price for the pre-opening Order Imbalance Information data feed is equal the last sale (previous closing price) or the price indication published under the Rule 15 or 123D. Therefore, when the Exchange publishes a pre-opening indication in a security pursuant to the provisions of paragraphs (a) and (b) of NYSE Rule 15 or NYSE Rule 123D, the reference price will be determined as follows:

If the Bid Price from the indication (the lower price) is higher than the last sale, the Reference Price will be the Bid.

If the Offer Price from the indication (the higher price) is lower than the last sale, the Reference Price will be the Offer.

If the Last Sale is within the indication range, the Book will use the Last Sale as the Reference Price.

If multiple indications have been published, the last indication that the Exchange makes available will be used as the Reference Price.

[31] *See* NYSE Rules 123C(3) and 116.40(B).

[32] *See* NYSE Rules 123C(3).

[33] *See* NYSE Rules 123C(3) and 116.40(C).

[34] *See* NYSE Rules 116.40(C) and 123C(3)(B).

[35] *See Id.*

[36] *See* NYSE Rules 116.40(A) and 123C(3)(A).

[37] *See* New York Stock Exchange Inc., Floor Official Manual, 214–215 (June 2004 Edition). The Exchange ceased publication of the Floor Official Manual after this edition. The proposed amendments herein seek to add transparency to the closing process and will incorporate the hierarchy of allocation into the proposed rule text.

[38] MOC orders must be executed in its entirety at the closing price. Marketable limit orders receive an execution subject to the availability of contra side volume.

[39] As used herein, Crowd interest means verbal Floor broker interest at the market entered by the DMM to interact with orders in the Display Book.

[40] For example, the last sale on the Exchange was at a price of $46.00 on a minus tick, the closing price is $46.01, all sell plus MOC orders are limited to the closing price of $46.01 because the closing transaction would be the next plus tick.

[41] Section 11(a)(1) of the Act generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. *See* 15 U.S.C. 78k(a)(1). Subsection (G) of Section 11(a)(1) provides an exemption allowing an exchange member to have its own floor broker execute a proprietary transaction (''G order''). A g-Quote is an electronic method for Floor brokers to represent G orders. G

Continued

Once the last sale in the security occurs, the DMM organizes the closing transaction by considering Crowd interest, interest available to participate on the close and his own trading interest (consistent with affirmative obligations).[42] Pursuant to the DMM's affirmative obligation, the DMM should minimize price dislocation caused by disparity between supply and demand. At that point, he or she must assess potential imbalances (if any) at various potential closing price points in order to price the close. The DMM will generally close the security by picking a price point that he or she believes is an appropriate price based on supply and demand and may insert DMM trading interest.

Example of a Current Close Including the Imbalance Publications

Example #1

XYZ security has an average daily trading volume of approximately 450,000 shares. At 3:10 p.m. XYZ receives a buy MOC order for 45,000 shares. Shortly thereafter, in consultation with a Floor Official, the DMM publishes an Informational Imbalance. By 3:40 p.m. the buy imbalance has increased to 150,000 shares and the DMM disseminates a mandatory imbalance publication showing the updated amount. Also at 3:40 the Order Imbalance Information data feed commences and is disseminated every 15 seconds thereafter.

By 3:50 p.m. the DMM has received 50,000 shares of sell MOC interest to offset the 150,000 share buy imbalance. At 3:50 p.m. the DMM disseminates another mandatory imbalance publication updating the imbalance to a 100,000 share buy imbalance.

Also at 3:50 the Order Imbalance information data feed increases the frequency of its publications to every 5 seconds. Beginning at 3:55 p.m. the Order Imbalance data feed includes d-Quotes and all other e-Quotes containing pegging instructions that are eligible to participate in the closing transaction based on current execution prices.

The DMM did not receive any additional offsetting interest between 3:50 and 4 p.m. (official closing time) so the imbalance remained at 100,000 shares to buy.

The last bid in XYZ security prior to the closing transaction was $19.85 and the offer was $20.00. The last sale prior to 4 p.m. (official closing time) was at $19.85.

The sell interest on the Display Book leading into the closing transaction consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of public limit orders at $20.24;
4. 10,000 shares of tick sensitive LOC interest at $20.24;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;
6. 40,000 shares LOC interest at $20.25;
7. 10,000 shares of non-MOC ''G'' market orders.

Given this interest available in Display Book, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 10,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4:00 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:[43]

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares.

The remaining imbalance of 100,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–5 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 95,000 share buy imbalance;
2. 5,000 shares of Crowd market interest which leaves a 90,000 share buy imbalance;
3. 10,000 shares of public limit orders at $20.24, which leaves an 80,000 share buy imbalance; and [sic]
4. 10,000 shares of tick sensitive LOC interest at $20.24 which leaves a 70,000 share buy imbalance;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 60,000 share buy imbalance;[44]

The remaining 60,000 share buy imbalance will be offset at the price of $20.25 as follows:

6. 10,000 shares of DMM interest, which leaves a 50,000 share buy imbalance;
7. 40,000 shares LOC interest at $20.25, which leaves a 10,000 share buy imbalance; and
8. 10,000 shares of non-MOC ''G'' orders.

Example number 1 above is a simple closing transaction that demonstrates all interest eligible to receive an execution in the closing transaction being executed in full. In the above example, the offsetting interest was equal to the size of the actual buy imbalance; however, in the event that any one type of offsetting interest with precedence in the hierarchy is sufficient to fill the imbalance, that interest will be filled and the remaining interest lower in the hierarchy will receive a report of ''nothing done.'' Example number 2 below demonstrates this principle and further illustrates the operation of parity allocations in the closing transactions.

Example #2

Assuming the same imbalance publication information and receipt of offsetting interest in Example #1. The last sale in the security is at the price of $19.85. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of tick sensitive LOC interest at $20.24;
4. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;
5. 20,000 shares e-Quote interest from a single Floor broker at $20.25;
6. 50,000 shares of public limit orders at $20.25;
7. 40,000 shares LOC interest at $20.25;

orders on NYSE yield priority, and parity to all other non-G orders.

[42] DMMs [sic] trading interest is determined in part by risk management goals. DMMs may manage risk by trading on the same side of the imbalance if consistent with his or her affirmative obligation under NYSE Rule 104 and other NYSE and SEC rules. If the DMM participates on the same side of an order imbalance in a security such that the price of the security moves significantly, this may raise a concern as to whether the DMM is meeting his or her affirmative obligation and other regulatory requirements.

[43] The execution occurs as a single transaction. The logic described in the text refers to how the Display book allocates shares, not the order of execution.

[44] Any super-marketable d-Quote interest that exercises its maximum discretion becomes better priced limit interest for the purposes of the hierarchy of execution and is included in the closing transaction as must execute interest.

8. 10,000 shares of non-MOC ''G'' market orders.

Given this interest available in Display Book, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 50,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4:00 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares.

The remaining imbalance of 100,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–4 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 95,000 share buy imbalance;

2. 5,000 shares of Crowd market interest, which leaves a 90,000 share buy imbalance;

3. 10,000 shares of tick sensitive LOC interest at $20.24, which leaves an 80,000 share buy imbalance;

4. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 70,000 shares buy imbalance;

The remaining 70,000 shares of the buy imbalance will be offset at the price of $20.25 as follows:

5. 20,000 shares of e-Quote interest at $20.25, which leaves a 50,000 share buy imbalance;

6. 25,000 shares of at-priced DMM interest, which leaves a 25,000 shares buy imbalance;

7. 25,000 shares of public limit orders at $20.25, which fills the remaining 25,000 shares of the imbalance.

The remaining 25,000 shares of at-priced DMM interest and the 25,000 shares of public limit orders at $20.25 will not be executed.[45] Additionally, the 40,000 shares LOC interest priced at $20.25 and 10,000 shares of ''G'' orders will also remain unexecuted and receive reports of ''nothing done.''[46]

Example #3

Example #3 further illustrates a DMMM [sic] facilitation of the closing transaction and demonstrates that the DMM may enter his or her interest on the same side of the MOC/LOC imbalance when effecting the closing transaction.

Assuming the same imbalance publication information and receipt of offsetting interest in Example #1. The last sale in the security in this Example #3 is at the price of $20.23. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;

2. 5,000 shares of Crowd market interest;

3. 10,000 shares of tick sensitive LOC interest at $20.24;

4. 50,000 shares of public limit orders at $20.25;

5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;

6. 20,000 shares of LOC interest at $20.25.

In addition, while arranging the closing transaction after 4:00 p.m. the DMM enters 20,000 shares of DMM interest to buy for the dealer account.[47] There is additional sell interest on the Display Book that would accommodate the DMM's additional interest as follows:

7. 10,000 shares of public limit orders to sell at $20.26;

8. 10,000 shares of public limit orders to sell at $20.27;

Based on the interest available in Display Book on both sides of the market, the DMM has determined to close trading in XYZ security at a price of $20.27.

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the current 170,000 shares of the buy imbalance at a price of $20.27, leaving a buy imbalance of 120,000 shares (including DMM interest).

The remaining imbalance of 120,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.27. As interest priced better than the closing price, numbers 1–7 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 115,000 share buy imbalance;

2. 5,000 shares of Crowd Market interest, which leaves a 110,000 share buy imbalance;

3. 10,000 shares of tick sensitive LOC interest at $20.24, which leaves an 100,000 share buy imbalance;

4. 50,000 shares of public limit orders at $20.25, which leaves a 50,000 share buy imbalance;

5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 40,000 share buy imbalance;

6. 20,000 shares LOC interest at $20.25, which leaves a 20,000 share buy imbalance;

7. 10,000 shares of public limit orders at $20.26, which leaves a 10,000 share buy imbalance; and

8. 10,000 shares of public limit orders at $20.27 are executed against the remaining 10,000 share buy imbalance.

Additional Procedures Governed by NYSE Rule 123C

In addition to current Market on the Close procedures, NYSE Rule 123C prescribes the Expiration Friday[48] Auxiliary Procedures for the Opening. The provisions of the rule govern the time of entry and the marking of orders related to expiring index contracts.[49]

[45] Interest represented in numbers 5–7 received an allocation of shares that is less than their full quantity consistent with NYSE Rule 72 which requires the shares to be allocated on a parity basis. Specifically, DMM interests, individual e-Quotes interests and public limit order interests each represent a distinct parity group which and the available shares are divided among the parity groups.

[46] DMM interest is considered at price interest and is therefore higher in the hierarchy of execution than at priced LOC interest which are not guaranteed an execution pursuant to the provisions of 123C(2). It should be noted that DMM interest participating in the closing transaction is executed as if it were priced equal to the closing transaction. This includes DMM interest entered in Display Book prior to the closing transaction at better price points that are eligible to participate in the closing transaction.

[47] *See supra* note 42. As previously noted DMM trading must be consistent with his or her affirmative obligation under NYSE Rule 104 and other NYSE and SEC rules particularly in this example where the DMM is participating on the same side of the imbalance.

[48] An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the Exchange, as identified by a qualified clearing corporation (*e.g.,* the Options Clearing Corporation). The twelve expiration days are ''expiration Fridays'' which fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month.

[49] NYSE Rule 123C(7) requires, among other things, that orders related to index contracts whose settlement pricing is based upon the ''Expiration Friday'' opening prices must be received by 9 a.m. Orders not related to index contracts whose settlement is not based on opening prices may be received before or after 9:00 a.m. It further requires orders relating to opening-price settling contracts be identified ''OPG'' and sets forth procedures for firms that are unable to comply with the marking requirement.

Proposed New Closing Procedures [50]

The Exchange seeks to build on the changes the NYSE began this year as noted above, to simplify its closing procedures in order to provide customers with a more efficient closing process. The closing transaction on the Exchange continues to be a manual auction in order to facilitate greater price discovery and allow for the maximum interaction between market participants. While the Exchange currently provides DMM units with tools to facilitate an efficient closing process, the Exchange believes that changes proposed herein will maximize the use of those electronic tools and allow for an even more efficient closing process.

Order Entry, Cancellation, Mandatory MOC/LOC Imbalance and Informational Imbalance Publications

In order to optimize the efficient operation of the closing process, the Exchange proposes to amend NYSE Rule 123C to require electronic entry of all MOC and LOC orders, including those entered to offset imbalances.[51] The Exchange believes that the electronic entry of MOC and LOC orders will allow the DMM to maximize the Display Book capability to continuously update and provide the DMM and trading community with imbalance information, thus enhancing the DMM's ability to efficiently manage the closing process and customers with the ability to interact appropriately.

The electronic entry of MOC and LOC interest will obviate the need to have an imbalance publication at 3:40 p.m. and 3:50 p.m. because the DMM will not have to manually keep track of the MOC/LOC interest; rather, Exchange systems will track the electronically entered MOC/LOC interest. Exchange systems will therefore be able to provide more accurate and timely imbalance information to all market participants systemically. The Exchange's customers have expressed that in the current more electronic environment two imbalance publications ten minutes apart are not useful. Accordingly, the Exchange proposes to modify the order information available prior to the closing transaction as described more fully below and amend NYSE Rule 123C to provide for a single imbalance publication as soon as practicable after 3:45 p.m., to be referred to as the ''Mandatory MOC/LOC Imbalance Publication,'' (herein ''Mandatory MOC/LOC Imbalance'') when there is an imbalance: (i) of 50,000 shares or more; or (ii) of less than 50,000 shares that is deemed to be ''significant'' [52] (*i.e.,* significant in relation to the average daily volume of the security).[53] The last sale price at 3:45 p.m. will serve as the basis for the Mandatory MOC/LOC Imbalance.

The Exchange intends to retain the current ability to publish an Informational Imbalance of any size. The Exchange seeks to extend the time for the publication of such imbalance from 3:40 p.m. until 3:45 p.m. in order to provide a mechanism for an imbalance publication prior to any Mandatory MOC/LOC Imbalance if the DMM in consultation with a Floor Official or qualified NYSE Euronext employee as defined in Supplementary Material .10 of NYSE Rule 46 deems that such imbalance publication is warranted for the security. In extending the time to 3:45 p.m., the proposed rule will provide that a Mandatory MOC/LOC Imbalance or ''no imbalance'' notice must occur as soon as possible after 3:45 p.m.[54]

The proposed new rule will further explicitly state that the entry of MOC/LOC orders in response to a Mandatory MOC/LOC Imbalance after 3:45 p.m. may be entered only to offset the published imbalance.[55] In the case of a ''no imbalance'' notification, no offsetting MOC/LOC interest may be entered at all after 3:45 p.m.[56]

Given that MOC/LOC orders will be entered electronically, Exchange systems will keep track of the available interest thus making it more readily available for the DMM. The Exchange therefore further proposes to allow customers to cancel or reduce MOC/LOC orders in the case of legitimate errors [57] between 3:45 p.m. and 3:58 p.m.[58] Systemic tracking of MOC/LOC interest makes it entirely feasible for the DMM to review in two minutes the interest eligible to participate in the closing transaction and facilitate the execution of the closing transaction. After 3:58 p.m., cancellations or reduction in the size of MOC/LOC orders, even in the event of legitimate error, will not be permitted.[59]

The Exchange further proposes to provide all market participants an additional method to offset a published imbalance and proposes to create a conditional-instruction limit-type order that will be eligible to participate in the closing transaction to offset an order imbalance at the close, the CO order. The CO order will not be guaranteed to participate in the closing transaction. CO orders will be eligible to participate in the closing transaction when there is an imbalance of orders to be executed on the opposite side of the market from the CO order and there is no other interest remaining to trade at the closing price. This order type must yield to all other eligible interest.

Unlike MOC/LOC orders, CO orders may be entered on any side of the market at anytime prior to the close.[60] CO orders will not be included in the

[50] On May 19, 2004, the Securities and Exchange Commission (''Commission'' or ''SEC'') approved amendments to NYSE Rule 123C, subject to technology upgrades to the electronic entry systems for MOC and LOC orders (the ''2004 Amendments''). The 2004 Amendments included, among other things, changes to the time of imbalance publications and the mechanism by which MOC and LOC orders could be entered. *See* Securities Exchange Act Release No. 49682 (May 11, 2004), 69 FR 28969 (May 19, 2004) (SR–NYSE–2004–09).

The Exchange continually reviewed the approved amendments in keeping with the evolution of its market and the technological upgrades required. As a result of its review the Exchange did not implement the approved changes; rather, in May 2008, the Exchange informed the Commission that it intended to formally submit the instant revised proposal to modify its closing procedures. *See* Securities Exchange Act Release No. 57862 (May 23, 2008), 73 FR 31174 (May 30, 2008) (SR–NYSE–2008–41).

[51] In the event a Floor broker's handheld device malfunctions, the DMM should assist the Floor broker by entering or cancelling MOC/LOC orders on the Floor broker's behalf. DMMs perform this administrative function on a best efforts basis. *See,* NYSE Information Memos 09–26 (June 18, 2009); NYSE Member Education Bulletin 05–24 (December 9, 2005).

[52] Mandatory MOC/LOC Imbalance publications for less than 50,000 shares may only be published with the prior approval of a Floor Official or qualified NYSE Euronext employee as defined in Supplementary Material .10 of NYSE Rule 46.

[53] *See* proposed NYSE Rule 123C paragraphs (1)(d) (Definition: Mandatory MOC/LOC Imbalance) and (4) Calculation of MOC Imbalances.

[54] *See* proposed NYSE Rule 123C paragraphs (1)(b) (Definition: Informational Imbalance) and (4) Calculation and Publication of MOC Imbalances) [sic]. In the event that an Informational Imbalance is disseminated prior to 3:45 and thereafter there is no Mandatory MOC/LOC Imbalance, the DMM will be required to manual [sic] disseminate a ''no imbalance'' notification.

[55] *See* proposed NYSE Rule 123C paragraphs (2)(b)(i) (Order entry).

[56] *See* proposed NYSE Rule 123C paragraphs (2)(b)(ii) (Order entry).

[57] Through the instant filing, the Exchange seeks to clarify what is meant by legitimate error as it applies to the closing process. The Exchange proposes to define a legitimate error in the proposed definition section of 123C. Specifically, a [sic] pursuant to proposed NYSE Rule 123C(1)(c), a legitimate error means an error in any term of an MOC or LOC order, such as price, number of shares, side of the transaction (buy or sell) or identification of the security.

[58] *See* proposed NYSE Rule 123C(3) (Cancellation of MOC and LOC orders). The Exchange anticipates that DMMs will have sufficient time to perform the requisite calculations for the closing transaction while affording customers the ability to cancel or reduce in size an MOC/LOC order until 3:58 p.m.

[59] Current NYSE Rule 123C(8)(a)(2) permits the Exchange to temporarily suspend the prohibitions on canceling or reducing an MOC or LOC order if there is an extreme order imbalance at or near the close. This filing would renumber that rule as proposed NYSE Rule 123C(9).

[60] *See* proposed NYSE Rule 123C(2)(b)(iv).

calculation of the Mandatory MOC/LOC Imbalance and Informational Imbalance. The Exchange proposes that the time periods to cancel a CO order be consistent with the cancellation requirements for MOC and LOC orders. As such, proposed NYSE Rule 123(C)(3) will provide that up to 3:45 p.m., a CO order may be cancelled or reduced for any reason. Between 3:45 p.m. and 3:58 p.m., a CO order may be cancelled or reduced only in the case of a legitimate error as that term is defined by proposed NYSE Rule 123C(1)(c). After 3:58 p.m., a CO order, like MOC/LOC orders, may not be cancelled for any reason.

CO orders will be eligible to participate in the closing transaction only to offset an imbalance and do not add to or flip the imbalance. If there is an imbalance at the close and the price of the closing transaction is at or within the limit of the CO order, the CO order will be eligible to participate in the closing transaction, subject to strict time priority of receipt in Exchange systems among such eligible CO orders and after yielding to all other interest in the closing execution, including MOCs, marketable LOCs, ''G'' orders, DMM interest, and at-priced LOCs. CO orders deemed eligible to participate in the close will be executed at the price of the closing transaction. If the number of shares represented by CO orders is larger than the number of shares required to offset the imbalance, Exchange systems will execute only those shares of CO orders required to complete the execution of the imbalance in full based on the time priority of receipt in Exchange systems of the CO orders. CO orders therefore will not be allowed to swing an imbalance to the opposite side of the market. Accordingly, if there is a 50,000 share buy imbalance and 100,000 shares of CO orders eligible to sell at the closing price, the first 50,000 shares of CO orders that were entered into Exchange systems throughout the trading day will participate in the closing transaction. The remaining 50,000 shares of CO orders will not participate and will be cancelled.

Modifications to Order Imbalance Information Data Feed Prior to the Closing and Opening Transaction

The Exchange further proposes to modify the Order Imbalance data feed prior to closing transaction to commence at 3:45 p.m., the same time as the Mandatory MOC/LOC Imbalance. Pursuant to proposed NYSE Rule 123C(6)(a)(iii), the Order Imbalance data feed will be disseminated approximately every five seconds between 3:45 p.m. and 4:00 p.m.

Moreover, to increase transparency of order information prior to the execution of the closing transaction, the Exchange proposes to expand the order information included in the Order Imbalance Information data feed. Currently the pre-closing Order Imbalance Information data feed includes the: (i) Reference price; (ii) MOC/LOC imbalance and the side of the market; (iii) d-Quotes and all other e-Quotes containing pegging instructions eligible to participate in the closing transaction; and (iv) MOC/LOC paired quantity at reference price. The proposed new data feed will continue to provide that information but also additionally include (i) CO orders on the opposite side[61] of the imbalance and (ii) at-priced LOC interest eligible to offset the imbalance.

The proposed Order Imbalance Information data feed prior to the closing transaction will also make available two new data fields. The proposed new data fields will provide subscribers with a snap shot of the prices at which interest eligible to participate in the closing transaction would be executed in full against each other at the time data feed is disseminated. It will also provide subscribers with the price at which closing-only interest (*i.e.,* MOC orders, marketable LOC orders, and CO orders on the opposite side of the imbalance) may be executed in full and the price at which orders in the Display Book (*e.g.,* Minimum Display Reserve Orders, Floor broker reserve e-Quotes not designated to be excluded from the aggregated agency interest information available to the DMM (''do not display''), d-Quotes pegged e-Quotes,[62] and Stop orders) will be executed in full.

Only those CO orders on the opposite side of the imbalance will be included in the calculation of the new data fields. In order to avoid compromising the reserve interest at price points between the quote, if the price at which all closing orders in the Display Book may be executed in full is at or between the quote, then both data fields indicating imbalance information will publish the price at which the closing-only interest (*i.e.,* MOC orders, marketable LOC orders, and CO orders) may be executed in full.

Similarly the Exchange proposes to conform the pre-opening Order Imbalance Information data feed to provide its market participants with more information prior to the opening transaction. As such, the pre-opening Order Imbalance Information data feed will include the price at which all the interest eligible to participate in the opening transaction may be executed in full.[63] The Exchange does not propose to modify the time periods pursuant to NYSE Rule 15 when the pre-opening Order Imbalance data feed is disseminated. Moreover, the calculation of the reference price will also remain the same.

Execution of the Closing Transaction

The Exchange proposes to maintain its current execution logic and codify the hierarchy of allocation logic applied to interest participating in the closing transaction. Proposed NYSE Rule 123C(7) will list all the interest that must be executed or cancelled as part of the closing transaction and the hierarchy of the interest that may be used to offset the closing imbalance. Moreover, proposed NYSE Rule 123C(7) will add the CO order as the last interest eligible to participate in the closing transaction to offset an imbalance.

The codification of hierarchy of allocation logic applied to interest participating in the closing transaction pursuant to proposed NYSE Rule 123C(7) will only slightly modify the execution of a closing transaction on the Exchange because it will now incorporate the new proposed CO order type into the closing transaction where it is eligible to participate.

Example of a Close Including the Imbalance Publications Pursuant to Proposed NYSE Rule 123C[64]

Example #4

XYZ security has an average daily trading volume of approximately 450,000 shares. At 3:10 p.m. XYZ receives a buy MOC order for 45,000 shares. Shortly thereafter, in consultation with a Floor Official, the DMM publishes an Informational Imbalance. By 3:45 p.m. the buy imbalance has increased to 150,000 shares and the DMM disseminates a mandatory imbalance publication showing the updated amount. Also at

[61] In the case of a buy imbalance, CO orders to sell at a price equal to or lower than the reference price are to be included in the imbalance. In the case of a sell imbalance, CO orders to buy at a price equal to or higher than the reference price are to be included in the imbalance.

[62] d-Quotes and pegged e-Quotes included in this new data field of the Order Imbalance Information data feed are included at the price indicated on the order as the base price to be used to calculate the range of discretion and not at prices within their discretionary pricing instructions.

[63] *See* Proposed NYSE Rule 15.

[64] Example numbers 4–6 mirror example numbers 1–3 above in that all the examples illustrate the execution of the closing transaction based on the principles explained above; however, example numbers 4–6 also incorporate the proposed new CO order type.

3:45 the Order Imbalance Information data feed commences and is disseminated every 5 seconds thereafter.

Beginning at 3:55 p.m. the Order Imbalance data feed includes d-Quotes and all other e-Quotes containing pegging instructions that are eligible to participate in the closing transaction based on current execution prices.

The DMM received offsetting interest between 3:50 and 4 p.m. (official closing time) reducing the buy imbalance to 100,000 shares.

The last bid in XYZ security prior to the closing transaction was $19.85 and the offer was $20.00. The last sale prior to 4 p.m. (official closing time) was at $19.85.

The sell interest on the Display Book leading into the closing transaction consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of public limit orders at $20.24;
4. 10,000 shares of tick sensitive LOC interest at $20.24;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;
6. 40,000 shares of LOC interest at $20.25;
7. 5,000 shares of non-MOC ''G'' market orders; and
8. 5,000 shares of CO orders.

Given this interest available in Display Book on both sides of the market, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 10,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares.

The remaining imbalance of 100,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–5 above are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 95,000 share buy imbalance;
2. 5,000 shares of Crowd market interest which leaves a 90,000 share buy imbalance;
3. 10,000 shares of public limit orders at $20.24, which leaves an 80,000 share buy imbalance; and [sic]
4. 10,000 shares of tick sensitive LOC interest at $20.24 which leaves a 70,000 share buy imbalance;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 60,000 share buy imbalance; [65]

The remaining 60,000 share buy imbalance will be offset at the price of $20.25 as follows:

6. 10,000 shares of DMM interest, which leaves a 50,000 share buy imbalance;
7. 40,000 shares LOC interest at $20.25, which leaves a 10,000 share buy imbalance;
8. 5,000 shares of non-MOC ''G'' orders which leaves a 5,000 share buy imbalance; and
9. 5,000 shares of CO orders fill the 5,000 share remaining of the buy imbalance.

In the above example, the offsetting interest was equal to the size of the actual buy imbalance; however, in the event that any one type of offsetting interest with precedence in the hierarchy is sufficient to fill the imbalance that interest will be filled and the remaining interest lower in the hierarchy will receive a report of ''nothing done.''

Example #5

Assuming the same imbalance publication information and receipt of offsetting interest in Example #4. The last sale in the security is at the price of $19.85. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of tick sensitive LOC interest at $20.24;
4. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;
5. 20,000 shares of e-Quote interest from a single Floor broker at $20.25;
6. 50,000 shares of public limit orders at $20.25;
7. 40,000 shares LOC interest at $20.25;
8. 10,000 shares of non-MOC ''G'' market orders;
9. 10,000 shares of CO orders.

Given this interest available in Display Book, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 50,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4:00 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares.

The remaining imbalance of 100,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–4 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 95,000 share buy imbalance;
2. 5,000 shares of Crowd market interest, which leaves a 90,000 share buy imbalance;
3. 10,000 shares of tick sensitive LOC interest at $20.24, which leaves an 80,000 share buy imbalance;
4. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 70,000 shares buy imbalance;

The remaining 70,000 shares of the buy imbalance will be offset at the price of $20.25 as follows:

5. 20,000 shares of e-Quote interest at $20.25, which leaves a 50,000 share buy imbalance;
6. 25,000 shares of at-priced DMM interest, which leaves a 25,000 shares buy imbalance;
7. 25,000 shares of public limit orders at $20.25, which fills the remaining 25,000 shares of the imbalance.

The remaining 25,000 shares of at-priced DMM interest and the 25,000 shares of public limit orders at $20.25 will not be executed.[66] Additionally, the 40,000 shares LOC interest priced at $20.25, 10,000 shares of ''G'' orders and 10,000 shares of CO orders will also remain unexecuted and receive reports of ''nothing done.'' [67]

Example #6

Assuming the same imbalance publication information and receipt of

[65] *See supra* text accompanying note 44.

[66] *See supra* text accompanying note 45.

[67] *See supra* text accompanying note 46.

offsetting interest in Example #4. The last sale in the security in this Example #6 is at the price of $20.23. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 100,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of tick sensitive LOC interest at $20.24;
4. 50,000 shares of public limit orders at $20.25;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;
6. 10,000 shares of LOC interest at $20.25;
7. 10,000 shares of CO orders.

In addition, while arranging the closing transaction after 4:00 p.m. the DMM enters 20,000 shares of DMM interest to buy.[68] There is additional sell interest on the Display Book that would accommodate the DMM's additional interest as follows:

8. 10,000 shares of public limit orders to sell at $20.26;
9. 10,000 shares of public limit orders to sell at $20.27;

Based on the interest available in Display Book on both sides of the market, the DMM has determined to close trading in XYZ security at a price of $20.27.

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the current 170,000 shares of the buy imbalance at a price of $20.27, leaving a buy imbalance of 120,000 shares (including DMM interest).

The remaining imbalance of 120,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.27. As interest priced better than the closing price, numbers 1–7 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 115,000 share buy imbalance;
2. 5,000 shares of Crowd market interest, which leaves a 110,000 share buy imbalance;
3. 10,000 shares of tick sensitive LOC interest at $20.24, which leaves an 100,000 share buy imbalance;
4. 50,000 shares of public limit orders at $20.25, which leaves a 50,000 share buy imbalance;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 40,000 share buy imbalance;
6. 10,000 shares LOC interest at $20.25, which leaves a 30,000 share buy imbalance;
7. 10,000 shares of public limit orders at $20.26, which leaves a 20,000 share buy imbalance;
8. 10,000 shares of public limit orders at $20.27 which leaves a 10,000 share buy imbalance; and
9. 10,000 shares of CO orders fill the remaining 10,000 shares of the buy imbalance.

Trading Halts

The Exchange further proposes to amend NYSE Rule 123C to make ''trading halt'' a defined term whose meaning is consistent with a halt in trading in any security pursuant to the provisions of NYSE Rule 123D (''Trading Halt'').[69] Further, pursuant to the proposed rule, where a Trading Halt is in effect at 3:45 p.m., a Mandatory MOC/LOC Imbalance will be published as close to the resumption of trading as possible if the Trading Halt is lifted prior to the close of trading. In this event, MOC/LOC orders may be entered to offset the published imbalance. If the Trading Halt is not lifted, the entry of MOC/LOC interest, including offsetting interest, is prohibited.

Where a Trading Halt occurs in a security *after* a Mandatory MOC/LOC Imbalance is published (*i.e.,* after 3:45 p.m.), MOC/LOC orders may be entered to offset the published imbalance.[70] Where a Trading Halt occurs after 3:45 p.m. and there is no Mandatory MOC/LOC Imbalance in the security, the entry of MOC/LOC interest will not be allowed.[71]

Unlike MOC/LOC orders, the entry of CO orders on both sides of the market will be permitted when a Trading Halt occurs in a security, but is lifted prior to the close of trading in the security. Because CO orders are the interest of last resort in the closing transaction, entry of such orders is not restricted to offsetting the Mandatory MOC/LOC Imbalance.

Rescission of Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements

The Exchange further proposes to amend NYSE Rule 123C to rescind the provisions governing ''Expiration Friday Auxiliary Procedures for the Opening''. The provisions governing Expiration Friday are vestigial in that they were created to facilitate a fair and orderly opening transaction in light of the additional order flow on Expiration Fridays. Today, modifications to Exchange systems allow the DMM to accommodate for such fluctuation in volume, thus rendering the provisions of this section unnecessary. Moreover, the order marking provisions (*i.e.,* appending the indicator ''OPG'') were an accommodation to member organizations whose systems were unable to electronically affix the OPG designation. Today, all Exchange member organizations are capable of affixing appropriate order designations rendering these provisions unwarranted. For these reasons the Exchange believes that the rescission of the Expiration Friday Auxiliary Procedures for the Opening is appropriate.

In keeping with the above amendments, the Exchange further seeks to make the provisions of NYSE Rule 123C govern solely Market and Limit ''on the Close'' Policy. Therefore, the Exchange proposes to delete the ''Due Diligence Requirements'' from this rule as they are redundant provisions that are codified in NYSE Rule 405 (''Diligence as to Accounts'').

Conclusion

The Exchange believes that requiring MOC/LOC interest to be electronically entered will increase the efficiency at the point of sale. It will provide accurate information faster to market participants and allow the DMM greater control in active trading crowds. Furthermore, the Exchange believes that moving the cut-off time for the entry of MOC/LOC orders from 3:40 p.m. to 3:45 p.m. will allow Exchange participants greater control of the handling of their orders to be executed in the closing transaction and greater participation in active markets. The Exchange further believes that the proposed amendments to create the CO order will add greater efficiency to the closing process by providing an additional source of liquidity to offset an imbalance going into the closing transaction. The proposed modifications will provide investors with a more accurate depiction of the market interest prior to the closing transaction thereby allowing them to make better informed trading decisions.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[72] in general, and furthers

[68] *See supra* text accompanying note 47.

[69] *See* proposed NYSE Rule 123C(1)(f).

[70] *See* proposed NYSE Rule 123C(2)(c)(i).

[71] *See* proposed NYSE Rule 123C(2)(c)(iii).

[72] 15 U.S.C. 78f(b).

the objectives of Section 6(b)(5) of the Act,[73] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will facilitate the timely and efficient closing of securities on the Exchange by increasing transparency and providing market participants with an additional method of offset imbalances prior to the closing transaction that ultimately serves to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register.** The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

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–2009–111 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–2009–111. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal 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–NYSE–2009–111 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27503 Filed 11–16–09; 8:45 am]

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[73] 15 U.S.C. 78f(b)(5).

[74] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60973; File No. SR–NYSEAmex–2009–81]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Amex LLC Amending NYSE Amex Equities Rule 123C To Modify the Procedures for Its Closing Process and Make Conforming Changes to NYSE Amex Equities Rules 13 and Rule 15

November 9, 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 November 9, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 amendments to NYSE Amex Equities Rule 123C (Market On The Close Policy And Expiration Procedures) to modify the procedures for its closing process; and make conforming changes to NYSE Amex Equities Rule 13 (''Definitions of Orders'') and Rule 15. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In October 2008, NYSE Amex implemented sweeping changes to its market rules and execution technology that were designed to improve execution quality on the Exchange. Among the elements of the enhanced Exchange market model, NYSE Amex eliminated the function of specialists on the Exchange by creating a new category of market participant, the Designated Market Maker or DMM. The DMMs, like specialists, have affirmative obligations to make an orderly market in assigned securities, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. NYSE Amex also recognized that in view of the NYSE's electronic execution functionality, the DMM, unlike the specialist, would no longer be deemed the agent for every incoming order. NYSE Amex also responded to customer demand and created new order types to represent additional undisplayed reserve interest.

NYSE Amex has also focused on streamlining and improving efficiency of its closing process by implementing a single print close,[3] activating systemic compliance filters for market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders and enhancing the transparency of its informational data feed for imbalances by including d-Quotes[4] and all other e-Quotes[5] containing pegging instructions eligible to participate in the closing transaction in the NYSE Amex Order Imbalance Information datafeed.[6] In continuing the enhancements to the Exchange's market model, the Exchange seeks to amend NYSE Amex Equities Rule 123C to streamline the closing process, enhance transparency on the close[7] and allow for greater customer participation when there is an imbalance in a security prior to the closing transaction. Specifically, the Exchange proposes to amend NYSE Amex Equities Rule 123C to: (i) Extend the time for the entry of MOC and LOC orders[8] from 3:40 p.m. to 3:45 p.m.; (ii) amend the procedures for the entry of MOC/LOC orders in response to imbalance publications and regulatory trading halts; (iii) change the cancellation time for MOC/LOC orders to 3:58 p.m.; (iv) require only one mandatory imbalance publication; (v) rescind the provisions governing Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements; (vi) modify the dissemination of Order Imbalance Information pursuant to NYSE Rule 123C(6) to commence at 3:45 p.m.; (vii) include additional information in both the pre-opening and pre-closing Order Imbalance Information data feeds; (viii) amend NYSE Rule 13 to create a conditional-instruction limit order type called the Closing Offset Order (''CO order''), which may only be used to offset an existing imbalance of orders on the close; (ix) delete the ''At the Close'' order type from NYSE Rule 13 and replace it with the specific definitions of MOC and LOC orders; and (x) codify the hierarchy of allocation of interest in the closing transaction in NYSE Rule 123(C).

The Exchange notes that similar changes are proposed to the rules of its affiliate, New York Stock Exchange LLC (''NYSE'').[9]

Current Closing Procedures

NYSE Amex Equities Rule 123C prescribes, *inter alia,* the procedure for the entry and execution of MOC and marketable LOC orders and the determination of the closing print(s) to be reported to the Consolidated Tape for each security at the close of trading.

Pursuant to NYSE Amex Equities Rule 123C market participants may enter an MOC order for execution as part of the closing transaction at the price of the close.[10] Similar to a market order, an MOC order is to be executed in its entirety at the closing price; however, if the order is not executed as a result of a trading halt or because of its terms (*e.g.,* buy minus or sell plus), the MOC order is cancelled.[11]

Market participants that seek to have their orders executed on the close but are sensitive to price, may pursuant to NYSE Amex Equities Rule 123C, enter LOC orders that will be eligible for execution in the closing transaction, provided that the closing price is at or within the limit specified.[12] An LOC order is not guaranteed an execution in the closing transaction; rather, only an LOC order with a limit price that is better[13] than the closing price is guaranteed an execution.[14] An LOC order limited at the closing price is sequenced with other LOC orders on the Display Book®[15] (''Display Book'') in time priority of receipt in Exchange systems and is available for execution after all other orders on the Display Book at the closing price are executed, regardless of when such other orders are received.[16]

NYSE Amex Equities Rule 123C(1) and (2) require that all MOC/LOC orders be entered by 3:40 p.m. in any stock on any trading day, unless entered to offset a published imbalance, or on either side of the market if a regulatory halt is in effect at 3:40 p.m. or occurs after that time. Pursuant to NYSE Amex Equities Rule 123C, between 3:40 and 3:50 p.m., MOC/LOC orders are irrevocable, except to correct a legitimate error (*e.g.,* side, size, symbol, price, or duplication of an order) or when a regulatory trading halt is in effect[17] at or after 3:40 p.m. During normal trading conditions, cancellations or reductions in the size of a MOC/LOC orders after 3:50 p.m. are not permitted for any reason, even in the case of legitimate error, except as provided in NYSE Amex Equities Rule 123C(8)(a)(2). Currently, NYSE Amex Equities Rule 123C(8) allows the Exchange to temporarily suspend certain requirements related to the closing of securities, provided certain conditions are met.[18] If a suspension is invoked in

[3] *See* Securities Exchange [sic] Release No. 59360 (February 4, 2009), 74 FR 6936 (February, 2009) (SR–NYSEALTR–2009–06).

[4] *See* NYSE Amex Equities Rule 70, Supplementary Material .25.

[5] *See* NYSE Amex Equities Rule 70(a).

[6] *See* Securities Exchange [sic] Release No. 59743 (April 9, 2009), 74 FR 17699 (April 16, 2009) (SR–NYSE Amex–2009–11).

[7] Conforming changes related to the information disseminated prior to the opening transaction are also proposed in this filing.

[8] In the NYSE Amex Equities Rules and for the purposes of this discussion, the terms ''market-on-close'' and ''limit-on-close'' are used interchangeably with ''market-at-the-close'' and ''limit-at-the-close''.

[9] *See* SR–NYSE–2009–111.

[10] *See* NYSE Amex Equities Rule 123C(1).

[11] *See Id.*

[12] *See* NYSE Amex Equities Rule 123C(2).

[13] As used herein, ''better priced than the closing price'' means an order that is lower than the closing price in the case of an order to sell or higher than the closing price in the case of an order to buy.

[14] It should be noted that orders are cancelled if there is a trading halt in the security that is not lifted prior to the close of trading.

[15] The Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMM, contains order information, and provides a mechanism to execute and report transactions and publish results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[16] *See* NYSE Amex Equities Rule 123C(2).

[17] In the case of a regulatory halt, MOC orders may be entered until 3:50 p.m. or until the stock reopens, whichever occurs first, even if an imbalance publication occurred prior to the regulatory halt.

[18] *See* Securities Exchange [sic] Release No. 59755 (April 13, 2009), 74 FR 18009 (April 20, 2009) (SR–NYSEALTR–2009–15) (approving the ability of the Exchange to temporarily suspend certain requirements related to the closing of securities on the Exchange with the provisions of

Continued

a security pursuant to NYSE Amex Equities Rule 123C(8)(a)(2), MOC/LOC interest may be cancelled or reduced after 3:50 p.m.[19]

Exchange systems calculate imbalance of MOC and marketable LOC orders (*i.e.,* more shares to buy than sell or vice versa) by netting the aggregate amount of MOC shares and marketable LOC buy orders against the aggregate amount of MOC shares and marketable LOC sell orders.[20]

Between 3 p.m. and 3:40 p.m., if there is an imbalance of MOC/LOC orders, a DMM who has received Floor Official approval may publish an imbalance of any size (''Informational Imbalance''). If the DMM publishes an Informational Imbalance and at 3:40 p.m. there exists an imbalance of 25,000 shares or more, or any other significant imbalance, the DMM must publish that updated imbalance information as soon as possible after 3:40 p.m. If there is neither a significant imbalance nor one of 25,000 shares or more, the DMM is required to publish a ''no imbalance'' message if an Informational Imbalance was published. If the DMM publishes a ''no imbalance'' message at 3:40 p.m. and a significant imbalance or one of 25,000 shares or more occurs between 3:40 and 3:50 p.m., then the DMM must publish the imbalance information as soon as possible after 3:50 p.m.

In the absence of an Informational Imbalance publication, if at 3:40 p.m. there is an imbalance of 25,000 shares or more of MOC/LOC orders, the DMM is required to publish the imbalance information to the Consolidated Tape in order to solicit contra-side interest.[21] The published imbalance information must be updated again at 3:50 p.m. with the current numerical imbalance or a no imbalance message.[22]

NYSE Amex Equities Rule 123C(6) further allows Exchange systems to disseminate a data feed of real-time order imbalances that accumulate prior to the close of trading on the Exchange (''Order Imbalance Information'').[23] Order Imbalance Information is supplemental information disseminated by the Exchange prior to a closing transaction.[24] Specifically, Order Imbalance Information is disseminated every fifteen seconds between 3:40 p.m. and 3:50 p.m.; thereafter, it is disseminated every five seconds between 3:50 p.m. and 4 p.m.[25]

The mandatory publications are included in both the Order Imbalance Information data feed and on the Consolidated Tape. In addition, commencing at 3:55 p.m., the Order Imbalance Information data feed also includes d-Quotes[26] and all other e-Quotes[27] containing pegging instructions[28] eligible to participate in the closing transaction.[29]

The Order Imbalance Information data feed prior to the close calculates the reference price, when the last sale price does not fall within the best bid and the best offer on the Exchange at the time that the Exchange calculates a closing imbalance for a security,[30] as follows:

- If the last sale price is lower than the Bid price, then the Bid Price will serve as the Reference Price.
- If the last sale price is higher than the Offer price, then the Offer Price will serve as the Reference Price.
- If the last sale price falls within the Exchange's best bid and offer for the

NYSE Amex Equities Rule 123(C)(8)(a)(1) operating as a pilot scheduled to end on October 12, 2009). *See also* Securities Exchange [sic] Release No. 60808 (October 9, 2009), 74 FR 53539 (October 19, 2009) (SR–NYSEAmex–2009–70) (extending the Exchange ability to temporarily suspend certain requirements related to the closing of securities on the Exchange with the provisions of NYSE Amex Equities Rule 123(C)(8)(a)(1) operating as a pilot scheduled to end on December 31, 2009). Pursuant to 123C(8), to avoid closing price dislocation that may result from an order entered into Exchange systems or represented to a DMM orally at or near the close, the Exchange may temporarily suspend the hours during which the Exchange is open for the transaction of business pursuant to NYSE Amex Equities Rule 52. A determination to declare such a temporary suspension is made on a security-by-security basis. The determination, as well as any entry or cancellation of orders or closing of a security pursuant to NYSE Amex Equities Rule 123C(8)(a) must be supervised and approved by either an Executive Floor Governor or a qualified NYSE Euronext employee, as defined under NYSE Amex Equities Rule 46(b)(v), and supervised by a qualified Exchange Officer, as defined in NYSE Amex Equities Rule 48(d).

[19] Pursuant to NYSE Amex Equities Rule 123C(8)(a)(2), with approval of an Executive Floor Governor or a qualified NYSE Euronext employee, MOC/LOC orders may be cancelled or reduced if:

(i) The cancellation or reduction is necessary to correct a legitimate error; and

(ii) [sic] Execution of such an MOC or LOC order would cause significant price dislocation at the close.

[20] *See* NYSE Amex Equities Rule 116.40(B) and 123C(3)(A).

[21] *See* NYSE Amex Equities Rule 123C(1), (2) and (5). Imbalance publications pursuant to these provisions of the rule are interpreted as the mandatory publications.

[22] At 3:50 p.m., a ''no imbalance message'' indicates that the subsequent imbalance of shares, is less than 50,000 shares and is not significant in relation to the average daily trading volume in the security.

[23] *See* Securities Exchange [sic] Release Nos. 59743 (April 9, 2009), 74 FR 17699 (April 16, 2009) (SR–NYSEAmex–2009–11) (establishing Order Imbalance Information); 60385 (July 24, 2009), 74 FR 30184 (July 31, 2009) (SR–NYSEAmex–2009–26) (establishing fees for Order Imbalance Information); 60151 (June 19, 2009) 74 FR 30653 (June 29, 2009) (SR–NYSEAmex–2009–29) (including Floor broker agency interest containing pegging and/or discretionary instructions eligible for execution in the closing transaction in Order Imbalance Information).

[24] *See* NYSE Amex Equities Rule 123C(6). Pursuant to NYSE Amex Equities Rule 15, the Exchange also distributes information about imbalances in real-time at specified intervals prior to the opening transaction. The pre-opening Order Imbalance Information data feed is disseminated (i) every five minutes between 8:30 a.m. and 9 a.m.; (ii) every one minute between 9 a.m. and 9:20 a.m.; and (iii) every 15 seconds between 9:20 a.m. and the opening (or 9:35 a.m. if the opening is delayed).

[25] On any day that the scheduled close of trading on the Exchange is earlier than 4:00 p.m., the dissemination of Order Imbalance Information prior to the closing transaction will commence 20 minutes before the scheduled closing time. Order Imbalance Information will be disseminated every fifteen seconds for approximately 10 minutes. Thereafter, the Order Imbalance Information will be disseminated ever [sic] five seconds until the scheduled closing time.

[26] This type of Floor broker agency interest contains discretionary instructions as to size and/or price of an e-Quote. *See* NYSE Amex Equities Rule 70 Supplementary Material .25.

[27] Floor brokers are permitted to represent orders electronically through the use of e-Quotes. *See* NYSE Amex Equities Rule 70(a)(i).

[28] This type of Floor broker agency interest contains a distinct instruction that may be used in conjunction with an e-Quote and/or a d-Quote. *See* NYSE Amex Equities Rule 70, Supplementary Material .26. This type of instruction allows the Floor broker to maintain his/her interest in the Exchange Best Bid or Offer (''BBO'') if the quote moves from the orders initial quote price. Pegged interest moves with the Exchange BBO within the designated range. Any discretionary instructions associated with that interest will continue to be applied as long as it is within the Floor broker's designated price range. Buy side e-Quotes will peg to the best bid and sell side e-Quotes will peg to the best offer. The Exchange filed a proposal with the SEC to amend NYSE Amex Equities Rule 70.25 to permit d-Quotes to be active throughout the trading day and to provide for discretionary instructions that a d-Quote will execute only if a minimum trade size requirement is met, and to amend NYSE Amex Equities Rule 70.26 to provide for e-Quotes and d-Quotes to peg to the National best bid or offer (''NBBO'') rather than the Exchange best bid or offer (''BBO''). See Securities and Exchange [sic] Release No. 60887 (October 27, 2009), 74 FR 56889 (November 3, 2009) (SR–NYSEAmex–2009–76).

[29] Similarly, in the case of the pre-opening Order Imbalance Information data feed, all interest eligible to trade in the opening transaction, excluding odd-lot orders and the odd-lot portion of partial round-lot orders, are included in the data feed. Floor broker interest includes all interest except non-displayed reserve interest marked ''do not display.'' Customer interest includes all interest except for non-displayed reserve interest. DMM interest is not included in the pre-opening Order Imbalance Information data feed.

[30] The reference price for the pre-opening Order Imbalance Information data feed is equal the last sale (previous closing price) or the price indication published under the Rule 15 or 123D. Therefore, when the Exchange publishes a pre-opening indication in a security pursuant to the provisions of paragraphs (a) and (b) of NYSE Amex Equities Rule 15 or NYSE Amex Equities Rule 123D, the reference price will be determined as follows:

If the Bid Price from the indication (the lower price) is higher than the last sale, the Reference Price will be the Bid.

If the Offer Price from the indication (the higher price) is lower than the last sale, the Reference Price will be the Offer.

If the Last Sale is within the indication range, the Book will use the Last Sale as the Reference Price.

If multiple indications have been published, the last indication that the Exchange makes available will be used as the Reference Price.

security, the last sale price will serve as the Reference Price.

Examples

(1) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the data feed is 100 shares bid at a price of $15.02 and 500 shares offered at a price of $15.20. The reference price for the NYSE Order Imbalance data feed in XYZ security will be $15.02.

(2) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the data feed is 100 shares bid at a price of $14.91 and 500 shares offered at a price of $14.99. The reference price for the NYSE Order Imbalance data feed in XYZ security will be $14.99.

(3) The sale in XYZ security prior to the dissemination of the order imbalance feed was at a price of $15.00. The quote prior to the dissemination of the data feed is 100 shares bid at a price of $14.98 and 500 shares offered at a $15.02. The reference price for the NYSE Order Imbalance data feed in XYZ security will be $15.00.

Only the mandatory indications published pursuant to NYSE Amex Equities Rule 123C(1) control whether a party may enter MOC/LOC interest to offset an imbalance publication.

In executing the closing transaction, Exchange systems calculate the shares of MOC and marketable LOC orders on each side of the market. Where there is an imbalance, the shares constituting the imbalance are executed against the offer side (in case of a buy imbalance) or the bid side (in the case of a sell imbalance).[31] The remaining MOC and marketable LOC buy and sell orders are paired off against each other at the price at which the imbalance shares were executed.[32] The imbalance and the pair off transaction are reported to the Consolidated Tape as a single transaction.[33]

If there is no imbalance, the aggregate buy and sell MOC and marketable LOC orders are paired off at the price of the last sale on the Exchange prior to the close of trading in the security.[34] This transaction is reported to the Consolidated Tape as a single transaction.[35]

Any stop orders that are elected by the closing price in a particular security are automatically and systemically converted into market orders and are included in the total number of MOC orders to be executed at the close for that security.[36]

Interest executed in the closing transaction is allocated pursuant to NYSE Amex Equities Rule 72 (''Priority of Bids and Offers and Allocation of Executions'') and consistent with the hierarchy of interest which currently is only codified in the NYSE Floor Official Manual.[37] In the hierarchy of allocation, better priced interest must receive an execution in whole or in part[38] (''must execute interest'') in order for the security to close. Included in this category are MOC orders without tick restrictions, MOC orders with tick restrictions that are eligible to be executed at a price better than the closing price, better priced limit orders, better priced LOC orders with or without tick restrictions that are eligible for execution at a better price than the closing price and Crowd interest.[39] After the ''must execute interest'' is satisfied, then any limit orders represented in Display Book at the closing price may be used to offset the remaining imbalance. It should be noted that DMM interest, including better priced DMM interest entered into the Display Book prior to the closing transaction, eligible to participate in the closing transaction is always included in the hierarchy of execution as if it were interest equal to the price of the closing transaction. Next eligible for execution in the hierarchy of allocation for the closing transaction are LOC orders without tick restrictions limited to the closing price, then MOC orders that have tick restrictions which limit the order's price to the price of the closing transaction,[40] followed by LOC orders limited to the price of the closing transaction that have tick restrictions and finally ''G'' orders,[41] including all better priced ''G'' orders.

Once the last sale in the security occurs, the DMM organizes the closing transaction by considering Crowd interest, interest available to participate on the close and his own trading interest (consistent with affirmative obligations).[42] Pursuant to the DMM's affirmative obligation, the DMM should minimize price dislocation caused by disparity between supply and demand. At that point, he or she must assess potential imbalances (if any) at various potential closing price points in order to price the close. The DMM will generally close the security by picking a price point that he or she believes is an appropriate price based on supply and demand and may insert DMM trading interest.

Example of a Current Close Including the Imbalance Publications

Example #1

XYZ security has an average daily trading volume of approximately 250,000 shares. At 3:10 p.m. XYZ receives a buy MOC order for 20,000 shares. Shortly thereafter, in consultation with a Floor Official, the DMM publishes an Informational Imbalance. By 3:40 p.m. the buy imbalance has increased to 100,000 shares and the DMM disseminates a mandatory imbalance publication showing the updated amount. Also at 3:40 the Order Imbalance Information data feed commences and is disseminated every 15 seconds thereafter.

By 3:50 p.m. the DMM has received 50,000 shares of sell MOC interest to offset the 150,000 share buy imbalance.

[31] *See* NYSE Rules 123C(3) and 116.40(B).

[32] *See* NYSE Rules 123C(3).

[33] *See* NYSE Rules 123C(3) and 116.40(C).

[34] *See* NYSE Amex Equities Rules 116.40(C) and 123C(3)(B).

[35] *See Id.*

[36] *See* NYSE Amex Equities Rules 116.40(A) and 123C(3)(A).

[37] *See* New York Stock Exchange Inc., Floor Official Manual, 214–215 (June 2004 Edition). The NYSE ceased publication of the Floor Official Manual after this edition. The proposed amendments herein seek to add transparency to the closing process and will incorporate the hierarchy of allocation into the proposed rule text. NYSE Amex's equity trading systems and facilities are operated by the NYSE on behalf of the Exchange. The allocation logic for equity securities on NYSE Amex is the same as that utilized by the NYSE. *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving the Merger).

[38] MOC orders must be executed in its entirety at the closing price. Marketable limit orders receive an execution subject to the availability of contra side volume.

[39] As used herein, Crowd interest means verbal Floor broker interest at the market entered by the DMM to interact with orders in the Display Book.

[40] For example, the last sale on the Exchange was at a price of $46.00 on a minus tick, the closing price is $46.01, all sell plus MOC orders are limited to the closing price of $46.01 because the closing transaction would be the next plus tick.

[41] Section 11(a)(1) of the Act generally prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or any account over which it or an associated person exercises discretion. *See* 15 U.S.C. 78k(a)(1). Subsection (G) of Section 11(a)(1) provides an exemption allowing an exchange member to have its own Floor broker execute a proprietary transaction (''G order''). A g-Quote is an electronic method for Floor brokers to represent G orders. G orders on NYSE Amex yield priority, and parity to all other non-G orders.

[42] DMMs [sic] trading interest is determined in part by risk management goals. DMMs may manage risk by trading on the same side of the imbalance if consistent with his or her affirmative obligation under NYSE Amex Equities Rule 104 and other NYSE Amex and SEC rules. If the DMM participates on the same side of an order imbalance in a security such that the price of the security moves significantly, this may raise a concern as to whether the DMM is meeting his or her affirmative obligation and other regulatory requirements.

At 3:50 p.m. the DMM disseminates another mandatory imbalance publication updating the imbalance to a 50,000 share buy imbalance.

Also at 3:50 the Order Imbalance information data feed increases the frequency of its publications to every 5 seconds. Beginning at 3:55 p.m. the Order Imbalance data feed includes d-Quotes and all other e-Quotes containing pegging instructions that are eligible to participate in the closing transaction based on current execution prices.

The DMM did not receive any additional offsetting interest between 3:50 and 4 p.m. (official closing time) so the imbalance remained at 50,000 shares to buy.

The last bid in XYZ security prior to the closing transaction was $19.85 and the offer was $20.00. The last sale prior to 4 p.m. (official closing time) was at $19.85.

The sell interest on the Display Book leading into the closing transaction consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of public limit orders at $20.24;
4. 5,000 shares of tick sensitive LOC interest at $20.24;
5. 5,000 shares of d-Quote interest that at its maximum discretion is $20.24;
6. 10,000 shares LOC interest at $20.25;
7. 5,000 shares of non-MOC ''G'' market orders.

Given this interest available in Display Book, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 5,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows: [43]

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 100,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 50,000 shares.

The remaining imbalance of 100,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–5 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 45,000 share buy imbalance;
2. 5,000 shares of Crowd market interest which leaves a 40,000 share buy imbalance;
3. 10,000 shares of public limit orders at $20.24, which leaves an 30,000 share buy imbalance; and [sic]
4. 5,000 shares of tick sensitive LOC interest at $20.24 which leaves a 25,000 share buy imbalance;
5. 5,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 20,000 share buy imbalance; [44]

The remaining 20,000 share buy imbalance will be offset at the price of $20.25 as follows:

6. 5,000 shares of DMM interest, which leaves a 15,000 share buy imbalance;
7. 10,000 shares LOC interest at $20.25, which leaves a 5,000 share buy imbalance; and
8. 5,000 shares of non-MOC ''G'' orders.

Example number 1 above is a simple closing transaction that demonstrates all interest eligible to receive an execution in the closing transaction being executed in full. In the above example, the offsetting interest was equal to the size of the actual buy imbalance; however, in the event that any one type of offsetting interest with precedence in the hierarchy is sufficient to fill the imbalance, that interest will be filled and the remaining interest lower in the hierarchy will receive a report of ''nothing done.'' Example number 2 below demonstrates this principle and further illustrates the operation of parity allocations in the closing transactions.

Example #2

Assuming the same imbalance publication information and receipt of offsetting interest in Example #1. The last sale in the security is at the price of $19.85. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 100,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 50,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 5,000 shares of tick sensitive LOC interest at $20.24;
4. 5,000 shares of d-Quote interest that at its maximum discretion is $20.24;
5. 10,000 shares e-Quote interest from a single Floor broker at $20.25;
6. 20,000 shares of public limit orders at $20.25;
7. 20,000 shares LOC interest at $20.25;
8. 10,000 shares of non-MOC ''G'' market orders.

Given this interest available in Display Book, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 20,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 100,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 50,000 shares.

The remaining imbalance of 50,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–4 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 45,000 share buy imbalance;
2. 5,000 shares of Crowd market interest, which leaves a 40,000 share buy imbalance;
3. 5,000 shares of tick sensitive LOC interest at $20.24, which leaves an 35,000 share buy imbalance;
4. 10,000 shares of d-Quote interest that at its maximum discretion is $20.2424, which leaves a 30,000 shares buy imbalance;

The remaining 30,000 shares of the buy imbalance will be offset at the price of $20.25 as follows:

5. 10,000 shares of e-Quote interest at $20.25, which leaves a 20,000 share buy imbalance;
6. 10,000 shares of at-priced DMM interest, which leaves a 10,000 shares buy imbalance;
7. 10,000 shares of public limit orders at $20.25, which fills the remaining 10,000 shares of the imbalance.

[43] The execution occurs as a single transaction. The logic described in the text refers to how the Display book allocates shares, not the order of execution.

[44] Any super-marketable d-Quote interest that exercises its maximum discretion becomes better priced limit interest for the purposes of the hierarchy of execution and is included in the closing transaction as must execute interest.

The remaining 10,000 shares of at-priced DMM interest and the 10,000 shares of public limit orders at $20.25 will not be executed.[45] Additionally, the 20,000 shares LOC interest priced at $20.25 and 10,000 shares of ''G'' orders will also remain unexecuted and receive reports of ''nothing done.'' [46]

Example #3

Example #3 further illustrates a DMMM [sic] facilitation of the closing transaction and demonstrates that the DMM may enter his or her interest on the same side of the MOC/LOC imbalance when effecting the closing transaction.

Assuming the same imbalance publication information and receipt of offsetting interest in Example #1. The last sale in the security in this Example #3 is at the price of $20.23. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 100,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 50,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of tick sensitive LOC interest at $20.24;
4. 10,000 shares of public limit orders at $20.25;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;
6. 10,000 shares of LOC interest at $20.25.

In addition, while arranging the closing transaction after 4:00 p.m. the DMM enters 20,000 shares of DMM interest to buy for the dealer account.[47] There is additional sell interest on the Display Book that would accommodate the DMM's additional interest as follows:

7. 10,000 shares of public limit orders to sell at $20.26;
8. 10,000 shares of public limit orders to sell at $20.27;

Based on the interest available in Display Book on both sides of the market, the DMM has determined to close trading in XYZ security at a price of $20.27.

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the current 100,000 shares of the buy imbalance at a price of $20.27, leaving a buy imbalance of 120,000 shares (including DMM interest).

The remaining imbalance of 120,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.27. As interest priced better than the closing price, numbers 1–7 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 115,000 share buy imbalance;
2. 5,000 shares of Crowd Market interest, which leaves a 110,000 share buy imbalance;
3. 10,000 shares of tick sensitive LOC interest at $20.24, which leaves an 100,000 share buy imbalance;
4. 50,000 shares of public limit orders at $20.25, which leaves a 50,000 share buy imbalance;
5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 40,000 share buy imbalance;
6. 20,000 shares LOC interest at $20.25, which leaves a 20,000 share buy imbalance;
7. 10,000 shares of public limit orders at $20.26, which leaves a 10,000 share buy imbalance; and
8. 10,000 shares of public limit orders at $20.27 are executed against the remaining 10,000 share buy imbalance.

Additional Procedures Governed by NYSE Amex Equities Rule 123C

In addition to current Market on the Close procedures, NYSE Amex Equities Rule 123C prescribes the Expiration Friday [48] Auxiliary Procedures for the Opening. The provisions of the rule govern the time of entry and the marking of orders related to expiring index contracts.[49]

Proposed New Closing Procedures

The Exchange seeks to build on the changes NYSE Amex began this year as noted above, to simplify its closing procedures in order to provide customers with a more efficient closing process. The closing transaction on the Exchange continues to be a manual auction in order to facilitate greater price discovery and allow for the maximum interaction between market participants. While the Exchange currently provides DMM units with tools to facilitate an efficient closing process, the Exchange believes that changes proposed herein will maximize the use of those electronic tools and allow for an even more efficient closing process.

Order Entry, Cancellation, Mandatory MOC/LOC Imbalance and Informational Imbalance Publications

In order to optimize the efficient operation of the closing process, the Exchange proposes to amend NYSE Amex Equities Rule 123C to require electronic entry of all MOC and LOC orders, including those entered to offset imbalances.[50] The Exchange believes that the electronic entry of MOC and LOC orders will allow the DMM to maximize the Display Book capability to continuously update and provide the DMM and trading community with imbalance information, thus enhancing the DMM's ability to efficiently manage the closing process and customers with the ability to interact appropriately.

The electronic entry of MOC and LOC interest will obviate the need to have an imbalance publication at 3:40 p.m. and 3:50 p.m. because the DMM will not have to manually keep track of the MOC/LOC interest; rather, Exchange systems will track the electronically

[45] Interest represented in numbers 5–7 received an allocation of shares that is less than their full quantity consistent with NYSE Amex Equities Rule 72 which requires the shares to be allocated on a parity basis. Specifically, DMM interests, individual e-Quotes interests and public limit order interests each represent a distinct parity group which and the available shares are divided among the parity groups.

[46] DMM interest is considered at price interest and is therefore higher in the hierarchy of execution than at priced LOC interest which are not guaranteed an execution pursuant to the provisions of 123C(2). It should be noted that DMM interest participating in the closing transaction is executed as if it were priced equal to the closing transaction. This includes DMM interest entered in Display Book prior to the closing transaction at better price points that are eligible to participate in the closing transaction.

[47] *See supra* note 42. As previously noted DMM trading must be consistent with his or her affirmative obligation under NYSE Amex Equities Rule 104 and other NYSE Amex Equities Rules and SEC rules particularly in this example where the DMM is participating on the same side of the imbalance.

[48] An expiration day is a trading day prior to the expiration of index-related derivative products (futures, options or options on futures), whose settlement pricing is based upon opening or closing prices on the Exchange, as identified by a qualified clearing corporation (*e.g.,* the Options Clearing Corporation). The twelve expiration days are ''expiration Fridays'' which fall on the third Friday in every month. If that Friday is an Exchange holiday, there will be an expiration Thursday in such a month.

[49] NYSE Amex Equities Rule 123C(7) requires, among other things, that orders related to index contracts whose settlement pricing is based upon the ''Expiration Friday'' opening prices must be received by 9:00 a.m. Orders not related to index contracts whose settlement is not based on opening prices may be received before or after 9:00 a.m. It further requires orders relating to opening-price settling contracts be identified ''OPG'' and sets forth procedures for firms that are unable to comply with the marking requirement.

[50] In the event a Floor broker's handheld device malfunctions, the DMM should assist the Floor broker by entering or cancelling MOC/LOC orders on the Floor broker's behalf. DMMs perform this administrative function on a best efforts basis. *See* NYSE Information Memos 09–26 (June 18, 2009); NYSE Member Education Bulletin 05–24 (December 9, 2005) incorporated pursuant to the Merger.

entered MOC/LOC interest. Exchange systems will therefore be able to provide more accurate and timely imbalance information to all market participants systemically. The Exchange's customers have expressed that in the current more electronic environment two imbalance publications ten minutes apart are not useful. Accordingly, the Exchange proposes to modify the order information available prior to the closing transaction as described more fully below and amend NYSE Rule 123C to provide for a single imbalance publication as soon as practicable after 3:45 p.m., to be referred to as the ''Mandatory MOC/LOC Imbalance Publication,'' (herein ''Mandatory MOC/LOC Imbalance'') when there is an imbalance: (i) of 50,000 shares or more; or (ii) of less than 50,000 shares that is deemed to be ''significant'' [51] (*i.e.,* significant in relation to the average daily volume of the security).[52] The last sale price at 3:45 p.m. will serve as the basis for the Mandatory MOC/LOC Imbalance.

The Exchange intends to retain the current ability to publish an Informational Imbalance of any size. The Exchange seeks to extend the time for the publication of such imbalance from 3:40 p.m. until 3:45 p.m. in order to provide a mechanism for an imbalance publication prior to any Mandatory MOC/LOC Imbalance if the DMM in consultation with a Floor Official or qualified NYSE Amex Euronext employee as defined in Supplementary Material .10 of NYSE Amex Equities Rule 46 deem that such imbalance publication is warranted for the security. In extending the time to 3:45 p.m., the proposed rule will provide that a Mandatory MOC/LOC Imbalance or ''no imbalance'' notice must occur as soon as possible after 3:45 p.m.[53]

The proposed new rule will further explicitly state that the entry of MOC/LOC orders in response to a Mandatory MOC/LOC Imbalance after 3:45 p.m. may be entered only to offset the published imbalance.[54] In the case of a ''no imbalance'' notification, no offsetting MOC/LOC interest may be entered at all after 3:45 p.m.[55]

Given that MOC/LOC orders will be entered electronically, Exchange systems will keep track of the available interest thus making it more readily available for the DMM. The Exchange therefore further proposes to allow customers to cancel or reduce MOC/LOC orders in the case of legitimate errors [56] between 3:45 p.m. and 3:58 p.m.[57] Systemic tracking of MOC/LOC interest makes it entirely feasible for the DMM to review in two minutes the interest eligible to participate in the closing transaction and facilitate the execution of the closing transaction. After 3:58 p.m., cancellations or reduction in the size of MOC/LOC orders, even in the event of legitimate error, will not be permitted.[58]

The Exchange further proposes to provide all market participants an additional method to offset a published imbalance and proposes to create a conditional-instruction limit-type order that will be eligible to participate in the closing transaction to offset an order imbalance at the close, the CO order. The CO order will not be guaranteed to participate in the closing transaction. CO orders will be eligible to participate in the closing transaction when there is an imbalance of orders to be executed on the opposite side of the market from the CO order and there is no other interest remaining to trade at the closing price. This order type must yield to all other eligible interest.

Unlike MOC/LOC orders, CO orders may be entered on any side of the market at anytime prior to the close.[59] CO orders will not be included in the calculation of the Mandatory MOC/LOC Imbalance and Informational Imbalance. The Exchange proposes that the time periods to cancel a CO order be consistent with the cancellation requirements for MOC and LOC orders. As such, proposed NYSE Amex Equities Rule 123(C)(3) will provide that up to 3:45 p.m., a CO order may be canceled or reduced for any reason. Between 3:45 p.m. and 3:58 p.m., a CO order may be canceled or reduced only in the case of a legitimate error as that term is defined by proposed NYSE Amex Equities Rule 123C(1)(c). After 3:58 p.m., a CO order, like MOC/LOC orders, may not be cancelled for any reason.

CO orders will be eligible to participate in the closing transaction only to offset an imbalance and do not add to or flip the imbalance. If there is an imbalance at the close and the price of the closing transaction is at or within the limit of the CO order, the CO order will be eligible to participate in the closing transaction, subject to strict time priority of receipt in Exchange systems among such eligible CO orders and after yielding to all other interest in the closing execution, including MOCs, marketable LOCs, ''G'' orders, DMM interest, and at-priced LOCs. CO orders deemed eligible to participate in the close will be executed at the price of the closing transaction. If the number of shares represented by CO orders is larger than the number of shares required to offset the imbalance, Exchange systems will execute only those shares of CO orders required to complete the execution of the imbalance in full based on the time priority of receipt in Exchange systems of the CO orders. CO orders therefore will not be allowed to swing an imbalance to the opposite side of the market. Accordingly, if there is a 50,000 share buy imbalance and 100,000 shares of CO orders eligible to sell at the closing price, the first 50,000 shares of CO orders that were entered into Exchange systems throughout the trading day will participate in the closing transaction. The remaining 50,000 shares of CO orders will not participate and will be cancelled.

Modifications to Order Imbalance Information Data Feed Prior to the Closing and Opening Transaction

The Exchange further proposes to modify the Order Imbalance data feed prior to closing transaction to commence at 3:45 p.m., the same time as the Mandatory MOC/LOC Imbalance. Pursuant to proposed NYSE Amex Equities Rule 123C(6)(a)(iii), the Order Imbalance data feed will be disseminated approximately every five

[51] Mandatory MOC/LOC Imbalance publications for less than 50,000 shares may only be published with the prior approval of a Floor Official or qualified NYSE Euronext employee as defined in Supplementary Material .10 of NYSE Rule 46.

[52] *See* proposed NYSE Rule 123C paragraphs (1)(d) (Definition: Mandatory MOC/LOC Imbalance) and (4) Calculation of MOC Imbalances.

[53] *See* proposed NYSE Amex Equities Rule 123C paragraphs (1)(b) (Definition: Informational Imbalance) and (4) Calculation and Publication of MOC Imbalances) [sic]. In the event that an Informational Imbalance is disseminated prior to 3:45 and thereafter there is no Mandatory MOC/LOC Imbalance, the DMM will be required to manual [sic] disseminate a ''no imbalance'' notification.

[54] *See* proposed NYSE Amex Equities Rule 123C paragraphs (2)(b)(i) (Order entry).

[55] *See* proposed NYSE Amex Equities Rule 123C paragraphs (2)(b)(ii) (Order entry).

[56] Through the instant filing, the Exchange seeks to clarify what is meant by legitimate error as it applies to the closing process. The Exchange proposes to define a legitimate error in the proposed definition section of 123C. Specifically, a [sic] pursuant to proposed NYSE Rule 123C(1)(c), a legitimate error means an error in any term of an MOC or LOC order, such as price, number of shares, side of the transaction (buy or sell) or identification of the security.

[57] *See* proposed NYSE Rule 123C(3) (Cancellation of MOC and LOC orders). The Exchange anticipates that DMMs will have sufficient time to perform the requisite calculations for the closing transaction while affording customers the ability to cancel or reduce in size an MOC/LOC order until 3:58 p.m.

[58] Current NYSE Amex Equities Rule 123C(8)(a)(2) permits the Exchange to temporarily suspend the prohibitions on canceling or reducing an MOC or LOC order if there is an extreme order imbalance at or near the close. This filing would renumber that rule as proposed NYSE Amex Equities Rule 123C(9).

[59] *See* proposed NYSE Amex Equities Rule 123C(2)(b)(iv).

seconds between 3:45 p.m. and 4:00 p.m.

Moreover, to increase transparency of order information prior to the execution of the closing transaction, the Exchange proposes to expand the order information included in the Order Imbalance Information data feed. Currently the pre-closing Order Imbalance Information data feed includes the: (i) Reference price; (ii) MOC/LOC imbalance and the side of the market; (iii) d-Quotes and all other e-Quotes containing pegging instructions eligible to participate in the closing transaction; and (iv) MOC/LOC paired quantity at reference price. The proposed new data feed will continue to provide that information but also additionally include (i) CO orders on the opposite side [60] of the imbalance and (ii) at-priced LOC interest eligible to offset the imbalance.

The proposed Order Imbalance Information data feed prior to the closing transaction will also make available two new data fields. The proposed new data fields will provide subscribers with a snap shot of the prices at which interest eligible to participate in the closing transaction would be executed in full against each other at the time data feed is disseminated. It will also provide subscribers with the price at which closing-only interest (*i.e.,* MOC orders, marketable LOC orders, and CO orders on the opposite side of the imbalance) may be executed in full and the price at which orders in the Display Book (*e.g.,* Minimum Display Reserve Orders, Floor broker reserve e-Quotes not designated to be excluded from the aggregated agency interest information available to the DMM (''do not display''), d-Quotes pegged e-Quotes, [61] and Stop orders) will be executed in full.

Only those CO orders on the opposite side of the imbalance will be included in the calculation of the new data fields. In order to avoid compromising the reserve interest at price points between the quote, if the price at which all closing orders in the Display Book may be executed in full is at or between the quote, then both data fields indicating imbalance information will publish the price at which the closing-only interest (*i.e.,* MOC orders, marketable LOC orders, and CO orders) may be executed in full.

Similarly the Exchange proposes to conform the pre-opening Order Imbalance Information data feed to provide its market participants with more information prior to the opening transaction. As such, the pre-opening Order Imbalance Information data feed will include the price at which all the interest eligible to participate in the opening transaction may be executed in full.[62] The Exchange does not propose to modify the time periods pursuant to NYSE Amex Equities Rule 15 when the pre-opening Order Imbalance data feed is disseminated. Moreover, the calculation of the reference price will also remain the same.

Execution of the Closing Transaction

The Exchange proposes to maintain its current execution logic and codify the hierarchy of allocation logic applied to interest participating in the closing transaction. Proposed NYSE Amex Equities Rule 123C(7) will list all the interest that must be executed or cancelled as part of the closing transaction and the hierarchy of the interest that may be used to offset the closing imbalance. Moreover, proposed NYSE Amex Equities Rule 123C(7) will add the CO order as the last interest eligible to participate in the closing transaction to offset an imbalance.

The codification of hierarchy of allocation logic applied to interest participating in the closing transaction pursuant to proposed NYSE Amex Equities Rule 123C(7) will only slightly modify the execution of a closing transaction on the Exchange because it will now incorporate the new proposed CO order type into the closing transaction where it is eligible to participate.

Example of a Close Including the Imbalance Publications Pursuant to Proposed NYSE Amex Equities Rule 123C [63]

Example #4

XYZ security has an average daily trading volume of approximately 250,000 shares. At 3:10 p.m. XYZ receives a buy MOC order for 20,000 shares. Shortly thereafter, in consultation with a Floor Official, the DMM publishes an Informational Imbalance. By 3:45 p.m. the buy imbalance has increased to 100,000 shares and the DMM disseminates a mandatory imbalance publication showing the updated amount. Also at 3:45 the Order Imbalance Information data feed commences and is disseminated every 5 seconds thereafter.

Beginning at 3:55 p.m. the Order Imbalance data feed includes d-Quotes and all other e-Quotes containing pegging instructions that are eligible to participate in the closing transaction based on current execution prices.

The DMM received offsetting interest between 3:50 and 4 p.m. (official closing time) reducing the buy imbalance to 50,000 shares.

The last bid in XYZ security prior to the closing transaction was $19.85 and the offer was $20.00. The last sale prior to 4 p.m. (official closing time) was at $19.85.

The sell interest on the Display Book leading into the closing transaction consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;
2. 5,000 shares of Crowd market interest;
3. 10,000 shares of public limit orders at $20.24;
4. 5,000 shares of tick sensitive LOC interest at $20.24;
5. 5,000 shares of d-Quote interest at its maximum discretion of $20.24;
6. 5, 000 shares LOC interest at $20.25;
7. 5,000 shares of non-MOC ''G'' market orders; and
8. 5,000 shares of CO orders.

Given this interest available in Display Book on both sides of the market, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 10,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after after 4 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 150,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 50,000 shares.

The remaining imbalance of 50,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–5 above are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price

[60] In the case of a buy imbalance, CO orders to sell at a price equal to or lower than the reference price are to be included in the imbalance. In the case of a sell imbalance, CO orders to buy at a price equal to or higher than the reference price are to be included in the imbalance.

[61] d-Quotes and pegged e-Quotes included in this new data field of the Order Imbalance Information data feed are included at the price indicated on the order as the base price to be used to calculate the range of discretion and not at prices within their discretionary pricing instructions.

[62] *See* Proposed NYSE Amex Equities Rule 15.

[63] Example numbers 4–6 mirror example numbers 1–3 above in that all the examples illustrate the execution of the closing transaction based on the principles explained above; however, example numbers 4–6 also incorporate the proposed new CO order type.

better than the last sale, which leaves a 45,000 share buy imbalance;

2. 5,000 shares of Crowd market interest which leaves a 40,000 share buy imbalance;

3. 10,000 shares of public limit orders at $20.24, which leaves a 30,000 share buy imbalance; and [sic]

4. 5,000 shares of tick sensitive LOC interest at $20.24 which leaves a 25,000 share buy imbalance;

5. 5,000 shares of d-Quote interest that at its maximum discretion is $20.24; which leaves a 20,000 share buy imbalance;[64]

The remaining 20,000 share buy imbalance will be offset at the price of $20.25 as follows:

6. 5,000 shares of DMM interest, which leaves a 15,000 share buy imbalance;

7. 5,000 shares LOC interest at $20.25, which leaves a 10,000 share buy imbalance;

8. 5,000 shares of non-MOC ''G'' orders which leaves a 5,000 share buy imbalance; and

9. 5,000 shares of CO orders fill the 5,000 shares remaining of the buy imbalance.

In the above example, the offsetting interest was equal to the size of the actual buy imbalance; however, in the event that any one type of offsetting interest with precedence in the hierarchy is sufficient to fill the imbalance that interest will be filled and the remaining interest lower in the hierarchy will receive a report of ''nothing done.''

Example #5

Assuming the same imbalance publication information and receipt of offsetting interest in Example #4. The last sale in the security is at the price of $19.85. Again, the offsetting sell MOC interest of 50,000 shares is netted against 50,000 shares of the 100,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 50,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;

2. 5,000 shares of Crowd market interest;

3. 5,000 shares of tick sensitive LOC interest at $20.24;

4. 5,000 shares of d-Quote interest that at its maximum discretion is $20.24;

5. 10,000 shares of e-Quote interest from a single Floor broker at $20.25;

6. 20,000 shares of public limit orders at $20.25;

7. 20,000 shares LOC interest at $20.25;

8. 10,000 shares of non-MOC ''G'' market orders;

9. 10,000 shares of CO orders.

Given this interest available in Display Book, the DMM determines to close trading in XYZ security at a price of $20.25 and to sell 50,000 shares for the dealer account. The DMM interest is entered into the Display Book while the DMM is arranging the closing transaction which may be after 4 p.m. The DMM then executes the closing transaction in XYZ security at the price of $20.25.

The closing execution logic is as follows:

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the 100,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 50,000 shares.

The remaining imbalance of 50,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.25. As interest priced better than the closing price, numbers 1–4 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 45,000 share buy imbalance;

2. 5,000 shares of Crowd market interest, which leaves a 40,000 share buy imbalance;

3. 5,000 shares of tick sensitive LOC interest at $20.24, which leaves a 35,000 share buy imbalance;

4. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 30,000 shares buy imbalance;

The remaining 30,000 shares of the buy imbalance will be offset at the price of $20.25 as follows:

5. 10,000 shares of e-Quote interest at $20.25, which leaves a 20,000 share buy imbalance;

6. 10,000 shares of at-priced DMM interest, which leaves a 10,000 shares buy imbalance;

7. 10,000 shares of public limit orders at $20.25, which fills the remaining 10,000 shares of the imbalance.

The remaining 10,000 shares of at-priced DMM interest and the 10,000 shares of public limit orders at $20.25 will not be executed.[65] Additionally, the 20,000 shares LOC interest priced at $20.25, 10,000 shares of ''G'' orders and 10,000 shares of CO orders will also remain unexecuted and receive reports of ''nothing done.''[66]

Example #6

Assuming the same imbalance publication information and receipt of offsetting interest in Example #4. The last sale in the security in this Example #6 is at the price of $20.23. Again, the offsetting sell MOC interest is of 50,000 shares is netted against 50,000 shares of the 100,000 shares of the buy imbalance at a price of $20.25, leaving a buy imbalance of 50,000 shares. The sell interest on the Display Book now consists of:

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale;

2. 5,000 shares of Crowd market interest;

3. 10,000 shares of tick sensitive LOC interest at $20.24;

4. 10,000 shares of public limit orders at $20.25;

5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24;

6. 5,000 shares of LOC interest at $20.25

7. 5,000 shares of CO orders.

In addition, while arranging the closing transaction after 4:00 p.m. the DMM enters 20,000 shares of DMM interest to buy for the dealer account.[67] There is additional sell interest on the Display Book that would accommodate the DMM's additional interest as follows:

8. 10,000 shares of public limit orders to sell at $20.26;

9. 10,000 shares of public limit orders to sell at $20.27.

Based on the interest available in Display Book on both sides of the market, the DMM has determined to close trading in XYZ security at a price of $20.27.

The offsetting 50,000 shares of sell MOC interest is netted against 50,000 shares of the current 120,000 shares of the buy imbalance at a price of $20.27, leaving a buy imbalance of 70,000 shares (including DMM interest).

The remaining imbalance of 70,000 shares is offset by allocating it to the interest listed below, at the closing price of $20.27. As interest priced better than the closing price, numbers 1–7 below are required to be included in the closing transaction.

1. 5,000 shares of tick sensitive MOC orders eligible to execute at a price better than the last sale, which leaves a 65,000 share buy imbalance;

2. 5,000 shares of Crowd market interest, which leaves a 60,000 share buy imbalance;

[64] *See supra* text accompanying note 44.

[65] *See supra* text accompanying note 45.

[66] *See supra* text accompanying note 46.

[67] *See supra* text accompanying note 47.

3. 10,000 shares of tick sensitive LOC interest at $20.24, which leaves a 50,000 share buy imbalance;

4. 10,000 shares of public limit orders at $20.25, which leaves a 40,000 share buy imbalance;

5. 10,000 shares of d-Quote interest that at its maximum discretion is $20.24, which leaves a 30,000 share buy imbalance;

6. 5,000 shares LOC interest at $20.25, which leaves a 25,000 share buy imbalance;

7. 10,000 shares of public limit orders at $20.26, which leaves a 15,000 share buy imbalance;

8. 10,000 shares of public limit orders at $20.27, which leaves a 5,000 share buy imbalance;

9. 5,000 shares of CO orders fill the remaining 10,000 shares of the buy imbalance.

Trading Halts

The Exchange further proposes to amend NYSE Amex Equities Rule 123C to make ''trading halt'' a defined term whose meaning is consistent with a halt in trading in any security pursuant to the provisions of NYSE Amex Equities Rule 123D (''Trading Halt'').[68] Further, pursuant to the proposed rule, where a Trading Halt is in effect at 3:45 p.m., a Mandatory MOC/LOC Imbalance will be published as close to the resumption of trading as possible if the Trading Halt is lifted prior to the close of trading. In this event, MOC/LOC orders may be entered to offset the published imbalance. If the Trading Halt is not lifted, the entry of MOC/LOC interest, including offsetting interest, is prohibited.

Where a Trading Halt occurs in a security after a Mandatory MOC/LOC Imbalance is published (*i.e.,* after 3:45 p.m.), MOC/LOC orders may be entered to offset the published imbalance.[69] Where a Trading Halt occurs after 3:45 p.m. and there is no Mandatory MOC/LOC Imbalance in the security, the entry of MOC/LOC interest will not be allowed.[70]

Unlike MOC/LOC orders, the entry of CO orders on both sides of the market will be permitted when a Trading Halt occurs in a security, but is lifted prior to the close of trading in the security. Because CO orders are the interest of last resort in the closing transaction, entry of such orders is not restricted to offsetting the Mandatory MOC/LOC Imbalance.

[68] *See* proposed NYSE Amex Equities Rule 123C(1)(f).

[69] *See* proposed NYSE Amex Equities Rule 123C(2)(c)(i).

[70] *See* proposed NYSE Amex Equities Rule 123C(2)(c)(iii).

Rescission of Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements

The Exchange further proposes to amend NYSE Amex Equities Rule 123C to rescind the provisions governing ''Expiration Friday Auxiliary Procedures for the Opening''. The provisions governing Expiration Friday are vestigial in that they were created to facilitate a fair and orderly opening transaction in light of the additional order flow on Expiration Fridays. Today, modifications to Exchange systems allow the DMM to accommodate for such fluctuation in volume, thus rendering the provisions of this section unnecessary. Moreover, the order marking provisions (*i.e.,* appending the indicator ''OPG'') were an accommodation to member organizations whose systems were unable to electronically affix the OPG designation. Today, all Exchange member organizations are capable of affixing appropriate order designations rendering these provisions unwarranted. For these reasons the Exchange believes that the rescission of the Expiration Friday Auxiliary Procedures for the Opening is appropriate.

In keeping with the above amendments, the Exchange further seeks to make the provisions of NYSE Amex Equities Rule 123C govern solely Market and Limit ''on the Close'' Policy. Therefore, the Exchange proposes to delete the ''Due Diligence Requirements'' from this rule as they are redundant provisions that are codified in NYSE Amex Equities Rule 405 (''Diligence as to Accounts'').

Conclusion

The Exchange believes that requiring MOC/LOC interest to be electronically entered will increase the efficiency at the point of sale. It will provide accurate information faster to market participants and allow the DMM greater control in active trading crowds. Furthermore, the Exchange believes that moving the cut-off time for the entry of MOC/LOC orders from 3:40 p.m. to 3:45 p.m. will allow Exchange participants greater control of the handling of their orders to be executed in the closing transaction and greater participation in active markets. The Exchange further believes that the proposed amendments to create the CO order will add greater efficiency to the closing process by providing an additional source of liquidity to offset an imbalance going into the closing transaction. The proposed modifications will provide investors with a more accurate depiction of the market interest prior to the closing transaction thereby allowing them to make better informed trading decisions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[71] in general, and furthers the objectives of Section 6(b)(5) of the Act,[72] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change will facilitate the timely and efficient closing of securities on the Exchange by increasing transparency and providing market participants with an additional method of offset imbalances prior to the closing transaction that ultimately serves to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register.** The Commission

[71] 15 U.S.C. 78f(b).

[72] 15 U.S.C. 78f(b)(5).

is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

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-2009–81 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-2009–81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex-2009–81 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[73]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27502 Filed 11–16–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60968; File No. SR–NYSEAmex–2009–63]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Permitting Affiliation with NYFIX Millennium L.L.C. and NYFIX Securities Corporation

November 9, 2009.

I. Introduction

On September 22, 2009, NYSE Amex LLC (''NYSE Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposing that the Exchange be affiliated with two registered broker-dealer subsidiaries of NYFIX, Inc. (''NYFIX''), NYFIX Millennium L.L.C. (''NYFIX Millennium'') and NYFIX Securities Corporation (''NYFIX Securities''), for a period not to exceed six months and subject to certain limitations and obligations. The proposed rule change was published for comment in the **Federal Register** on October 5, 2009.[3] On November 6, 2009, NYSE Amex filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change as modified by Amendment No. 1.

II. Overview

On August 26, 2009, NYSE Technologies entered into an Agreement and Plan of Merger (''Merger Agreement'') with NYFIX and CBR Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of NYSE Technologies. Under the terms of the Merger Agreement, CBR Acquisition Corp. will merge with and into NYFIX, with NYFIX surviving the merger as a direct wholly owned subsidiary of NYSE Technologies (''Merger''). Following the Merger, both the Exchange and NYFIX will be indirect wholly owned subsidiaries of NYSE Euronext. Consequently, NYFIX, and its subsidiaries NYFIX Millennium and NYFIX Securities, will be affiliates of the Exchange.

As a result of the Merger, NYSE Technologies will acquire, among other things, NYFIX's Transaction Services Division. In the U.S., the Transaction Services Division is currently composed of two U.S. registered broker-dealer subsidiaries: NYFIX Millennium, which is also an alternative trading system registered under Regulation ATS under the Act;[5] and, NYFIX Securities. In addition to other services provided by NYFIX Millennium and NYFIX Securities, (1) NYFIX Millennium provides routing of orders that are not matched within the NYFIX Millennium matching system to marketplaces such as exchanges, electronic communication networks, and ATSs, which are not operated by NYFIX; and (2) NYFIX Securities provides direct electronic market access and algorithmic trading products (together, ''Routing Services'').

The Exchange proposes to be affiliated with NYFIX Millennium and NYFIX Securities for a period not to exceed six months and subject to certain terms and conditions that the Exchange believes effectively address concerns regarding the (1) the potential for conflicts of interest where an exchange is affiliated with a broker-dealer conducting an order routing business that may interact with the Exchange itself, and (2) the potential for informational advantages that could place such an affiliated broker-dealer at a competitive advantage in comparison with other non-affiliated broker-dealers.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent

[73] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 60739 (September 29, 2009), 74 FR 51203 (''Notice'').

[4] In Amendment No. 1, the Exchange clarified that, with respect to the conditions on the Exchange's affiliation with NYFIX Millennium and NYFIX Securities, references to NYFIX also refer to its subsidiaries, NYFIX Millennium and NYFIX Securities. This technical amendment does not require notice and comment, as it did not materially affect the substance of the rule filing.

[5] 17 CFR 242.300–303.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

with Section 6(b)(5) of the Act,[7] which requires, among other things, 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.[8] The proposed relationship raises similar concerns in that the Exchange will be affiliated with two broker-dealers that provide Routing Services for orders that may be routed to the Exchange in competition with Exchange members. The Exchange has requested that the Commission approve its proposed affiliation with NYFIX Millennium and NYFIX Securities on a temporary basis, not to exceed six months, subject to certain conditions designed to address such concerns.

Specifically, so long as the Exchange is affiliated with NYFIX Millennium or NYFIX Securities and with respect to the Routing Services provided by each: [9]

(1) Neither NYFIX Millennium nor NYFIX Securities are members of the Exchange nor will they become members of the Exchange;

(2) NYFIX does not offer order routing services other than the Routing Services, and none of the Routing Services will be modified unless such modification is approved by the Commission;

(3) NYFIX will not engage in proprietary trading;

(4) NYFIX will not accept any new clients for the Routing Services after the Merger;

(5) There will continue to be independent functionality of, and full public access to, NYSE facilities; and

(6) There will be a complete separation between NYFIX, on the one hand, and the Exchange and its affiliates, on the other (*e.g.,* no shared office space, no shared employees, no shared systems).

The Exchange may furnish to NYFIX the same information on the same terms that the Exchange makes available in the normal course of business to any other person. Specifically:

(a) NYFIX must not be provided an information advantage concerning the operation of the Exchange or any of its facilities, particularly regarding changes and improvements to the trading systems, that are not available to the industry generally.

(b) NYFIX will be prevented from having any advance knowledge of proposed changes or modifications to the operations of the Exchange or its facilities, including but not limited to advance knowledge of related filings by the Exchange pursuant to Rule 19b–4 of the of the Act.[10]

(c) NYFIX will not share employees or databases with the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities, and will be housed in a separate office.

(d) NYFIX will only be notified of any changes or improvements to any of the Exchange's operations or trading facilities in the same manner that other persons are notified of such changes or improvements;

(e) NYFIX will not disclose any system or design specifications, or any other information, to any employees of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities that would give NYFIX an unfair advantage over its competitors.

(f) None of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities will disclose any system or design specifications, or any other information, to any employees of NYFIX or any affiliate of NYFIX that would give the Exchange, any other facility of the Exchange, any other affiliate of the Exchange, or NYFIX an unfair advantage over its competitors.

The Commission also notes that each of NYFIX Millenium and NYFIX Securities has the Financial Industry Regulatory Authority (''FINRA''), an unaffiliated self-regulatory organization (''SRO''), as its designated examining authority and neither broker-dealer is a member of the Exchange.[11]

The Commission finds that the temporary proposed affiliation between the Exchange and NYFIX Millennium and NYFIX Securities, pursuant to the proposed terms and conditions, is consistent with the Act, particularly Section 6(b)(5) thereunder.[12] The Commission continues to be concerned about potential unfair competition and conflicts of interest when an exchange, or one of its affiliates, is the parent company of a broker-dealer that provides Routing Services that may be in competition with services provided by members of that exchange. The Commission believes, however, that the temporary nature of the affiliation, together with the proposed terms and conditions, are reasonably designed to mitigate concern about potential unfair competition and conflicts of interest between the commercial interests of the Exchange or its affiliates, and the Exchange's regulatory responsibilities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEAmex—2009–63), as amended, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27500 Filed 11–16–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60970; File No. SR–NYSEArca–2009–95]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of ETFS Platinum Trust

November 9, 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 20, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the

[7] 15 U.S.C. 78f(b)(5≤.

[8] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving combination of NYSE and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62) (order approving acquisition of the American Stock Exchange by NYSE Euronext); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

[9] For the conditions set forth below, references to NYFIX also refer to its subsidiaries NYFIX Millennium and NYFIX Securities. *See* Amendment No. 1, *supra* note 4.

[10] 15 U.S.C. 78a.

[11] *See* Notice.

[12] 15 U.S.C. 78(f)(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The 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, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to list and trade shares of the ETFS Platinum Trust (the ''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade ETFS Platinum Shares (''Shares'') of the Trust under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.'' [3] The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 of other issues of Commodity-Based Trust Shares. The Commission has approved listing on the Exchange of the streetTRACKS Gold Trust and iShares COMEX Gold Trust.[4] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (''NYSE'') and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC (now known as ''NYSE Amex LLC'').[5] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.[6] The Commission also has approved listing of the iShares Silver Trust on the Exchange [7] and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC.[8]

The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of platinum, less the expenses of the Trust's operations.[9]

ETFS Services USA LLC is the sponsor of the Trust (''Sponsor''), The Bank of New York Mellon is the trustee of the Trust (''Trustee''),[10] and HSBC Bank USA, N.A. is the custodian of the Trust (''Custodian'').[11]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[12]

Operation of the Platinum Market

According to the Registration Statement, the global trade in platinum consists of Over-the-Counter (OTC) transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The OTC market trades on a 24-hour per day continuous basis and accounts for most global platinum trading.

Market makers, as well as others in the OTC market, trade with each other and with their clients on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. Market makers include the market-making members of the LPPM, the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the LPPM. The four market-making members of the LPPM are: J.Aron & Company (a division of Goldman Sachs International), Engelhard Metals Limited, HSBC Bank USA, N.A. (through its London branch), and Standard Bank. The OTC market provides a relatively flexible market in terms of quotes, price, size, destinations for delivery and other factors. Bullion dealers customize transactions to meet clients' requirements. The OTC market has no formal structure and no open-outcry meeting place.

[3] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[4] *See* Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[5] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE); Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

[6] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[7] *See* Securities Exchange Act Release Nos. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing on the Exchange of the iShares Silver Trust).

[8] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[9] *See* Amendment No. 2 to the Registration Statement for the ETFS Platinum Trust on Form S–1, filed with the Commission on October 20, 2009 (File No. 333–158381) (''Registration Statement''). The descriptions of the Trust, the Shares and the platinum market contained herein are based on the Registration Statement.

[10] The Trustee is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Trustee's principal responsibilities include (1) transferring the Trust's platinum as needed to pay the Sponsor's Fee in platinum (platinum transfers are expected to occur approximately monthly in the ordinary course), (2) valuing the Trust's platinum and calculating the NAV of the Trust and the NAV per Share, (3) receiving and processing orders from Authorized Participants to create and redeem Baskets and coordinating the processing of such orders with the Custodian and DTC, (4) selling the Trust's platinum as needed to pay any extraordinary Trust expenses that are not assumed by the Sponsor, (5) when appropriate, making distributions of cash or other property to Shareholders, and (6) receiving and reviewing reports from or on the Custodian's custody of and transactions in the Trust's platinum.

[11] The Custodian is responsible for safekeeping for the Trust platinum deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian is also responsible for selecting the Zurich Sub-Custodians and its other direct sub-custodians, if any. The Custodian facilitates the transfer of platinum in and out of the Trust through the unallocated platinum accounts it will maintain for each Authorized Participant and the unallocated and allocated platinum accounts it will maintain for the Trust. The Custodian is responsible for allocating specific plates or ingots of physical platinum to the Trust's allocated platinum account. The Custodian will provide the Trustee with regular reports detailing the platinum transfers in and out of the Trust's unallocated and allocated platinum accounts and identifying the platinum plates or ingots held in the Trust's allocated platinum account.

[12] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Securities Exchange of 1934 (''Act'') (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A–3(c)(7).

According to the Registration Statement, the main centers of the OTC market are London, New York, Hong Kong and Zurich. Mining companies, manufacturers of jewelry and industrial products, together with investors and speculators, tend to transact their business through one of these market centers. Centers such as Dubai and several cities in the Far East also transact substantial OTC market business, typically involving jewelry and small plates or ingots (1 kilogram or less) and will hedge their exposure by selling into one of these main OTC centers. Precious metals dealers have offices around the world and most of the world's major bullion dealers are either members or associate members of the London Bullion Market Association and/or the LPPM. In the OTC market, the standard size of platinum trades between market makers is 1,000 ounces.

Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's ''buy'' and ''sell'' prices. The period of greatest liquidity in the platinum market generally occurs at the time of day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York and other centers coincides with futures and options trading on the COMEX. This period lasts for approximately four hours each New York business day morning.[13]

The London Platinum Market

According to the Registration Statement, although the market for physical platinum is distributed globally, most OTC market trades are cleared through London. In addition to coordinating market activities, the London Platinum Palladium Market (''LPPM'') acts as the principal point of contact between the market and its regulators. A primary function of the LPPM is its involvement in the promotion of refining standards by maintenance of the ''London/Zurich Good Delivery Lists,'' which are the lists of LPPM accredited melters and assayers of platinum. The LPPM also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.

Platinum is traded generally on a loco Zurich basis, meaning the precious metal is physically held in vaults in Zurich or is transferred into accounts established in Zurich. The basis for settlement and delivery of a loco Zurich spot trade is payment (generally in U.S. dollars) two business days after the trade date against delivery. Delivery of the platinum can either be by physical delivery or through the clearing systems to an unallocated account.

The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams is equivalent to 32.1507465 troy ounces, and one troy ounce is equivalent to 31.1034768 grams. A London/Zurich good delivery plate or ingot is acceptable for delivery in settlement of a transaction on the OTC market. Typically referred to as Good Delivery, a plate or ingot must contain between 32 and 192 troy ounces of platinum with a minimum fineness (or purity) of 999.5 parts per 1,000 (99.95%), be of good appearance, and be easy to handle and stack. The platinum content of a platinum plate or ingot is calculated by multiplying the gross weight (expressed in units of 0.025 troy ounces) by the fineness of the plate or ingot. A Good Delivery plate or ingot must also bear the stamp of one of the melters and assayers who are on the LPPM approved list. Unless otherwise specified, the platinum spot price always refers to that of Good Delivery Standards. Business is generally conducted over the phone and through electronic dealing systems.[14]

Twice daily during London trading hours there is a fix which provides reference platinum prices for that day's trading. Many long-term contracts will be priced on the basis of either the morning (AM) or afternoon (PM) London fix, and market participants will usually refer to one or the other of these prices when looking for a basis for valuations. The London fix is the most widely used benchmark for daily platinum prices and is quoted by various financial information sources.

Formal participation in the London fix is traditionally limited to four members, each of which is a bullion dealer and a member of the LPPM. The chairmanship now rotates annually among the four member firms. The morning session of the fix starts at 9:45 a.m. London time and the afternoon session starts at 2 p.m. London time. The members of the LPPM fixing are currently: J.Aron & Company (a division of Goldman Sachs International), Engelhard Metals Limited, HSBC Bank USA N.A. (London branch), and Standard Bank London Limited. Any other market participant wishing to participate in the trading on the fix is required to do so through one of the four platinum fixing members.

Orders are placed either with one of the four fixing members or with another precious metals dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a ''trying price,'' reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms which have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The platinum price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. The London fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

Futures Exchanges

The most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange (TOCOM). The NYMEX is the largest exchange in the world for trading precious metals futures and options and has been trading platinum since 1974. The TOCOM has been trading platinum since 1982. Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. The NYMEX operates through a central clearance system. On June 6, 2003, TOCOM adopted a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

Market Regulation

The global platinum markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and

[13] The Registration Statement includes a table with data regarding World Platinum Supply and demand 1998–2008. According to the Registration Statement, the table illustrates that the platinum supply over the past ten years has averaged 6.8 million ounces with the majority of production from South Africa. Production from South Africa, on average, accounts for approximately 68% of total production. There is a 20% increase in platinum supply when comparing the average five-year periods ended 2003 and 2008, at 6.2 million ounces and 7.4 million ounces, respectively. The biggest source of demand for platinum output from 1998–2008 has come from the autocatalyst sector, which has accounted for an approximate average of 44% of all demand. Conversely, the jewelry sector has seen a continuous decline in demand continually 2002 to 2008. From 2002 levels, 2008 jewelry demand has decreased by 60%. The annual demand for platinum over the past 10 years has averaged approximately 7.0 million ounces.

[14] Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

participants. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LPPM, falls under the authority of the Financial Services Authority (''FSA'') as provided by the Financial Services and Markets Act 2000 (''FSM Act''). Under this act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls.

The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of platinum not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England.

The TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices. To act as a Futures Commission Merchant Broker, a broker must obtain a license from Japan's Ministry of Economy, Trade and Industry (''METI''), the regulatory authority that oversees the operations of the TOCOM.

The Trust will not trade in platinum futures contracts on the NYMEX or on any other futures exchange. The Trust will only take delivery of physical platinum that complies with the NYMEX platinum delivery rules or the LPPM platinum delivery rules. Because the Trust will not trade in platinum futures contracts on any futures exchange, the Trust will not be regulated by the Commodity Futures Trading Commission (''CFTC'') under the Commodity Exchange Act [15] (''CEA'') as a ''commodity pool,'' and will not be operated by a CFTC-regulated commodity pool operator. Investors in the Trust will not receive the regulatory protections afforded to investors in regulated commodity pools, nor may the NYMEX or any futures exchange enforce its rules with respect to the Trust's activities. In addition, investors in the Trust will not benefit from the protections afforded to investors in platinum futures contracts on regulated futures exchanges.

Custody of the Trust's Platinum

Custody of the physical platinum deposited with and held by the Trust will be provided by the Custodian at its London, England vaults, by Zurich Sub-Custodians selected by the Custodian in their Zurich vaults and by other sub-custodians on a temporary basis only. The Custodian is a market maker, clearer and approved weigher under the rules of the LPPM.

The Custodian is the custodian of the physical platinum credited to the Trust Allocated Account in accordance with the Custody Agreements. The Custodian will segregate the physical platinum credited to the Trust Allocated Account from any other precious metal it holds or holds for others by entering appropriate entries in its books and records, and will require any Zurich Sub-Custodian it appoints to also segregate the physical platinum from the other platinum held by them for other customers of the Custodian and the Zurich Sub-Custodian's other customers. The Custodian will require any Zurich Sub-Custodian it appoints to identify in such Zurich Sub-Custodian's books and records the Trust as having the rights to the physical platinum credited to its Trust Allocated Account.

The Custodian, as instructed by the Trustee, is authorized to accept, on behalf of the Trust, deposits of platinum in unallocated form. Acting on standing instructions specified in the Custody Agreements, the Custodian will or will require a Zurich Sub-Custodian to allocate platinum deposited in unallocated form with the Trust by selecting plates or ingots of physical platinum for deposit to the Trust Allocated Account. All physical platinum allocated to the Trust must conform to the rules, regulations, practices and customs of the LPPM.

The process of withdrawing platinum from the Trust for a redemption of a Basket will follow the same general procedure as for depositing platinum with the Trust for a creation of a Basket, only in reverse. Each transfer of platinum between the Trust Allocated Account and the Trust Unallocated Account connected with a creation or redemption of a Basket may result in a small amount of platinum being held in the Trust Unallocated Account after the completion of the transfer. In making deposits and withdrawals between the Trust Allocated Account and the Trust Unallocated Account, the Custodian will use commercially reasonable efforts to minimize the amount of platinum held in the Trust Unallocated Account as of the close of each business day and in any case not to exceed 192 troy ounces of platinum.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act of 1940 [16] and is not required to register under such act. The Trust will not hold or trade in commodity futures contracts regulated by the CEA, as administered by the CFTC. The Trust is not a commodity pool for purposes of the CEA, and neither the Sponsor nor the Trustee is subject to regulation by the CFTC as a commodity pool operator or a commodity trading advisor in connection with the Shares.

Sponsor's Estimate of Expected Size of the Trust

The Sponsor has made representations to the Commission regarding the expected size of the Trust and the expected impact of the offering of the Shares on the global platinum market.[17] In the May 15, 2009 Letter, the Sponsor has stated its expectation that the Trust's assets under management (''AUM'') would be between $240 million and $480 million after three years of the Trust's operation, and using the platinum spot market price of $1149.00 per ounce as of May 8, 2009, the Trust would be expected to be acquiring between approximately 70,000 to 140,000 ounces of platinum on an annual basis.[18] The Sponsor has represented that it does not believe that the currently expected size of the Trust will have a meaningful effect on the global supply or demand for platinum, and that the Trust's highest forecast platinum acquisitions would represent 2.1% and 2.0%, respectively, of the 10-year average annual supply and demand for platinum through the end of 2008.[19] The Sponsor, therefore, has stated its belief that, in view of the amount of Shares sought to be registered, the Trust believes there will be a market neutral impact given that the Shares can be a current source of supply at then current prices through redemptions.[20]

[15] 7 U.S.C. 1 *et seq.*

[16] 15 U.S.C. 80a.

[17] *See* Supplemental Comment Response regarding the Trust, dated May 15, 2009, from Peter J. Shea, Katten Muchin Rosenman LLP, to the Commission (submitted via EDGAR) (''May 15, 2009 Letter'').

[18] The Exchange notes that ETF Securities Ltd., the Sponsor's parent entity, has sponsored ETFS Platinum ETP, traded on the London Stock Exchange (ticker symbol: PHPT), which had AUM of approximately $347.8 million as of May 8, 2009.

[19] *See* note 13, *supra.*

[20] The Sponsor states that it intends to recast its analysis each time it seeks to register additional Shares of the Trust in the future to ensure that additional Trust offerings will not be disruptive to platinum supply and demand. May 15, 2009 Letter at p. 4. As stated in the May 15, 2009 Letter, the Registration Statement seeks to register 4,780,000 Shares, and that, at an estimated platinum acquisition rate of 140,000 ounces per year, the

In the May 15, 2009 Letter, the Sponsor also states that it expects that the offering of the Shares will not have a meaningful impact on the global platinum market, founded on the Sponsor's belief that the present Share offering is limited to an appropriate size and that arbitrage opportunities between platinum market prices and the Trust's net asset value together with the low cost creation and redemption process utilizing physical metal will neutralize any impact of the Trust on the broader platinum market.[21]

According to the Registration Statement, since there is no limit on the amount of platinum that the Trust may acquire, the Trust, as it grows, may have an impact on the supply and demand of platinum that ultimately may affect the price of the Shares in a manner unrelated to other factors affecting the global market for platinum.

Secondary Market Trading

While the Trust's investment objective is for the Shares to reflect the performance of platinum, less the expenses of the Trust, the Shares may trade in the secondary market on the NYSE Arca at prices that are lower or higher relative to their net asset value (''NAV'') per Share. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the NYMEX and London. While the Shares will trade on the NYSE Arca until 8 PM New York time, liquidity in the global platinum market will be reduced after the close of the NYMEX at 1:05 PM New York time. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Trust Expenses

The Trust's only ordinary recurring expense is expected to be equal to the Sponsor's Fee. In exchange for the Sponsor's Fee, the Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: the Trustee's monthly fee and out-of-pocket expenses, the Custodian's fee, Exchange listing fees, SEC registration fees, printing and mailing costs, audit fees and up to $100,000 per annum in legal expenses. The Sponsor will also pay the costs of the Trust's organization and the initial sale of the Shares, including the applicable SEC registration fees.

The Sponsor's Fee will accrue daily at an annualized rate equal to a specified percentage of the adjusted net asset value of the Trust and will be payable monthly in arrears. The Sponsor, from time to time, may temporarily waive all or a portion of the Sponsor's Fee at its discretion for a stated period of time.

The Trust will deliver platinum to the Sponsor to pay the Sponsor's Fee and sell platinum to raise the funds needed for the payment of all Trust expenses not assumed by the Sponsor. The purchase price received as consideration for such sales will be the Trust's sole source of funds to cover its liabilities. The Trust will not engage in any activity designed to derive a profit from changes in the price of platinum. Platinum not needed to redeem Baskets, or to cover the Sponsor's Fee and Trust expenses not assumed by the Trustee, will be held in physical form by the Custodian (except for residual amounts not exceeding 192 ounces of platinum, the maximum weight to make one Good Delivery plate or ingot, which will be held in unallocated form by the Custodian on behalf of the Trust). As a result of the recurring deliveries of platinum necessary to pay the Sponsor's Fee in-kind and potential sales of platinum to pay in cash the Trust expenses not assumed by the Sponsor, the net asset value of the Trust and, correspondingly, the fractional amount of physical platinum represented by each Share will decrease over the life of the Trust.[22]

Creation and Redemption of Shares

The Trust will create and redeem Shares in one or more Baskets (a Basket equals a block of 50,000 Shares). The creation and redemption of Baskets will only be made ''in-kind'' in exchange for the delivery to the Trust or the distribution by the Trust of the amount of platinum and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received. The creation and redemption of Baskets may occur daily.

Authorized Participants are the only persons that may place orders to create and redeem Baskets.[23] Authorized Participants will pay a transaction fee of $500 to the Trustee for each order they place to create or redeem one or more Baskets. Authorized Participants who make deposits with the Trust in exchange for Baskets will receive no fees, commissions or other form of compensation or inducement of any kind from either the Sponsor or the Trust, and no such person has any obligation or responsibility to the Sponsor or the Trust to effect any sale or resale of Shares.

According to the Registration Statement, certain Authorized Participants are expected to have the facility to participate directly in the physical platinum market and the platinum futures market. In some cases, an Authorized Participant may from time to time acquire platinum from or sell platinum to its affiliated platinum trading desk, which may profit in these instances. Each Authorized Participant will have its own set of rules and procedures, internal controls and information barriers as it determines is appropriate in light of its own regulatory regime.

Shareholders who are not Authorized Participants will only be able to redeem their Shares through an Authorized Participant.

All platinum will be delivered to the Trust and distributed by the Trust in unallocated form through credits and debits between Authorized Participant Unallocated Accounts and the Trust Unallocated Account. Platinum transferred from an Authorized Participant Unallocated Account to the Trust in unallocated form will first be credited to the Trust Unallocated Account. Thereafter, the Custodian will allocate specific plates or ingots of platinum representing the amount of platinum credited to the Trust Unallocated Account (to the extent such amount is representable by whole platinum plates or ingots) to the Trust Allocated Account. The movement of platinum is reversed for the distribution of platinum to an Authorized Participant in connection with the redemption of Baskets.

All physical platinum represented by a credit to any Authorized Participant Unallocated Account and to the Trust Unallocated Account and all physical platinum held in the Trust Allocated Account with the Custodian must be of at least a minimum fineness (or purity) of 999.5 parts per 1,000 (99.95%) and otherwise conform to the rules,

Trust would complete its Share offering in approximately 3.4 years.

[21] May 15, 2009 Letter at p. 5.

[22] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to David Liu, Assistant Director, Christopher W. Chow, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated November 9, 2009.

[23] Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions that are exempt from registration as broker-dealers to engage in securities transactions, and (2) participants in DTC. To become an Authorized Participant, a person must enter into an Authorized Participant Agreement with the Sponsor and the Trustee. The Authorized Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of the platinum and any cash required for such creations and redemptions.

regulations practices and customs of the LPPM, including the specifications for a Good Delivery plate or ingot.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. Creation and redemption orders will be accepted on ''business days'' when the NYSE Arca is open for regular trading. Settlements of such orders requiring receipt or delivery, or confirmation of receipt or delivery, of platinum in the United Kingdom, Zurich or another jurisdiction will occur on ''business days'' when (1) banks in the United Kingdom, Zurich or such other jurisdiction and (2) the London/Zurich or such other platinum markets are regularly open for business. If such banks or the London/Zurich platinum markets are not open for regular business for a full day, such a day will only be a ''business day'' for settlement purposes if the settlement procedures can be completed by the end of such day. Settlement of platinum deliveries, which occur loco Zurich, may be delayed for longer than three business days. Settlement of orders requiring receipt or delivery, or confirmation of receipt or delivery, of Shares will occur, after confirmation of the applicable platinum delivery, on ''business days'' when the NYSE Arca is open for regular trading. Purchase orders must be placed by 4 p.m. New York time or the close of regular trading on the NYSE Arca, whichever is earlier. The day on which the Trustee receives a valid purchase order is the purchase order date.

By placing a purchase order, an Authorized Participant agrees to deposit platinum with the Trust, or a combination of platinum and cash, as described below. Prior to the delivery of Baskets for a purchase order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the purchase order.

Determination of Required Deposits

The total deposit required to create each Basket (''Creation Basket Deposit'') will be an amount of platinum and cash, if any, that is in the same proportion to the total assets of the Trust (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to purchase is properly received as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. The Sponsor anticipates that in the ordinary course of the Trust's operations a cash deposit will not be required for the creation of Baskets.

The amount of the required platinum deposit is determined by dividing the number of ounces of platinum held by the Trust by the number of Baskets outstanding, as adjusted for estimated accrued but unpaid fees and expenses as described in the next paragraph.

The amount of any required cash deposit is determined as follows. The estimated unpaid fees, expenses and liabilities of the Trust accrued through the purchase order date are subtracted from any cash held or receivable by the Trust as of the purchase order date. The remaining amount is divided by the number of Shares outstanding immediately before the purchase order date and then multiplied by the number of Shares being created pursuant to the purchase order. If the resulting amount is positive, this amount is the required cash deposit. If the resulting amount is negative, the amount of the required platinum deposit will be reduced by the number of fine ounces of platinum equal in value to that resulting amount, determined at the price of platinum used in calculating the NAV of the Trust on the purchase order date. Fractions of a fine ounce of platinum smaller than 0.001 of a fine ounce which are included in the platinum deposit amount are disregarded. All questions as to the composition of a Creation Basket Deposit will be finally determined by the Trustee. The Trustee's determination of the Creation Basket Deposit shall be final and binding on all persons interested in the Trust.

Delivery of Required Deposits

An Authorized Participant who places a purchase order is responsible for crediting its Authorized Participant Unallocated Account with the required platinum deposit amount by the third business day in Zurich following the purchase order date. Upon receipt of the platinum deposit amount, the Custodian, after receiving appropriate instructions from the Authorized Participant and the Trustee, will transfer on the third business day following the purchase order date the platinum deposit amount from the Authorized Participant Unallocated Account to the Trust Unallocated Account and the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account. The expense and risk of delivery, ownership and safekeeping of platinum until such platinum has been received by the Trust shall be borne solely by the Authorized Participant. The Trustee may accept delivery of platinum by such other means as the Sponsor, from time to time, may determine to be acceptable for the Trust, provided that the same is disclosed in a Trust prospectus. If platinum is to be delivered other than as described above, the Sponsor is authorized to establish such procedures and to appoint such custodians and establish such custody accounts in addition to those described in this prospectus, as the Sponsor determines to be desirable.

Acting on standing instructions given by the Trustee, the Custodian will transfer the platinum deposit amount from the Trust Unallocated Account to the Trust Allocated Account by transferring platinum plates and ingots from its inventory to the Trust Allocated Account. The Custodian will use commercially reasonable efforts to complete the transfer of platinum to the Trust Allocated Account prior to the time by which the Trustee is to credit the Basket to the Authorized Participant's DTC account; if, however, such transfers have not been completed by such time, the number of Baskets ordered will be delivered against receipt of the platinum deposit amount in the Trust Unallocated Account, and all Shareholders will be exposed to the risks of unallocated platinum to the extent of that platinum deposit amount until the Custodian completes the allocation process.

The Trustee may reject a purchase order or a Creation Basket Deposit if such order or Creation Basket Deposit if [sic] not presented in proper form as described in the Authorized Participant Agreement or if the fulfillment of the order, in the opinion of counsel, might be unlawful.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed by 4 PM New York time or the close of regular trading on the NYSE Arca, whichever is earlier. A redemption order so received is effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket, or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust not later than the third business day following the effective date of the

redemption order. Prior to the delivery of the redemption distribution for a redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the redemption order.

Determination of Redemption Distribution

The redemption distribution from the Trust will consist of (1) a credit to the redeeming Authorized Participant's Authorized Participant Unallocated Account representing the amount of the platinum held by the Trust evidenced by the Shares being redeemed plus or minus (2) the cash redemption amount. The cash redemption amount is equal to the value of all assets of the Trust other than platinum less all estimated accrued but unpaid expenses and other liabilities, divided by the number of Baskets outstanding and multiplied by the number of Baskets included in the Authorized Participant's redemption order. The Trustee will distribute any positive cash redemption amount through DTC to the account of the Authorized Participant as recorded on DTC's book entry system. If the cash redemption amount is negative, the credit to the Authorized Participant Unallocated Account will be reduced by the number of ounces of platinum equal in value to the negative cash redemption amount, determined at the price of platinum used in calculating the NAV of the Trust on the redemption order date. The Sponsor anticipates that in the ordinary course of the Trust's operations there will be no cash distributions made to Authorized Participants upon redemptions. Fractions of a fine ounce of platinum included in the redemption distribution smaller than 0.001 of a fine ounce are disregarded. Redemption distributions will be subject to the deduction of any applicable tax or other governmental charges which may be due.

Delivery of Redemption Distribution

The redemption distribution due from the Trust will be delivered to the Authorized Participant on the third business day following the redemption order date if, by 9 a.m. New York time on such third business day, the Trustee's DTC account has been credited with the Baskets to be redeemed. Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

The Custodian will transfer the redemption platinum amount from the Trust Allocated Account to the Trust Unallocated Account and, thereafter, to the redeeming Authorized Participant's Authorized Participant Unallocated Account.

The Trustee may, in its discretion, and will when directed by the Sponsor, suspend the right of redemption, or postpone the redemption settlement date, (1) for any period during which the NYSE Arca is closed other than customary weekend or holiday closings, or trading on the NYSE Arca is suspended or restricted or (2) for any period during which an emergency exists as a result of which delivery, disposal or evaluation of platinum is not reasonably practicable.

The Trustee will reject a redemption order if the order is not in proper form as described in the Authorized Participant Agreement or if the fulfillment of the order, in the opinion of its counsel, might be unlawful.

Creation and Redemption Transaction Fee

To defray the costs incurred by the Trustee in providing services for processing the creation and redemption of Baskets, an Authorized Participant will be required to pay a transaction fee to the Trustee of $500 per order to create or redeem Baskets. An order may include multiple Baskets. The transaction fee may be reduced, increased or otherwise changed by the Trustee with the consent of the Sponsor. The Trustee shall notify DTC of any agreement to change the transaction fee and will not implement any increase in the fee for the redemption of Baskets until 30 days after the date of the notice.

Termination Events

The Trustee will terminate and liquidate the Trust if the aggregate market capitalization of the Trust, based on the closing price for the Shares, was less than $350 million (as adjusted for inflation) at any time after the first anniversary after the Trust's formation and the Trustee receives, within six months after the last of those trading days, notice from the Sponsor of its decision to terminate the Trust. The Trustee will terminate the Trust if the CFTC determines that the Trust is a commodities pool under the CEA. The Trustee may also terminate the Trust upon the agreement of the owners of beneficial interests in the Shares (''Shareholders'') owning at least 75% of the outstanding Shares.

Additional information regarding the Shares and the operation of the Trust, including termination events, risks, and creation and redemption procedures, are described in the Registration Statement.

Valuation of Platinum, Definition of Net Asset Value and Adjusted Net Asset Value (''ANAV'')

As of the London PM Fix on each day that the NYSE Arca is open for regular trading or, if there is no London PM Fix on such day or the London PM Fix has not been announced by 12 noon New York time on such day, as of 12 noon New York time on such day (Evaluation Time), the Trustee will evaluate the platinum held by the Trust and determine both the ANAV and the NAV of the Trust.

At the Evaluation Time, the Trustee will value the Trust's platinum on the basis of that day's London PM Fix or, if no London PM Fix is made on such day or has not been announced by the Evaluation Time, the next most recent London platinum price fix (AM or PM) determined prior to the Evaluation Time will be used, unless the Sponsor determines that such price is inappropriate as a basis for evaluation. In the event the Sponsor determines that the London PM Fix or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's platinum is not an appropriate basis for evaluation of the Trust's platinum, it shall identify an alternative basis for such evaluation to be employed by the Trustee. Neither the Trustee nor the Sponsor shall be liable to any person for the determination that the London PM Fix or last prior London platinum price fix is not appropriate as a basis for evaluation of the Trust's platinum or for any determination as to the alternative basis for such evaluation provided that such determination is made in good faith.[24]

Once the value of the platinum has been determined, the Trustee will subtract all estimated accrued but unpaid fees, expenses and other liabilities of the Trust from the total value of the platinum and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). The resulting figure is the ANAV of the Trust. The ANAV of the Trust is used to compute the Sponsor's Fee.

To determine the Trust's NAV, the Trustee will subtract the amount of estimated accrued but unpaid fees computed by reference to the ANAV of the Trust and to the value of the platinum held by the Trust from the ANAV of the Trust. The resulting figure is the NAV of the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on the NYSE Arca (which includes the net number of any Shares created or redeemed on such evaluation day).

[24] The Exchange, pursuant to NYSE Arca Equities Rule 7.12, has the discretion to halt trading in the Shares if the London Fix is not determined or available for an extended period based on extraordinary circumstances or market conditions.

The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include estimated accrued but unpaid fees and expenses). In determining the NAV of the Trust, the Trustee will value the platinum held by the Trust on the basis of the price of an ounce of platinum as set by the afternoon session of the twice daily fix of the price of an ounce of platinum which starts at 2 p.m. London, England time (London PM Fix) and is performed by the four members of the London Platinum and Palladium Market (LPPM). The Trustee will determine the NAV of the Trust on each day the NYSE Arca is open for regular trading, at the earlier of the London PM Fix for the day or 12 noon New York time. If no London PM Fix is made on a particular evaluation day or has not been announced by 12 noon New York time on a particular evaluation day, the next most recent London platinum price fix (AM or PM) will be used in the determination of the NAV of the Trust, unless the Sponsor determines that such price is inappropriate to use as basis for such determination.

The Shares will be book-entry only and individual certificates will not be issued for the Shares.

Liquidity

The Shares may trade at, above or below the NAV per Share. The NAV per Share will fluctuate with changes in the market value of the Trust's assets. The trading price of the Shares will fluctuate in accordance with changes in the NAV per Share as well as market supply and demand. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the major platinum markets. While the Shares will trade on the NYSE Arca until 8 p.m. New York time, liquidity in the market for platinum will be reduced after the close of the major world platinum markets, including London and the NYMEX. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Availability of Information Regarding Platinum Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as platinum, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of platinum price and platinum market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis platinum pricing information based on the spot price for an ounce of platinum from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of platinum and last sale prices of platinum futures, as well as information about news and developments in the platinum market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on platinum prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot platinum, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for platinum futures and options prices traded on the NYMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on platinum, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at *http://www.lbma.org.uk/statistics_current.htm* or *http://www.thebulliondesk.com*.

The Trust Web site will provide an intraday indicative value (''IIV'') per share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m., New York time). The IIV is calculated by multiplying the indicative spot price of platinum by the quantity of platinum backing each Share. The Trust Web site will also provide the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (a) the NAV as of the close of the prior business day and the mid-point of the bid-ask price [25] at the close of trading in relation to such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the following information: the Creation Basket Deposit, the Trust's prospectus, and the two most recent reports to stockholders. Finally, the Trust Web site will also provide the last sale price of the Shares as traded in the US market. The Exchange will provide on its Web site (*http://www.nyx.com*) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading.[26] The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the streetTRACKS Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust and exchange-traded funds. It is anticipated that the initial price of a Share will be approximately $110.00. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate

[25] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[26] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to David Liu, Assistant Director, Christopher W. Chow, Special Counsel, and Andrew Madar, Special Counsel, Commission, dated November 9, 2009.

surveillance. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying platinum, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying platinum, related futures or options on futures or any other related derivative (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying platinum market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[27]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying platinum, platinum futures contracts, options on platinum futures, or any other platinum derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[28] NYMEX is an ISG member.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of platinum trading during the Core and Late Trading Sessions after the close of the major world platinum markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical platinum, that the Commission has no jurisdiction over the trading of platinum as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of platinum futures contracts and options on platinum futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[29] of the Act, in general, and furthers the objectives of Section 6(b)(5),[30] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the 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 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.

[27] *See* NYSE Arca Equities Rule 7.12.

[28] A list of ISG members is available at *http://www.isgportal.org.* The Exchange notes that TOCOM is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market. In addition, the Exchange does not have access to information regarding platinum-related OTC transactions in spot, forwards, options or other derivatives.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–95 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–2009–95.* This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NYSEArca–2009–95* and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27495 Filed 11–16–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60962; File No. SR–ISE–2009–86]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add 75 Options Classes to the Penny Pilot Program as Modified by Amendment No. 1

November 6, 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 27, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. On November 6, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, 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 ISE proposes to designate 75 options classes to be added to the pilot program to quote and to trade certain options in pennies (the ''Penny Pilot'') on November 2, 2009.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

Purpose—ISE 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 Penny Pilot through December 31, 2010.[4] In that filing, the Exchange had proposed expanding the Penny Pilot on a quarterly basis to add the next 75 most actively traded multiply 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]

ISE 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:

Symbol	Company name
ABX	Barrick Gold Corp
AUY	Yamana Gold Inc
AXP	American Express Co
BA	Boeing Co/The
BBT	BB&T Corp
BBY	Best Buy Co Inc
BP	BP PLC
CHK	Chesapeake Energy Corp
CIT	CIT Group Inc
COF	Capital One Financial Corp
CVX	Chevron Corp
DE	Deere & Co
DOW	Dow Chemical Co/The
DRYS ...	DryShips Inc
EFA	iShares MSCI EAFE Index Fund
ETFC	E*Trade Financial Corp

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, ISE proposed to correct a technical error in Section III. The change does not effect the substance of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 60865 (October 22, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand the Penny Pilot Program).

[5] Index products would be included in the expansion if the underlying index level was under 200.

Symbol	Company name
EWZ	iShares MSCI Brazil Index Fund
FAS	Direxion Daily Financial Bull 3X Shares
FAZ	Direxion Daily Financial Bear 3X Shares
FITB	Fifth Third Bancorp
FSLR	First Solar Inc
FXI	iShares FTSE/Xinhua China 25 Index Fund
GDX	Market Vectors—Gold Miners ETF
GG	Goldcorp Inc
GLD	SPDR Gold Trust
HGSI	Human Genome Sciences Inc
HIG	Hartford Financial Services Group Inc
HPQ	Hewlett-Packard Co
IBM	International Business Machines Corp
IYR	iShares Dow Jones US Real Estate Index Fund
JNJ	Johnson & Johnson
JNPR	Juniper Networks Inc
KO	Coca-Cola Co/The
LVS	Las Vegas Sands Corp
MCD	McDonald's Corp
MGM	MGM Mirage
MON	Monsanto Co
MOS	Mosaic Co/The
MRK	Merck & Co Inc/NJ
MS	Morgan Stanley
NLY	Annaly Capital Management Inc
NOK	Nokia OYJ
NVDA ...	Nvidia Corp
ORCL ...	Oracle Corp
PALM ...	Palm Inc
PBR	Petroleo Brasileiro SA
PG	Procter & Gamble Co/The
POT	Potash Corp of Saskatchewan Inc
RF	Regions Financial Corp
RIG	Transocean Ltd
RMBS ...	Rambus Inc
S	Sprint Nextel Corp
SDS	ProShares UltraShort S&P500
SKF	ProShares UltraShort Financials
SLB	Schlumberger Ltd
SLV	iShares Silver Trust
SRS	ProShares UltraShort Real Estate
SSO	ProShares Ultra S&P500
STI	SunTrust Banks Inc
SVNT ...	Savient Pharmaceuticals Inc
TBT	ProShares UltraShort 20+ Year Treasury
UNG	United States Natural Gas Fund LP
UNH	UnitedHealth Group Inc
UPS	United Parcel Service Inc
USB	US Bancorp
USO	United States Oil Fund LP
UYG	ProShares Ultra Financials
V	Visa Inc
WFC	Wells Fargo & Co
WYNN ..	Wynn Resorts Ltd
X	United States Steel Corp
XHB	SPDR S&P Homebuilders ETF
XLI	Industrial Select Sector SPDR Fund
XLU	Utilities Select Sector SPDR Fund
XRT	SPDR S&P Retail ETF

(b) *Basis*—The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed rule change allows for a measured expansion of the Penny Pilot Program for the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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 Exchange 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2009–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–86. 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 ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–86 and should be submitted by December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

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[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60967; File No. SR–NYSEArca–2009–84]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Permitting Affiliation With NYFIX Millennium LLC and NYFIX Securities Corporation

November 9, 2009.

I. Introduction

On September 22, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposing that the Exchange be affiliated with two registered broker-dealer subsidiaries of NYFIX, Inc. (''NYFIX''), NYFIX Millennium LLC (''NYFIX Millennium'') and NYFIX Securities Corporation (''NYFIX Securities''), for a period not to exceed six months and subject to certain limitations and obligations. The proposed rule change was published for comment in the **Federal Register** on October 5, 2009.[3] On November 6, 2009, NYSE Arca filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposal. This order approves the proposed rule change as modified by Amendment No. 1.

II. Overview

On August 26, 2009, NYSE Technologies entered into an Agreement and Plan of Merger (''Merger Agreement'') with NYFIX and CBR Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of NYSE Technologies. Under the terms of the Merger Agreement, CBR Acquisition Corp. will merge with and into NYFIX, with NYFIX surviving the merger as a direct wholly owned subsidiary of NYSE Technologies (''Merger''). Following the Merger, both the Exchange and NYFIX will be indirect wholly owned subsidiaries of NYSE Euronext. Consequently, NYFIX, and its subsidiaries NYFIX Millennium and NYFIX Securities, will be affiliates of the Exchange.

As a result of the Merger, NYSE Technologies will acquire, among other things, NYFIX's Transaction Services Division. In the U.S., the Transaction Services Division is currently composed of two U.S. registered broker-dealer subsidiaries: NYFIX Millennium, which is also an alternative trading system registered under Regulation ATS under the Act;[5] and, NYFIX Securities. In addition to other services provided by NYFIX Millennium and NYFIX Securities, (1) NYFIX Millennium provides routing of orders that are not matched within the NYFIX Millennium matching system to marketplaces such as exchanges, electronic communication networks, and ATSs, which are not operated by NYFIX; and (2) NYFIX Securities provides direct electronic market access and algorithmic trading products (together, ''Routing Services'').

The Exchange proposes to be affiliated with NYFIX Millennium and NYFIX Securities for a period not to exceed six months and subject to certain terms and conditions that the Exchange believes effectively address concerns regarding the (1) the potential for conflicts of interest where an exchange is affiliated with a broker-dealer conducting an order routing business that may interact with the Exchange itself, and (2) the potential for informational advantages that could place such an affiliated broker-dealer at a competitive advantage in comparison with other non-affiliated broker-dealers.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest and the potential for unfair competitive advantage.[8] The proposed relationship raises similar concerns in that the Exchange will be affiliated with two broker-dealers that provide Routing Services for orders that may be routed to the Exchange in competition with Exchange members. The Exchange has requested that the Commission approve its proposed affiliation with NYFIX Millennium and NYFIX Securities on a temporary basis, not to exceed six months, subject to certain conditions designed to address such concerns.

Specifically, so long as the Exchange is affiliated with NYFIX Millennium or NYFIX Securities and with respect to the Routing Services provided by each:[9]

(1) Neither NYFIX Millennium nor NYFIX Securities are members of the Exchange nor will they become members of the Exchange;

(2) NYFIX does not offer order routing services other than the Routing Services, and none of the Routing Services will be modified unless such modification is approved by the Commission;

(3) NYFIX will not engage in proprietary trading;

(4) NYFIX will not accept any new clients for the Routing Services after the Merger;

(5) There will continue to be independent functionality of, and full public access to, NYSE facilities; and

(6) There will be a complete separation between NYFIX, on the one hand, and the Exchange and its affiliates, on the other (*e.g.*, no shared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 60738 (September 29, 2009), 74 FR 51211 (''Notice'').

[4] In Amendment No. 1, the Exchange clarified that, with respect to the conditions on the Exchange's affiliation with NYFIX Millennium and NYFIX Securities, references to NYFIX also refer to its subsidiaries, NYFIX Millennium and NYFIX Securities. This technical amendment does not require notice and comment, as it did not materially affect the substance of the rule filing.

[5] 17 CFR 242.300–303.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving combination of NYSE and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62) (order approving acquisition of the American Stock Exchange by NYSE Euronext); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

[9] For the conditions set forth below, references to NYFIX also refer to its subsidiaries NYFIX Millennium and NYFIX Securities. *See* Amendment No. 1, *supra* note 4.

office space, no shared employees, no shared systems).

The Exchange may furnish to NYFIX the same information on the same terms that the Exchange makes available in the normal course of business to any other person. Specifically:

(a) NYFIX must not be provided an information advantage concerning the operation of the Exchange or any of its facilities, particularly regarding changes and improvements to the trading systems, that are not available to the industry generally.

(b) NYFIX will be prevented from having any advance knowledge of proposed changes or modifications to the operations of the Exchange or its facilities, including but not limited to advance knowledge of related filings by the Exchange pursuant to Rule 19b–4 of the of the Act.[10]

(c) NYFIX will not share employees or databases with the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities, and will be housed in a separate office.

(d) NYFIX will only be notified of any changes or improvements to any of the Exchange's operations or trading facilities in the same manner that other persons are notified of such changes or improvements;

(e) NYFIX will not disclose any system or design specifications, or any other information, to any employees of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities that would give NYFIX an unfair advantage over its competitors.

(f) None of the Exchange, any facility of the Exchange, or any other affiliate of the Exchange or their facilities will disclose any system or design specifications, or any other information, to any employees of NYFIX or any affiliate of NYFIX that would give the Exchange, any other facility of the Exchange, any other affiliate of the Exchange, or NYFIX an unfair advantage over its competitors.

The Commission also notes that each of NYFIX Millenium and NYFIX Securities has the Financial Industry Regulatory Authority (''FINRA''), an unaffiliated self-regulatory organization (''SRO''), as its designated examining authority and neither broker-dealer is a member of the Exchange.[11]

The Commission finds that the temporary proposed affiliation between the Exchange and NYFIX Millennium and NYFIX Securities, pursuant to the proposed terms and conditions, is consistent with the Act, particularly Section 6(b)(5) thereunder.[12] The Commission continues to be concerned about potential unfair competition and conflicts of interest when an exchange, or one of its affiliates, is the parent company of a broker-dealer that provides Routing Services that may be in competition with services provided by members of that exchange. The Commission believes, however, that the temporary nature of the affiliation, together with the proposed terms and conditions, are reasonably designed to mitigate concern about potential unfair competition and conflicts of interest between the commercial interests of the Exchange or its affiliates, and the Exchange's regulatory responsibilities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEArca–2009–84), as amended, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27469 Filed 11–16–09; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78a.

[11] *See* Notice.

[12] 15 U.S.C. 78(f)(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60966; File No. SR–Phlx–2009–94]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No.1, To Add Seventy-Five Options Classes to the Penny Pilot Program

November 9, 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 28, 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, II and III below, which Items have been prepared by the Exchange. Phlx filed Amendment No. 1 to the proposal on November 5, 2009.[3] 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] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to designate seventy-five options classes to be added to the Penny Pilot in options classes in certain issues (''Penny Pilot'' or ''Pilot'') on November 2, 2009.[4] The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.[5]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective November 2, 2009.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31,

[3] In Amendment No. 1, Phlx proposed to correct a technical error in Section III. The change has no effect on the substance of the proposed rule change.

[4] The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); and 60873 (October 23, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot).

[5] *See* Rule 1034 regarding the Penny Pilot.

2010,[6] the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume (''ADV'') for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on November 2, 2009, based on ADVs 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.
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.
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	Pro Shares Ultra Short Real Estate.
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 U.S. 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.
119	SSO	ProShares Ultra S&P500.
101	STI	SunTrust Banks Inc.
125	SVNT	Savient Pharmaceuticals Inc.

[6] *See* Securities Exchange Act Release No. 60873 (October 23, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness).

Nat'l ranking	Symbol	Company name
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 that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny 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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(i) of the Act [9] and Rule 19b–4(f)(1) thereunder,[10] the Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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–Phlx–2009–94 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–2009–94. 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–Phlx–2009–94 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27470 Filed 11–16–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60963; File No. SR–FINRA–2009–071]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Increase the Session Fee for the Regulatory Element of the Continuing Education Requirements Pursuant to FINRA Rules

November 6, 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 27, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' 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 receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Section 4 of Schedule A to the FINRA By-Laws to increase the session fee for the Regulatory Element of the continuing education requirements pursuant to FINRA rules.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 1120 (Continuing Education Requirements) and Incorporated NYSE Rule 345A (Continuing Education for Registered Persons) prescribe requirements regarding the continuing education of certain registered persons (referred to as the ''Securities Industry Continuing Education Program'' or ''CE Program''). The CE Program consists of a Regulatory Element and a Firm Element. The Regulatory Element is a computer-based education program developed and administered by FINRA to help ensure that registered persons are kept current on regulatory, compliance and sales practice matters in the industry.[5] FINRA members currently pay $75 each time one of their registered persons participates in the Regulatory Element.

Following the consolidation of NASD's and NYSE Regulation's member regulation operations and the creation of FINRA, FINRA assumed responsibility for all aspects of the CE Program and thereafter conducted a financial review and evaluation of the program's budget. Based on this assessment, FINRA has determined that an increase in the Regulatory Element session fee is necessary to cover the full costs associated with the CE Program, including costs associated with the redesign of the Regulatory Element,[6] and to maintain an adequate reserve for the program. Therefore, the proposed rule change would increase the Regulatory Element session fee from $75 to $100, effective January 4, 2010. This fee increase will coincide with the implementation of the redesigned Regulatory Element of the CE Program.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA proposes to implement the proposed rule change on January 4, 2010.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[7] in general, and with Section 15A(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which FINRA operates or controls. FINRA believes that the proposed rule change is designed to accomplish these ends by enabling FINRA to cover the costs associated with the CE Program while preserving adequate reserves for the maintenance and improvement of the CE Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and paragraph (f)(2) of Rule 19b–4 thereunder.[10] 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:

[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).

[5] The Firm Element consists of annual, member developed and administered training programs designed to keep covered registered persons current regarding securities products, services and strategies offered by the member.

[6] The redesign updates the presentation and content of the Regulatory Element to take advantage of the latest innovations in adult learning theories and technological advances. This is the first such large-scale redesign since the inception of the CE Program and should result in a significantly improved product and experience for members. FINRA will first implement the redesign of the General Program (S101) and the Series 6 Program (S106). The redesign of the Supervisors Program (S201) will be implemented at a later stage.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–FINRA–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 No. SR–FINRA–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 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 No. SR–FINRA–2009–071 and should be submitted on or before December 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27466 Filed 11–16–09; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Director for Reports Clearance to the addresses or fax numbers shown below.

(OMB)

Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address*: *OIRA_Submission@omb.oep.gov.*

(SSA)

Social Security Administration, DCBFM, *Attn:* Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–0454, *E-mail address: OPLM.RCO@ssa.gov*.

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than January 19, 2010. Individuals can obtain copies of the collection instruments by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

1. *Integrated Registration Services (IRES) System—20 CFR 401.45—0960–0626.* The IRES system verifies the identity of individuals, businesses, organizations, entities, and government agencies that use SSA's eService Internet and telephone applications to request and exchange business data with SSA. Requestors provide SSA-required information to establish their identities. Once SSA verifies identity, IRES will issue the requestor a user identification number (User ID) and a password to conduct business with SSA. Respondents are employers and third party submitters of wage data, business entities providing taxpayer identification information, and data exchange partners conducting business in support of SSA programs. In this Information Collection Request (ICR), we are making revisions to IRES for certain applications.

Type of Request: Revision to an OMB-approved information collection.

Respondent types	Number of respondents	Average burden per response (minutes)	Estimated annual burden (hours)
Appointed Representatives Registering via Internet	268,000	5	22,333
All Other Business Services Online (BSO) Respondents Registering via Internet	,300,000	2	43,333
Appointed Representatives Registering via CSA Intranet	88,000	11	16,133
All Other BSO Respondents Registering via CSA Intranet	120,794	11	22,146
Total	1,776,794		103,945

2. *Request for Business Entity Taxpayer Information—0960–0731.* SSA will use the information collected via an Internet application to register law firms or other business entities that wish to serve as appointed representatives and receive direct payment of fees from SSA for representing claimants before SSA. These entities will also be able to designate individuals as entity administrators, who they authorize to perform certain duties on behalf of the entities (such as providing bank account information, maintaining entity information, and updating individual

[11] 17 CFR 200.30–3(a)(12).

affiliations). In addition, SSA will use the information to meet any requirement to issue a Form 1099–MISC to law firms or other business entities pursuant to sections 6041 and 6045(f) of the Internal Revenue Code. The respondents are law firms or other business entities that wish to serve as appointed representatives and receive direct payment of fees.

Type of Request: Revision to an OMB-approved information collection.

Number of Respondents: 8,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 2,667 hours.

3. *Appointed Representative Services—0960–0732.* SSA uses Form SSA–1699 to register:

- Individuals appointed as representatives;
- Individuals who will perform advocacy services on behalf of an appointed representative;
- Individuals who will act on behalf of an appointed representative and want access to our electronic services; and
- Individuals who will serve as administrators for an entity appointed as a representative.

By registering these individuals, SSA: (1) Authenticates and authorizes them to do business with us; (2) allows them access to our records for the claimants they represent; (3) facilitates direct payment of authorized fees to appointed representatives; and (4) collects information needed to meet Internal Revenue Service (IRS) requirements to issue specific IRS forms, if we pay these representatives in excess of a specific amount.

This ICR is for changes we will implement to the collection in 2010. The respondents are appointed claimant representatives.

Type of Request: Revision to an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–1699 (paper form)	52,800	1	30	26,400
Internet-based SSA–1699	13,200	1	22	4,840
Totals	66,000			31,240

Dated: November 10, 2009,

Elizabeth A. Davidson,

Director, Center for Reports Clearance Social Security Administration.

[FR Doc. E9–27509 Filed 11–16–09; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Director for Reports Clearance to the addresses or fax numbers shown below.

(OMB)

Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submion@omb.eop.gov.*

(SSA)

Social Security Administration, DCBFM, *Attn:* Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–0454, *E-mail address: OPLM.RCO@ssa.gov.*

I. The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than January 19, 2010. Individuals can obtain copies of the collection instrument by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above email address.

1. Important Information about Your Appeal, Waiver Rights and Repayment Options—20 CFR 404.502–521–0960–NEW. SSA uses Form SSA–3105 in an overpayment situation to explain the claimant's rights to reconsideration, waiver, or a different repayment rate. Claimants use Form SSA–3105 to inform SSA they do not agree with SSA's initial overpayment determination, they are unable to repay the overpayment, or to request a waiver for repayment to SSA. The respondents are individuals who are overpaid claimants who are requesting a waiver of recovery for the overpayment, reconsideration of the fact of the overpayment, or a lesser rate of withholding of the overpayment.

Type of Request: New information collection.

Number of Respondents: 800,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 200,000 hours.

2. Notification of a Social Security Number (SSN) to an Employer for Wage Reporting—20 CFR 422.103–0960–NEW. Individuals applying for employment must provide an SSN or indicate they have applied for one. The information SSA collects on Form SSA–112 allows SSA to send, at the individual's request, the individual's SSN to his or her employer. Mailing this information to the employer ensures the employer has the correct SSN for the individual, allows SSA to receive correct earnings information for wage reporting purposes for the individual, and reduces the delay between the initial SSN assignment and delivery of the SSN information to the employer. The respondents are individuals who are applying for an initial SSN and request to have the information mailed to their employer.

Type of Request: New information collection.

Number of Respondents: 375,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 12,500 hours.

3. Statement for Determining Continuing Eligibility, Supplemental Security Income Payment(s)—416.204–0960–0416. SSA uses the information from the SSA–8203–BK for high-error-profile redeterminations of disability to determine whether Supplemental Security Income (SSI) recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been, and are still receiving, the correct payment amount. Periodic collection of this information is the only way SSA can make these determinations, and collection of this information is mandatory under the law. The information is normally completed in field offices by personal contact (face-to-face or telephone interview) using the automated Modernized SSI Claim System (MSSICS). The respondents are SSI recipients or their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
MSSICS	94,568	1	20	31,523
MSSICS/Signature Proxy	31,522	1	19	9,982
Paper	31,522	1	20	10,507
Totals	157,612	.....	.....	52,012

4. Pain Report Child—20 CFR 416.912 and 416.512—0960–0540. Disability interviewers and applicants/claimants in self-help situations use Form SSA–3371–BK to record information about pain or other symptoms of a child who is claiming disability. The State Disability Determination Services adjudicators and administrative law judges use this information to assess the effects of symptoms on functionality to help make a disability determination. The respondents are applicants for SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 250,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 62,500 hours.

5. Internet Direct Deposit Application—31 CFR 210—0960–0634. SSA uses Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment information received from beneficiaries to facilitate DD/EFT of their Social Security benefits with a financial institution. Respondents are Social Security beneficiaries who use the Internet to enroll in DD/EFT.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 90,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 15,000 hours.

II. SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than December 17, 2009. You can obtain a copy of the OMB clearance packages by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

1. Blood Donor Locator Service (BDLS)—20 CFR 401.200—0960–0501. This regulation stipulates when blood donor facilities identify blood donations as Human Immunodeficiency Virus (HIV)-positive, the overseeing state agency must provide the names and SSNs of the affected donors to SSA's BDLS. SSA uses this information to furnish the state agencies with the blood donors' address information to notify the blood donors. Respondents are state agencies acting on behalf of blood donor facilities.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10.

Frequency of Response: 5.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 13 hours.

2. Representative Payee Report of Benefits and Dedicated Account—20 CFR 416.546, 416.635, 416.640, 416.665—0960–0576. SSA requires representative payees (RP) to submit a written report accounting for their use of money paid to Social Security and/or SSI recipients and to establish and maintain a dedicated account for these payments. SSA uses Form SSA–6233 to ensure RPs are using the benefits received for the recipient's current maintenance and personal needs, and the expenditures of funds from the dedicated account comply with the law. Respondents are RPs for SSI recipients.

Note: This is a correction notice. SSA published this information collection as an extension on September 2, 2009, at 74 FR 4408. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 10,000 hours.

3. Medical Consultant's Review of Psychiatric Review Technique Form—20 CFR 404.1520a, 404.1640, 404.1643, 404.1645, 416.920a—0960–0677. Form SSA–3023 is a program evaluation form SSA's regional review component uses to facilitate the contract medical/psychological consultant's review of the Psychiatric Review Technique Form (PRTF). SSA–3023 records the reviewing medical/psychological consultant's assessment of the PRTF. The medical/psychological consultant only completes Form SSA–3023 when an adjudicating component's PRTF is in the file. Form SSA–3023 is required for each PRTF completed. The respondents are medical/psychological consultants who review the PRTF for quality purposes.

Note: This is a correction notice. SSA published this information collection as an extension on September 2, 2009, at 74 FR 45508. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 344.

Frequency of Response: 165.

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 11,352 hours.

Dated: November 10, 2009.

Elizabeth A. Davidson,

Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. E9–27510 Filed 11–16–09; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a revision to OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and the SSA Director for Clearance to the addresses or fax numbers shown below.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCBFM, Attn: Director, Center Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

I. SSA has submitted the information collection we list below to OMB for clearance. Your comments on the information collection would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than December 17, 2009. You can obtain a copy of the OMB clearance package by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above email address.

1. *Social Security Benefits Application—20 CFR 404.310–.311, .315–.322, .330–.333, 601–.603, and .1501–.1512—0960–0618.* This collection comprises the various application modalities for retirement, survivors, and disability benefits. These modalities include paper forms (SSA Forms SSA–1, SSA–2, and SSA–16), Modernized Claims System (MCS) screens for in-person field office interview applications, and the Internet based iClaim application. This information collection request (ICR) will expand the potential user base for iClaim.

Type of Collection: Revision to an existing Office of Management and Budget-approved information collection.

Paper Forms/Accompanying MCS Screens/Burden Information:

FORM SSA–1

Collection method	Number of respondents	Frequency of response	Average burden per response (min)	Estimated annual burden (hours)
MCS	172,200	1	11	31,570
MCS/Signature Proxy	1,549,800	1	10	258,300
Paper	21,000	1	11	3,850
Medicare-only MCS	299,000	1	7	34,883
Medicare-only Paper	1,000	1	7	117
Totals	2,043,000			328,720
Form SSA–2:				
MCS	36,860	1	15	9,215
MCS/Signature Proxy	331,740	1	14	77,406
Paper	3,800	1	15	950
Totals	372,400			87,571
Form SSA–16:				
MCS	218,657	1	20	72,886
MCS/Signature Proxy	1,967,913	1	19	623,172
Paper	24,161	1	20	8,054
Totals	2,210,731			704,112
iClaim Burden Information:				
iClaim 3rd Party	28,118	1	15	7,030
iClaim Applicant after 3rd Party Completion	28,118	1	5	2,343
First Party iClaim	541,851	1	15	135,463
Medicare-only iClaim (new to this ICR)	200,000	1	10	33,333
Totals	798,087			178,169

Aggregate Public Reporting Burden: 1,298,572 hours.

Dated: November 10, 2009.

Elizabeth A. Davidson,

Director, Center for Clearance Officer, Social Security Administration.

[FR Doc. E9–27511 Filed 11–16–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6812]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Drawings of Bronzino''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Drawings of Bronzino,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about January 19, 2010, until on or about April 18, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: November 6, 2009.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E9–27570 Filed 11–16–09; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance With Telecommunications Trade Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment and reply comment.

SUMMARY: Pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) ('Section 1377'), the Office of the United States Trade Representative (''USTR'') is reviewing and requests comments on: The operation, effectiveness, and implementation of and compliance with the following agreements regarding telecommunications products and services of the United States: the World Trade Organization (''WTO'') General Agreement on Trade in Services; the North American Free Trade Agreement (''NAFTA''); U.S. free trade agreements (''FTAs'') with Australia, Bahrain, Chile, Morocco, Oman, Peru, and Singapore; and the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR''). The USTR will conclude the review by March 31, 2010.

DATES: Comments are due by noon on December 11, 2009 and reply comments by noon on January 15, 2010.

ADDRESSES: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, ATTN: Section 1377 Comments, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Catherine Hinckley, Office of Services and Investment (202) 395–9539; or Amy Karpel, Office of the General Counsel (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 1377 requires the USTR to review annually the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services that are in force with respect to the United States. The purpose of the review is to determine whether any act, policy, or practice of a country that has entered into an FTA or other telecommunications trade agreement with the United States is inconsistent with the terms of such agreement or otherwise denies U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities for telecommunications products and services. For the current review, the USTR seeks comments on:

(1) Whether any WTO member is acting in a manner that is inconsistent with its obligations under WTO agreements affecting market opportunities for telecommunications products or services, e.g., the WTO General Agreement on Trade in Services (''GATS''), including the Basic Telecommunications Agreement, the Annex on Telecommunications, and any scheduled commitments including the Reference Paper on Pro-Competitive Regulatory Principles;

(2) Whether Canada or Mexico has failed to comply with its telecommunications obligations under the NAFTA;

(3) Whether Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras or Nicaragua has failed to comply with its telecommunications obligations under the CAFTA–DR;

(4) Whether Australia, Bahrain, Chile, Morocco, Oman, Peru, or Singapore has failed to comply with its telecommunications obligations under the respective FTA between the United States and that country (*see http://www.ustr.gov/trade-agreements/free-trade-agreements* for U.S. FTAs);

(5) Whether any country has failed to comply with its obligations under telecommunications trade agreements with the United States other than FTAs, e.g., Mutual Recognition Agreements (MRAs) for Conformity Assessment of Telecommunications Equipment (see *http://ts.nist.gov/standards/conformity/mra/mra.cfm*) for a collection of trade agreements related, *inter alia,* to telecommunications);

(6) Whether any act, policy, or practice of a country cited in a previous section 1377 review remains unresolved (see *http://www.ustr.gov/trade-topics/services-investment/telecom-e-commerce/section-1377-review* for the most recent reviews); and

(7) Whether any measures or practices impede access to telecommunications markets or otherwise deny telecommunications products and services market opportunities with respect to any country that is a WTO member or for which an FTA or telecommunications trade agreement has entered into force between such country and the United States. Measures or practices of interest include, for example, prohibitions on voice over Internet protocol (VOIP) services; requirements for access to or use of networks that limit the products or services U.S. suppliers can offer in specific markets; the imposition of excessively high licensing fees; discriminatory procedures for allocation and use of spectrum or other scarce

resources; and the imposition of unnecessary or discriminatory technical regulations or standards in the telecommunications product or services sectors.

Public Comment and Reply Comment: Requirements for Submission

Comments in response to this notice must be written in English, must identify (on the first page of the comments) the telecommunications trade agreement(s) discussed therein, and must be submitted electronically by 5 p.m. on December 11, 2009. Reply comments must also be in English and must be submitted by 5 p.m. on January 15, 2010. Comments and reply comments, with the exception of business confidential comments, must be submitted using *http://www.regulations.gov,* docket number USTR–2009–0038. Instructions for submitted business confidential versions are provided below. In the unusual case where submitters are unable to make submissions through Regulations.gov, the submitter must contact Gloria Blue at (202) 395–3475 to make alternate arrangements.

To submit comments using *http://www.regulations.gov,* enter docket number USTR–2009–0038 on the home page and click ''Search''. The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting ''Notices'' under ''Document Type'' on the search-results page, and click on the link entitled ''Send a Comment.'' Follow the instructions given on the screen to submit a comment. The *http://www.regulations.gov* website offers the option of providing comments by filling in a ''Type Comment'' field or by attaching a document. While both options are acceptable, USTR prefers submissions in the form of an attachment.

Business Confidential Submissions

Persons wishing to submit business confidential information must submit that information by fax to (202) 395–3891. Business confidential submissions will not be accepted at *http://regulations.gov.* The submitter must include in the comments a written explanation of why the information should be protected in accordance with 15 CFR 2007.7(b). In addition, a non-confidential version of the comments must be submitted to *http://www.regulations.gov,* docket number USTR–2009–0038. The submission must indicate, with asterisks, where confidential information was redacted or deleted. The top and bottom of each page of the non-confidential version must be marked either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''.

Business confidential comments that are submitted without the required markings or that do not have a properly marked non-confidential version submitted to regulations.gov as set forth above may not be accepted or may be treated as public documents.

Submitters should provide updated information on all issues they cite in their filings; USTR will not review submissions that are copies of earlier submissions.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. E9–27561 Filed 11–16–09; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket DOT–OST–2009–0292]

Michael R. Bennett and Workplace Compliance; Final Public Interest Exclusion Order

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) issued a decision and order under the Procedures for Transportation Workplace Drug and Alcohol Testing Programs excluding a service agent, Michael R. Bennett, Workplace Compliance, Inc. in North Carolina, Texas, and all other places it is incorporated, franchised, or otherwise doing business, and all other individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with Workplace Compliance, Inc., from providing drug and alcohol testing services in any capacity to any DOT-regulated employer for a period of 5 years. Mr. Bennett and his company provided Medical Review Officer services to DOT-regulated employers directly and through other service agents when Mr. Bennett was not qualified to act as a Medical Review Officer.

DATES: The effective date of the Public Interest Exclusion was July 31, 2009 and it will remain in effect until July 31, 2014.

FOR FURTHER INFORMATION CONTACT: Patrice M. Kelly, Deputy Director, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–3784 (voice), (202) 366–3897 (fax), or *patrice.kelly@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of the Department's regulation at 49 CFR part 40 (Part 40), subpart R, Public Interest Exclusions (PIE), the Federal Aviation Administration (FAA) issued a Notice of Corrective Action to Mr. Bennett on March 6, 2009, and then issued a Notice of Proposed Exclusion on May 5, 2009. Through an investigation, the FAA found that Mr. Bennett violated Part 40 because he had performed all roles and responsibilities of a Medical Review Officer (MRO) under Part 40, even though he was not a licensed physician (a Doctor of Medicine or Osteopathy), and therefore not qualified to act as an MRO. Mr. Bennett and his company used a medical doctor's name on thousands of negative test results and hundreds of non-negative test results in order to verify these DOT-regulated drug test results. He communicated those results to employers and/or other service agents for communication to other DOT-regulated employers.

The FAA referred the matter to the Department for a PIE proceeding under the provisions of Subpart R of Part 40. Mr. Bennett did not contest the FAA's allegations.

Public Interest Exclusion Decision and Order

On July 31, 2009, the Department issued a PIE against Michael R. Bennett, Workplace Compliance, Inc. in North Carolina, Texas, and all other places it is incorporated, franchised, or otherwise doing business, and all other individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with Workplace Compliance, Inc., (''Michael R. Bennett, *et al.''*) from providing drug and alcohol testing services in any capacity to any DOT-regulated employer for a period of 5 years. A full copy of the Department's Decision and Order can be found at *http://www.dot.gov/ost/dapc/*.

In accordance with the terms of the Department's Decision and Order and per 49 CFR 40.403(a), Michael R. Bennett, *et al.,* were required to directly notify each of the affected DOT-regulated employer clients in writing about the issuance, scope, duration, and effect of the PIE. The Department has notified employers and the public about this PIE by publishing a ''List of Excluded Drug and Alcohol Service Agents'' on its Web site at *http://*

www.dot.gov/ost/dapc/ and will make the list available upon request. As required by 49 CFR 40.401(d), the Department is publishing this **Federal Register** notice to inform the public that Michael R. Bennett, *et al.,* are subject to a PIE for 5 years. After July 31, 2014, Michael R. Bennett, *et al.,* will be removed from the list and the public will be notified of that removal, also in accordance with 49 CFR 40.401(d).

Any DOT-regulated employer who uses the services of Michael R. Bennett, *et al.*, between July 31, 2009 and July 31, 2014 may be subject to a civil penalty for violation of Part 40.

Dated this 10th day of November, 2009, at Washington, DC.

Patrice M. Kelly,

Deputy Director, Office of Drug and Alcohol Policy Compliance.

[FR Doc. E9–27525 Filed 11–16–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Project No. STP–036–1 (11) Paia Bypass]

Environmental Impact Statement: Maui County, HI; Notice of Intent

AGENCY: Federal Highway Administration (FHWA), Hawaii Department of Transportation (HDOT).

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice of intent in order to advise the public that an Environmental Impact Statement (EIS) will be prepared to evaluate alternatives that would reduce congestion and improve safety and reliability of Hana Highway between the intersection of Hana Highway with Haleakala Highway and Maliko Gulch on the north side of the Island of Maui in the Paia-Haiku region. This section is the primary travel way for the movement of people and goods between east Maui and the Wailuku/Kahului area where connections are made to other parts of the island.

FOR FURTHER INFORMATION CONTACT: Pat V. Phung, Lead Civil Engineer, Federal Highway Administration, Hawaii Division, Box 50206, 300 Ala Moana Boulevard, Room 3–306, Honolulu, Hawaii 96850, *Telephone:* (808) 541–2305.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Hawaii Department of Transportation (HDOT), will prepare an Environmental Impact Statement (EIS) to evaluate alternatives that would reduce congestion and improve safety and reliability of Hana Highway between the intersection of Hana Highway with Haleakala Highway and Maliko Gulch on the north side of the Island of Maui in the Paia-Haiku region.

Purposes and needs for the project have been established through a collaborative effort that has included community input. The Purpose and Need for the project will be finalized after the completion of the scoping process. The project's purposes have been defined to date as follows:

1. Reduce Vehicle Travel Times.
2. Alleviate Congestion in Paia.
3. Improve Safety for All Modes of Travel.
4. Provide Improved, More Convenient Access to the Towns of Paia and Haiku.
5. Support Paia's Quality of Life through Transportation Improvements.

The NEPA scoping process being initiated by the publication of this NOI is intended to generate a full range of project alternatives for subsequent evaluation. The No-Build alternative would leave Hana Highway in its current condition except for possible short-term and minor improvements such as safety upgrades and maintenance. A Transportation System Management (TSM) alternative would include elements such as restriping the roadway, enhancing transit service, establishing contra-flow lanes, and/or widening the roadway in place. The TSM alternative could also include establishing and improving intersections along the existing roadway through techniques such as channelization, parking removal, roundabouts, or left turn lanes. Build alternatives are anticipated to widen the existing Hana Highway, use different alignments to bypass Paia, or incorporate a combination of these measures.

The purpose of the EIS process is to explore in a public setting potentially significant effects of implementing the proposed action on the physical, human, and natural environment. Areas of investigation for this project will include but are not limited to cultural resources, archaeological resources, biological resources, social impact, engineering feasibility, schedule, land use pattern, shoreline access, residential displacements, impacts on existing businesses, air quality, and noise. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified. The documents that will be produced include the Draft and Final Environmental Impact Statement (DEIS and FEIS) and the Record of Decision (ROD).

The EIS will be prepared in accordance with regulations implementing the National Environmental Policy Act (NEPA), as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The purpose of this Notice of Intent is to alert interested parties regarding the plan to prepare the EIS, to provide information on the nature of the proposed project, to invite participation in the EIS process, including comments on the scope of the EIS proposed in this notice. An announcement of formal public scoping meeting will published at a later date.

Regulations implementing NEPA, as well as provisions of SAFETEA–LU, call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FHWA and HDOT do the following: (1) Extend an invitation to other government agencies and Native Hawaiian organizations that may have an interest in the proposed project to become ''participating agencies,'' (2) provide an opportunity for involvement by participating agencies and the public in helping to define the purpose and need for this proposed project, as well as the range of alternatives for consideration in the impact statement, and (3) establish a plan for coordinating public and agency participation in and comment on the environmental review process.

To comply with these regulations, an invitation to become a participating agency will be extended to other government agencies and Native Hawaiian organizations that may have an interest in the proposed project.

The Paia Relief Route Advisory Group (PRAG) has also been formed to help advise HDOT on key aspects of the project such as project purpose and need, project goals, and development and ranking of alternatives. Similar to all community meetings, the Advisory Group meetings will be open to the public, accessible to people with disabilities, and held on Maui at times and locations convenient to those that live and work in the study area.

Issued on: October 29, 2009.

Abraham Wong,

Division Administrator, Hawaii Division.

[FR Doc. E9–27200 Filed 11–16–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Pipeline Safety: Request To Modify Special Permit Docket No. PHMSA–2007–29078 Federal Register Docket No. PHMSA–2009–0377

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: The Federal pipeline safety laws allow a pipeline operator to request that PHMSA waive compliance with any part of the Federal pipeline safety regulations by granting a special permit to the operator. PHMSA is publishing this notice to indicate that we have received from the Kern River Gas Transmission Company (Kern River), a request for modification of an existing special permit, PHMSA–2007–29078, granted to the company on November 8, 2008. Kern River seeks modification of Condition 35 of the special permit, which concerns the external coating on its gas pipeline. This notice seeks public comment on Kern River's request, including comments on any potential environmental impacts. At the conclusion of the comment period, PHMSA will evaluate Kern River's request to determine whether to modify the special permit or deny the request.

DATES: Submit any comments regarding this special permit modification request by December 17, 2009.

ADDRESSES: Comments should reference the docket number for this special permit and may be submitted in the following ways:

- *E–Gov Web Site: http://www.Regulations.gov*. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* DOT Docket Management System; 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.

Instructions: Identify the docket number, PHMSA–2007–29078, at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*. *Note:* Comments are posted without changes or edits to *http://www.regulations.gov*, including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of dockets. DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477) and is available on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT:

General: Kay McIver by telephone at (202) 366–0113; or, e-mail at *kay.mciver@dot.gov*.

Technical: Steve Nanney by telephone at (713) 272–2855; or, e-mail at *steve.nanney@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 20, 2007, Kern River petitioned PHMSA for a special permit waiving compliance with 49 CFR, 192.111, 192.201, 192.505 and 192.619, to operate its pipeline system at a design factor of up to 0.80 in Class 1 areas, 0.67 in Class 2 areas and 0.56 in Class 3 areas and compressor stations. Kern River sought this special permit so that it could increase the Maximum Allowable Operating Pressure (MAOP) in its pipeline system. On January 4, 2008, PHMSA posted a notice of the special permit request in the **Federal Register** (72 FR 6042). We did not receive any comments for or against the special permit request as a result of the notice. On November 6, 2008, PHMSA issued an order granting Kern River a special permit with the conditions and limitations specified in items 1 through 56 and 1 through 5, respectively.

The Kern River Gas Transmission pipeline system originates in Lincoln County, Wyoming, where it receives Rocky Mountain gas. It traverses through southwestern Wyoming, and into Utah and Nevada. It then interconnects with the Mojave Pipeline across the California border in San Bernardino County, California. The special permit applies to approximately 1,310 miles of 36'' mainline (A–Line) and loop-line (B–Line) of the Kern River Transmission system. PHMSA has been monitoring compliance with the terms and conditions of the permit since it was granted. On October 5, 2009, Kern River petitioned PHMSA to modify Condition 35 (Coating Assessment) of the special permit, relating to the condition of the external coating on its gas pipeline system. Kern River's petition includes proposed modifications to Condition 35, supporting technical justification and documentation, and a proposal to conduct certain additional work.

II. Comments Invited on Request for Modification

PHMSA has filed Kern River's petition to modify Condition 35 of the special permit in the Federal Docket Management System (DMS). The docket includes the petition, the original special permit, special permit analysis and findings, and other supporting documents provided by Kern River. This information is available at *www.regulations.gov* under Docket Number PHMSA–2007–29078.

We invite interested persons to participate by reviewing the petition to modify the special permit and by submitting written comments, data or other views. Please include any comments on potential environmental impacts modification of the special permit may have. Before acting on the modification request, PHMSA will evaluate all comments received on or before the comment closing date. Late filed comments will be considered to the extent practicable. We may modify the special permit or deny the request based on the comments we receive.

III. Summary of Modification Request

Existing Condition 35 requires Kern River to evaluate the condition of, and make repairs to the coating on its pipeline system. Pipeline coating is an important means of protecting pipelines from external corrosion damage. Condition 35 requires Kern River to collect and use coating-related data to determine when to conduct pipeline coating surveys and determine the locations of field excavations and repairs of coating. This data should also drive Kern River's future coating remediation procedures and schedules; cathodic protection survey procedures and schedules; operational limits such as compressor station maximum discharge temperatures and pressures; in-line inspection schedules, and anomaly remediation criteria.

Kern River requests modifications of Condition 35 that would permit fewer excavations and repairs at areas where surveys indicate damage to the pipeline coating. Kern River proposes to conduct additional corrosion prevention tasks on the pipeline system in lieu of compliance with the original requirement. Kern River contends that this additional work, combined with the work already required pursuant to existing regulations and other

Conditions in the special permit, will mitigate external corrosion risks on the pipeline. Kern River also contends that data collected so far show that, while Kern River does have pipe coating defects, the pipeline corrosion protection system currently in place is adequately protecting the pipeline, and the pipe coating defects examined do not threaten pipeline integrity.

In summary, Kern River requests modifications to Condition 35 in the following three areas:

1. *Definition of ''Remediation.''* Addition of a definition of the word ''remediation'' drawn from the National Association of Corrosion Engineers (NACE) Recommended Practice 0502–2002, Pipeline External Corrosion Direct Assessment Methodology (NACE RP 0502–2002). Such definition would permit remediation of coating anomalies by means other than coating repair.

2. Excavation. Clarification to require excavation of two damaged coating indications for each classification (minor, moderate and severe), for each survey crew and compressor station discharge section. Further clarification that two excavations for each classification are not required if two are not found, however, in any case at least two excavations must be made in each section. Finally, clarification that excavation of every Alternating Current Voltage Gradient (ACVG) indication is not required on the basis of the definition of ''remediation'' above.

3. Additional Requirements. Addition of a requirement that Kern River perform certain corrosion prevention work before raising the operating pressure of its pipeline.

Kern River's proposed modifications to Condition 35 are set out below. Underlined text represents proposed new or changed language.

Coating Assessment: To verify the pipeline coating conditions and to remediate any integrity issues, Kern River must perform a DCVG survey or ACVG survey of the following not later than one year after the grant of this special permit.

(a) all piping in the special permit area that has operated above 120 degrees Fahrenheit,

(a) all Class 1 locations with structures within 300 feet of the pipeline,

(b) all Class 2 and all Class 3 locations, and

(c) all HCAs.

A DCVG or ACVG survey and remediation need not be performed if Kern River has performed a DCVG or ACVG and remediation survey of the above and completed the remediation of any integrity issue within the two years prior to the grant of this special permit. Kern River must remediate any damaged coating indications found during these assessments that are classified as moderate (i.e. 15% IR and above for DCVG or 35 dBμV and above for ACVG) or severe based on NACE International Recommended Practice 0502–2002, Pipeline External Corrosion Direct Assessment Methodology, (NACE RP 0502–2002). *Remediation as defined herein is the definition from NACE RP 0502–2002, which states ''remediation refers to corrective actions taken to mitigate deficiencies in the corrosion protection system.''*

A minimum of two coating survey assessment classifications must be excavated, *for each classification (minor, moderate and severe), for each survey crew and compressor station discharge section. Two excavations for each classification are not required if two are not found, however, in any case at least two excavations must be made in each section.* If factors beyond Kern River's control prevent the completion of the DCVG or ACVG survey and remediation within one year, a DCVG or ACVG survey and remediation must be performed as soon as practicable and a letter justifying the delay and providing the anticipated date of completion must be submitted to the director, PHMSA Western Region not later than one year after the grant of this special permit.

Kern River will complete the following coating and pipe integrity prior to raising the operating pressure under this Special Permit:

A. *Kern River will accelerate the in-line inspection of both mainlines between the Salt Lake and Elberta compressor stations and the A Line between the Dry Lake and Goodsprings compressor stations, from 2010 to 2009. Conducting these inspections before the pressure increase will verify the integrity of the system in these high consequence areas and verify that the corrosion protection systems have been functioning properly.*

B. *Kern River will evaluate historic rectifier current and voltage demands.*

C. *Kern River will excavate and examine all coating anomalies over 70 dBμV in the 2009 ACVG survey areas. The purpose of the digs is to characterize the nature of the coating holiday and the state of the surroundings with respect to corrosion. In the event that the corrosion protection system is found to be ineffective or active corrosion is identified, a root cause analysis will be developed and the cause mitigated within six months.*

D. *Kern River has developed a GIS alignment sheet to facilitate the integration of In-Line Inspection (ILI), Close Interval Survey (CIS), ACVG, Alternating Current Current Attenuation (ACCA), depth of cover, elevation, pipe and coating information and foreign crossings with a map band containing aerial photography. The integrated data will be used as the basis for future integrity management decisions.*

E. *Kern River will assemble and review documentation packages for each excavation and will forward them to PHMSA as completed. These packages will contain the findings of each excavation. Kern River will also summarize and statistically analyze the results of the excavation program.*

F. *Kern River will conduct a side-by-side comparison of the Spectrum XLI ACVG readings obtained from the original survey with Pipeline Current Mapper (PCM) A-frame ACVG readings obtained for a five-mile section on each of the A–Line and B–Line downstream of the Goodsprings compressor station.*

Kern River will implement the seven specific integrity measures enumerated below to ensure that the corrosion protection system is effective. These measures will be performed recognizing the results and findings of conditions that relate to the effectiveness of the corrosion protection system, including Conditions 19, 32, 33, 34, 39, 40 and 41.

The specific integrity measures are:

1. *Remote monitoring of rectifiers on line pipe subject to the Special Permit;*

2. *Evaluation of annual surveys at test point locations;*

3. *Evaluation of CIS in HCAs as conducted under Special Permit Condition 33 (Verification of Cathodic Protection);*

4. *Evaluation of surveys for AC/DC interference mitigation plan;*

5. *Evaluation of data from excavations made for routine maintenance and integrity management work;*

6. *Evaluation of ILI data; and*

7. *Integration and evaluation of integrated data from rectifiers, test points, AC/DC interference surveys, CIS in HCAs, ILI and pipe exposures including encroachments.*

In the event that corrosion prevention is found to be ineffective or active corrosion is identified, the corrosion will be mitigated. Mitigation will be carried out in accordance with Kern River's Operation & Maintenance (O&M) Manual, which has been updated to fulfill the requirements of Condition 43, Anomaly Evaluation and Repair.

Authority: 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC, on November 11, 2009.

Alan Mayberry,

Director, Engineering and Emergency Support.

[FR Doc. E9–27526 Filed 11–16–09; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities and Individuals Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 25 newly-designated entities and 14 newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers.''

DATES: The designation by the Director of OFAC of the 25 entities and 14 individuals identified in this notice pursuant to Executive Order 12978 is effective on *November 10, 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 October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued Executive Order 12978 (60 Fed. Reg. 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia, or materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On *November 10, 2009,* the Director of OFAC, in consultation with the Attorney General and the Secretary of State, as well as the Secretary of Homeland Security, designated 25 entities and 14 individuals whose property and interests in property are blocked pursuant to the Order.

The list of additional designees is as follows:

Entities

1. EUROMAR CARIBE S.A., Calle 7 No. 6–95, Edificio Marlin, Apto. 4A, Cartagena, Colombia; Carrera 3 No. 8–38, Cartagena, Colombia; NIT # 806008708–6 (Colombia); (ENTITY) [SDNT].
2. INVERSIONES EL PROGRESO S.A. (a.k.a. ''I.P. S.A.''); Carrera 3 No. 8–38 Ofc. 1, Cartagena, Colombia; Carrera 4 No. 8–41, Cartagena, Colombia; Olaya Herrera Carrera 68 No. 32B–45, Cartagena, Colombia; NIT # 806006517–7 (Colombia); (ENTITY) [SDNT].
3. INVERSIONES LAMARC S.A., Carrera 3 No. 8–38, Cartagena, Colombia; Carrera 4a No. 8–41, Cartagena, Colombia; NIT # 900162108–6 (Colombia); (ENTITY) [SDNT].
4. PREFABRICADOS Y AGREGADOS DE COLOMBIA LTDA. (a.k.a. PREFAGRECOL LTDA.); La Cordialidad Transversal 54 No. 31I–150, Cartagena, Colombia; La Carolina Urbanizacion Carrera 86 No. 35–103, Cartagena, Colombia; Mamonal-Gambote Via Aguasprieta, Cartagena, Colombia; NIT # 900171299–2 (Colombia); (ENTITY) [SDNT].
5. SERVICIOS DE CONTROL INTEGRAL DE OBRAS S.L. SIP SUCURSAL CARTAGENA, Carrera 3 No. 8–38, Cartagena, Colombia; Carrera 4 No. 8–41, Cartagena, Colombia; NIT # 900106267–0 (Colombia); (ENTITY) [SDNT].
6. BIENES Y VALORES B Y V S.A. (a.k.a. B Y V S.A.); Calle 100 No. 8A–49, Trr. B, Oficina 505, Bogota, Colombia; NIT # 900058166–9 (Colombia); (ENTITY) [SDNT].
7. COMERCIALIZADORA INTERNACIONAL ASFALTOS Y AGREGADOS LAS CASCAJERA S.A. (a.k.a. A Y A LA CASCAJERA S.A.); Calle 100 No. 8A–49, Trr. B, Oficina 505, Bogota, Colombia; NIT # 900155202–1 (Colombia); (ENTITY) [SDNT].
8. INGENIERIA TECNICA EN COMUNICACIONES LTDA. (a.k.a. INTENCOM); Carrera 4 No. 26–33, Local 102, Cali, Colombia; (ENTITY) [SDNT].
9. GESTION DE ADMINISTRACIONES SIP S.L., Avenida Miramar No. 17 Portal 2 7 F, Fuengirola, Malaga 29640, Spain; C.I.F. B–92255363 (Spain); (ENTITY) [SDNT].
10. PATRIMONIO DE GESTION Y ADMINISTRACION SIP S.L., Avenida Jesus Santos Rein Edificio Ofisol 4 1 A, Fuengirola, Malaga 29640, Spain; C.I.F. B–92255389 (Spain); (ENTITY) [SDNT].
11. SERVICIOS DE CONTROL INTEGRAL DE OBRAS S.L. (a.k.a. SIP PROJECT MANAGEMENT); Parque Tecnologico Andalucia Centro De Empresas P–7 Avenida Juan Lopez P 17, Campanillas, Malaga 29590, Spain; Calle Marie Curie Edificio I+D 11 No. 4 Planta 1a Oficina D–9 Parque Tecnologico De Andalucia, Campanillas, Malaga 29590, Spain; C.I.F. B–92174689 (Spain); (ENTITY) [SDNT].
12. SERVICIOS DE CONTROL INTEGRAL FACILITIES MANAGEMENT S.L., Calle Marie Curie Edificio I+D 11 No. 4 Planta 1a Oficina D–9 Parque Tecnologico De Andalucia, Campanillas, Malaga 29590, Spain; C.I.F. B–92649276 (Spain); (ENTITY) [SDNT].
13. SIP CONSULTANCY SERVICES S.L., Calle Marie Curie Edificio I+D 11 No. 4 Planta 1a Oficina D–9 Parque Tecnologico De Andalucia, Campanillas, Malaga 29590, Spain; C.I.F. B–92725514 (Spain); (ENTITY) [SDNT].
14. COLOMBIA REAL ESTATE DEVELOPMENT B.V., Locatellikade 1 Parnassustrn, Amsterdam 1076 AZ, Netherlands; P.O. Box 87459, Amsterdam 1080 JL, Netherlands; Tax ID No. Haarlem 34288890 (Netherlands); (ENTITY) [SDNT].
15. LAUREANO RAMOS GABINETE TECNICO S.L., Calle Inca 5 Portal 1

Bloque IV 2 D, Fuengirola, Malaga 29640, Spain; C.I.F. B–92219831 (Spain); (ENTITY) [SDNT].

16. GENERAL DE OBRAS Y ALQUILERES S.A. (a.k.a. GOYASA); 9 Calle Juan Ramon Jimenez, Marbella, Malaga 29601, Spain; Urbanizacion Puente Romano Fase II Local 37–38, Marbella, Malaga 29602, Spain; Calle Castillo De Ponferrada 56 Villafranca Del Castillo, Madrid 28692, Spain; Calle Castillo De Ponferrada 54 Villanueva De La Canada, Madrid 28692, Spain; Co. Cruz No. 5, Madrid 28023, Spain; Calle Pere De Lluna 17, Reus, Tarragona 43204, Spain; Calle Coso 98–100, Zaragoza, Zaragoza 50001, Spain; C.I.F. A–81847204 (Spain); (ENTITY) [SDNT].
17. UNDER PAR REAL ESTATE S.L., Calle Marques Del Duero 76–3C San Pedro De Alcantara, Marbella, Malaga 29670, Spain; C.I.F. B–92678473 (Spain); (ENTITY) [SDNT].
18. TRACKING INOVATIONS S.L., Calle Marques Del Duero 76–3C San Pedro De Alcantara, Marbella, Malaga 29670, Spain; C.I.F. B–63971360 (Spain); (ENTITY) [SDNT].
19. AURIGA INTERLEXUS S.L., Calle Marques Del Duero, 76 (PLT 3C), San Pedro De Alcantara, Marbella, Malaga 29670, Spain; C.I.F. B–64252703 (Spain); (ENTITY) [SDNT].
20. QUANTICA PROJECT S.L., Calle Marques Del Duero, 76—PLT 3C, San Pedro De Alcantara, Marbella, Malaga 29670, Spain; C.I.F. B–64472814 (Spain); (ENTITY) [SDNT].
21. HORMAC PLANNING S.L., Calle Marques Del Duero, 76—Plt 3C, San Pedro De Alcantara, Marbella, Malaga 29670, Spain; C.I.F. B–64472756 (Spain); (ENTITY) [SDNT].
22. PROYECTO EMPRESARIAL COSTA ARENA S.L., Urbanizacion Puente Romano Fase II Local Bajo 37–38, Marbella, Malaga 29602, Spain; C.I.F. B–92506872 (Spain); (ENTITY) [SDNT].
23. ARAWAK HOLDING B.V., Locatellikade 1 Parnassustrn, Amsterdam 1076 AZ, Netherlands; P.O. Box 87459, Amsterdam 1080 JL, Netherlands; Tax ID No. Haarlem 34288894 (Netherlands); (ENTITY) [SDNT].
24. BANCA DE INVERSION Y MERCADO DE CAPITALES S.A. (a.k.a. BIMERC S.A.); Avenida 6N No. 17–92 Oficina 802, Cali, Colombia; NIT # 800238316–7 (Colombia); (ENTITY) [SDNT].
25. GAMBOA Y GAMBOA LTDA., Carrera 9 No. 70A–35 P. 7, Bogota, Colombia; NIT # 800013236–1 (Colombia); (ENTITY) [SDNT].

Individuals

1. MEJIA URIBE, Hernando (a.k.a. URIBE PATINO, Juan Carlos); c/o EUROMAR CARIBE S.A., Cartagena, Colombia; c/o INGENIERIA TECNICA EN COMUNICACIONES LTDA., Cali, Colombia; c/o INVERSIONES LAMARC S.A., Cartagena, Colombia; c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; c/o PREFABRICADOS Y AGREGADOS DE COLOMBIA LTDA., Cartagena, Colombia; c/o SERVICIOS DE CONTROL INTEGRAL DE OBRAS S.L. SIP SUCURSAL CARTAGENA, Cartagena, Colombia; c/o COMERCIALIZADORA INTERNACIONAL ASFALTOS Y AGREGADOS LAS CASCAJERA S.A., Bogota, Colombia; c/o BIENES Y VALORES B Y V S.A., Bogota, Colombia; Calle 7 No. 6–95, Edificio Marlin, Apto. 4A, Cartagena, Colombia; No. 22 del Conjunto Residencial Ciudadela Pasoancho II Etapa Conjunto 2 Urbanizacion Villas III Carrera 81 No. 13B–179, Cali, Colombia; Carrera 11 No. 21–59/53 y 10–64, Cali, Colombia; Carrera 127 No. 10A–10, Cali, Colombia; Calle 11 No. 21–42, Cali, Colombia; Calle 21 No. 10–52, Cali, Colombia; Calle 21 No. 10–55, Cali, Colombia; Calle 22 No. 10–40, Cali, Colombia; Calle 22 No. 10–44, Cali, Colombia; Calle 54 No. 10–B–101, Barranquilla, Colombia; Los Pompones, Corregimiento De Rejoya, Popayan, Cauca, Colombia; DOB 20 Dec 1949; POB Manizalez, Caldas, Colombia; Cedula No. 8308983 (Colombia); Cedula No. 16796652 (Colombia); (INDIVIDUAL) [SDNT].
2. BOTERO ARISTIZABAL, Maria Emma, c/o EUROMAR CARIBE S.A., Cartagena, Colombia; c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; c/o INVERSIONES LAMARC S.A., Cartagena, Colombia; Calle 7 No. 6–95, Edificio Marlin, Apto. 4A, Cartagena, Colombia; No. 22 del Conjunto Residencial Ciudadela Pasoancho II Etapa Conjunto 2 Urbanizacion Villas III Carrera 81 No. 13B–179, Cali, Colombia; Apto. No. 1003–B, Edificio Torres De La Cincuenta, Calle 9B No. 50–15, Cali, Colombia; Penthouse 802A, Carrera 77 No. 13A–1–29, Cali, Colombia; Carrera 92 No. 162–40, Bogota, Colombia; DOB 24 Sep 1951; POB Sonson, Antioquia, Colombia; Cedula No. 32518408 (Colombia); (INDIVIDUAL) [SDNT].
3. BAENA CARDENAS, Luis Gonzalo, c/o BANCA DE INVERSION Y MERCADO DE CAPITALES S.A., Cali, Colombia; DOB 30 Jul 1955; Cedula No. 19266564 (Colombia); (INDIVIDUAL) [SDNT].
4. GAMBOA MORALES, Luis Carlos, c/o GAMBOA Y GAMBOA LTDA., Bogota, Colombia; Carrera 9 No. 70A—35 Piso 7, Bogota, Colombia; DOB 20 Dec 1957; Cedula No. 3228859 (Colombia); (INDIVIDUAL) [SDNT].
5. BARRIGA FAYAD, Luis Santiago, c/o EUROMAR CARIBE S.A., Cartagena, Colombia; c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; c/o INVERSIONES LAMARC S.A., Cartagena, Colombia; Carrera 4 No. 4–139, Cartagena, Colombia; Cedula No. 73085554 (Colombia); (INDIVIDUAL) [SDNT].
6. DIAZ CHACON, Inmaculada, c/o EUROMAR CARIBE S.A., Cartagena, Colombia; c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; Cedula No. 40976673 (Colombia); (INDIVIDUAL) [SDNT].
7. FERNANDEZ VIEJO, Alfredo, c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; DOB 15 Dec 1954; Cedula No. 206946 (Extranjeria) (Colombia); (INDIVIDUAL) [SDNT].
8. LOSADA DUSSAN, Jacqueline (a.k.a. LOSADA DUSSAN, Jacueline; a.k.a. LOZADA DUSSAN, Jacqueline); c/o EUROMAR CARIBE S.A., Cartagena, Colombia; c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; c/o INVERSIONES LAMARC S.A., Cartagena, Colombia; Calle 29B No. 20–141, Cartagena, Colombia; DOB 06 Mar 1966; Alt. DOB 03 Jun 1966; Cedula No. 36175880 (Colombia); (INDIVIDUAL) [SDNT].
9. PARRA MILLARES, Sixto, c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; c/o INVERSIONES LAMARC S.A., Cartagena, Colombia; c/o SERVICIOS DE CONTROL INTEGRAL DE OBRAS S.L. SIP SUCURSAL CARTAGENA, Cartagena, Colombia; Cedula No. 73190399 (Colombia); (INDIVIDUAL) [SDNT].
10. ALVAREZ RAMOS, Prisiliano Enrique (a.k.a. ALVAREZ RAMOS, Prisciliano); c/o PREFABRICADOS

Y AGREGADOS DE COLOMBIA LTDA., Cartagena, Colombia; DOB 20 Jun 1969; Cedula No. 70524763 (Colombia); (INDIVIDUAL) [SDNT].

11. VERTEL ANAYA, Clara Julia, c/o PREFABRICADOS Y AGREGADOS DE COLOMBIA LTDA., Cartagena, Colombia; DOB 21 Mar 1969; Cedula No. 42652411 (Colombia); (INDIVIDUAL) [SDNT].
12. RAMOS RODRIGUEZ, Laureano, c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; c/o INVERSIONES LAMARC S.A., Cartagena, Colombia; c/o SERVICIOS DE CONTROL INTEGRAL DE OBRAS S.L. SIP SUCURSAL CARTAGENA, Cartagena, Colombia; c/o SERVICIOS DE CONTROL INTEGRAL DE OBRAS S.L., Campanillas, Malaga, Spain; c/o SERVICIOS DE CONTROL INTEGRAL FACILITIES MANAGEMENT S.L., Campanillas, Malaga, Spain; c/o SIP CONSULTANCY SERVICES S.L., Campanillas, Malaga, Spain; c/o PATRIMONIO DE GESTION Y ADMINISTRACION SIP S.L., Fuengirola, Malaga, Spain; c/o LAUREANO RAMOS GABINETE TECNICO S.L., Fuengirola, Malaga, Spain; c/o GESTION DE ADMINISTRACIONES SIP S.L., Fuengirola, Malaga, Spain; c/o COLOMBIA REAL ESTATE DEVELOPMENT B.V., Amsterdam, Netherlands; Calle Marie 4 1–D9, Campanillas, Malaga, Spain; DOB 08 Nov 1963; POB Fuengirola, Malaga, Spain; D.N.I. 27377459–F (Spain); Passport AD 320707 (Spain); Passport BA 848697 (Spain); (INDIVIDUAL) [SDNT].
13. FERNANDEZ MONTERO, Marco Jose, c/o INVERSIONES EL PROGRESO S.A., Cartagena, Colombia; c/o INVERSIONES LAMARC S.A., Cartagena, Colombia; c/o ARAWAK HOLDING B.V., Amsterdam, Netherlands; c/o AURIGA INTERLEXUS S.L., Marbella, Malaga, Spain; c/o GENERAL DE OBRAS Y ALQUILERES S.A., Marbella, Malaga, Spain; c/o HORMAC PLANNING S.L., Marbella, Malaga, Spain; c/o QUANTICA PROJECT S.L., Marbella, Malaga, Spain; c/o TRACKING INOVATIONS S.L., Marbella, Malaga, Spain; c/o UNDER PAR REAL ESTATE S.L., Marbella, Malaga, Spain; Calle Marques Del Duero 76–3C San Pedro De Alcantara, Marbella, Malaga, Spain; Calle Sierra De Cazorla, Residencial La Cascada, Bloque 1, Bajos 1B, Marbella, Malaga, Spain; Calle Chamberi 7, Montellano, Becerril De La Sierra, Madrid 28490, Spain; DOB 21 Dec 1970; POB Madrid, Spain; D.N.I. 07497033–E (Spain); Passport AC 018964 (Spain); (INDIVIDUAL) [SDNT].
14. AVENDANO MUNERA, Jairo Ivan, Carrera 52 No. 41–81, Edificio El Polo, Medellin, Colombia; DOB 26 Aug 1960; Cedula No. 71589827 (Colombia); (INDIVIDUAL) [SDNT].

Dated: November 10, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–27460 Filed 11–16–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning collections of information required to comply with the terms and conditions of FHA debentures.

DATES: Written comments should be received on or before January 5, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Judi Owens, 200 Third Street, A–4A, Parkersburg, WV 26106–1328, or *Judi.Owens@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Judi Owens, Bureau of the Public Debt, 200 Third Street, A 4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Titles: FHA New Account Request, FHA Transaction Request, FHA Debenture Transfer Request.

OMB Number: 1535–0120.

Form Numbers: PD F 5366, 5354, and 5367.

Abstract: The information is used to (1) establish a book-entry account; (2) change information on a book-entry account; and (3) transfer ownership of a book-entry account on the HUD system, maintained by the Federal Reserve Bank of Philadelphia.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households, businesses or other for-profit.

Estimated Number of Respondents: 300.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 50.

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.

Dated: November 10, 2009.

Judi Owens,

Manager, Information Management Branch.

[FR Doc. E9–27521 Filed 11–16–09; 8:45 am]

BILLING CODE 4810–39–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 09–06).

TIME AND DATE: 9:30 a.m. (CST), November 19, 2009, Carroll Knicely Conference Center, 2355 Nashville Road, Bowling Green, Kentucky.

STATUS: Open.

Agenda

Old Business

Approval of minutes of August 20, 2009, Board Meeting.

New Business

1. Chairman's Report.

2. President's Report.
3. Report of the Finance, Strategy, Rates, and Administration Committee:
   A. Tax-equivalent payments for Fiscal Year 2009 and estimated payments for Fiscal Year 2010.
   B. Management compensation.
4. Report of the Operations, Environment, and Safety Committee:
   A. Nuclear fuel enrichment services.
   B. Turbine generator alliance fossil and nuclear.
   C. Fleet-wide maintenance and modification contracts.
   D. Fleet-wide managed task engineering contracts.
5. Report of the Audit, Governance, and Ethics Committee:
   A. Consideration of PURPA standards.
   B. Selection of TVA's external auditor for Fiscal Year 2010.
6. Report of the Community Relations and Energy Efficiency Committee:
   A. Guntersville Airport easement.
   B. Watts Bar Reservoir Land Management Plan.
   C. Mountain Reservoirs Land Management Plan.
   D. Energy Efficiency and Demand Response update.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: November 12, 2009.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. E9–27640 Filed 11–13–09; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0524]

Agency Information Collection (VA Police Officer Pre-Employment Screening Checklist) Activities Under OMB Review

AGENCY: Office of Policy, Planning and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Policy, Planning and Preparedness (OPP&P), Department of Veterans Affairs, will submit the collection of information as abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 17, 2009.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0524'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0524.''

SUPPLEMENTARY INFORMATION:

Title: VA Police Officer Pre-Employment Screening Checklist.

OMB Control Number: 2900–0524.

Type of Review: Extension of a currently approved collection.

Abstract: VA personnel use the form to document pre-employment history and conduct background checks on applicants seeking employment as VA police officers. VA will use the data collected to determine the applicant's qualification and suitability to be hired as a VA police officer.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 9, 2009, at page 46482.

Affected Public: State, Local, or Tribal Government.

Estimated Total Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,500.

Dated: November 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27585 Filed 11–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-New (10–0468)]

Agency Information Collection (Internet Student CPR Web Registration Application) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 17, 2009.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900-New (10–0468)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900-New (10–0468).''

SUPPLEMENTAL INFORMATION:

Titles: Internet Student CPR Web Registration Application, VA Form 10–0468.

OMB Control Number: 2900–New (10–0468).

Type of Review: New collection.

Abstract: The data collected on VA Form 10–0468 will be used to establish a roster on students attending courses provided by the Minneapolis VA Medical Center Education Service. Students will be able to identify and register for a training course online without waiting for the Registrar to return calls or e-mails to confirm enrollment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information

unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 9, 2009, at page 46485.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 125 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Bi-Annually.

Estimated Number of Respondents: 1,500.

Dated: November 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27586 Filed 11–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (10–0473)]

Agency Information Collection (Millennium Bill Emergency Care Provider Satisfaction Survey) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 17, 2009.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–New (10–0473)'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New (10–0473).''

SUPPLEMENTARY INFORMATION:

Title: Millennium Bill Emergency Care Provider Satisfaction Survey, VA Form 10–0473.

OMB Control Number: 2900–New (10–0473).

Type of Review: New collection.

Abstract: VA Form 10–0473 will be used to survey non-VA healthcare providers who participate in the Millennium Bill Fee Reimbursement/Purchased Care program on their satisfaction with VHA's claims processing services. VA will use the data collected to improve the claims processing program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 9, 2009, at pages 46485–46486.

Affected Public: Individuals or households.

Estimated Annual Burden: 9 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 110.

Dated: November 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27587 Filed 11–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0260]

Agency Information Collection (Request for and Authorization to Release Medical Records or Health Information) Activities under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 17, 2009.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0260'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0260.''

SUPPLEMENTAL INFORMATION:

Titles:

a. Request for and Authorization to Release Medical Records or Health Information, VA Form 10–5345.

b. Individual's Request for a Copy of their Own Health Information, VA Form 10–5345a.

c. My HealtheVet (MHV)—Individuals' Request for a Copy of Their Own Health Information, VA Form 10–5345a–MHV.

OMB Control Number: 2900–0260.

Type of Review: Revision of a currently approved collection.

Abstracts:

a. VA Form 10–5345 is used to obtain a written consent from patients before information concerning his or her treatment for alcoholism or alcohol abuse, drug abuse, sickle cell anemia, or infection with the human immunodeficiency virus (HIV) can be disclosed to private insurance companies, physicians and other third parties.

b. Patients complete VA Form 10–5345a to request a copy of their health information maintained at Department of Veterans Affairs.

c. VA Form 10–5345a–MHV is completed by individuals requesting their health information electronically through My HealtheVet.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on

September 9, 2009 at pages 46484–46485.

Affected Public: Individuals or households.

Estimated Total Annual Burden

a. VA Form 10–5345—15,000 hours.

b. VA Form 10–5345a—15,000 hours.

c. VA Form 10–5345a–MVH—35,000 hours.

Estimated Average Burden Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 10–5345—300,000.

b. VA Form 10–5345a—300,000.

c. VA Form 10–5345a–MVH—700,000.

Dated: November 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27588 Filed 11–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (21–0844)]

Proposed Information Collection (Certification of Fully Developed Claim) 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 existing collection in use without an OMB Control Number and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to process compensation and pension claims within 90 days after receipt of the claim.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 19, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900-New (21–0844)'' 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: Certification of Fully Developed Claim, VA Form 21–0844.

OMB Control Number: 2900-New (21–0844).

Type of Review: Existing collection in use without an OMB Control Number.

Abstract: VA Form 21–0844 is used to process a claim within 90 days after receipt by a claimant or their representative. Claimants or their representative are required to sign and date the certification, certifying as of the signed date, no additional information or evidence is available or needs to be submitted in order to adjudicate the claim.

Affected Public: Individuals and Households.

Estimated Annual Burden: 132 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 1,584.

Dated: November 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27589 Filed 11–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0358]

Agency Information Collection (Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 17, 2009.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0358'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0358.''

SUPPLEMENTAL INFORMATION:

Title: Supplemental Information for Change of Program or Reenrollment after Unsatisfactory Attendance, Conduct or Progress, VA Form 22–8873.

OMB Control Number: 2900–0358.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and other eligible persons may change their program of education under conditions prescribed by Title 38 U.S.C., Section 3691. A claimant can normally make one change of program without VA approval. VA approval is required if the claimant makes any additional change of program. Before VA can approve benefits for a second or subsequent change of program, VA must first determine that the new program is

suitable to the claimant's aptitudes, interests, and abilities, or that the cause of any unsatisfactory progress or conduct has been resolved before entering into a different program. VA Form 22–8873 is used to gather the necessary information only if the suitability of the proposed training program cannot be established from information already available in the claimant's VA education records or the results of academic or vocational counseling are not available to VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 9, 2009, at pages 46482–46483.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,629 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 29,258.

Dated: November 12, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27590 Filed 11–16–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERAN AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veteran Affairs (VA).

ACTION: Amendment of One Altered Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), the Department of Veterans Affairs (VA) has amended and is publishing the alteration of a system of records entitled ''Freedom of Information Act (FOIA) Records-VA'' 119VA005R1C. The amended and altered system of records makes only administrative edits and revisions as necessary.

DATES: The amended and altered system of records, which incorporates the comments received following the initial publication, shall become effective December 17, 2009.

FOR FURTHER INFORMATION CONTACT: Director, VA FOIA Service (005R1C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7457.

SUPPLEMENTARY INFORMATION: As required by Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), this document sets forth the amendment of the alteration of a system of records maintained by VA in response to comments received following the initial publication in the **Federal Register** at 74 FR 990 on January 9, 2009. VA is altering System No. 119VA005R1B, ''Freedom of Information Act (FOIA) Records-VA'' to update a change of address in the System Location and Storage and to update a change in the name and mail routing symbol of the System Manager and the system of records number. During the comment period, VA received only one response from the public which contained the several comments addressed below.

Comment: One commenter suggested changing the statutory citation found under the ''Summary'' heading of the notice from 5 U.S.C. 552(e)(4) to 5 U.S.C. 552a(e)(4).

Response: After careful review of this comment, VA agrees and has revised the notice.

Comment: One commenter suggested adding two new routine uses. The first would allow access to educational organizations/institutions that may need the records for research into the operations of VA or to determine if FOIA requests would be unnecessary or duplicative. The second would allow access to representatives of the news media who may need the records for an investigation or story of public interest.

Response: After careful review of this comment, VA disagrees with the suggested changes and therefore has not revised the notice. This system of records contains the home addresses and may also contain the home telephone numbers and email addresses of a percentage of individuals who submit FOIA requests. Educational organizations/institutions and representatives of the news media do not possess any unique quality or characteristic that should allow them access to such personal information. Should such organizations want access to the content of this system of records, they may request the records through the Freedom of Information Act (FOIA) which would protect the personal information we have described from disclosure.

Comment: One commenter suggested that the records should be required to be indexed by subject matter and that each FOIA request should be given a request number which can be used to easily identify the request and the VA's responses.

Response: After careful review of this comment, VA disagrees with the suggestion that the records be required to be indexed by subject matter and therefore has not revised the notice. The records are indexed by the name of the requestor, date, and any other identifier deemed appropriate. The electronic data can be searched and retrieved by many other data elements when necessary, including the subject matter of the request. VA already intends to assign a FOIA tracking number, or a request number, to every request.

This Notice meets the requirement to notify the public that VA is amending the proposed changes in the VA system of records by incorporating the administrative changes following the initial publication at 74 FR 990, January 9, 2009. With this notification, this system of records is effective [Insert effective date].

Dated: November 9, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

119VA005R1C

SYSTEM NAME:

Freedom of Information Act (FOIA) Records-VA.

SYSTEM LOCATION:

Records are maintained at the VA Central Office FOIA Offices, 810 Vermont Avenue, NW., Washington, DC 20420; 806 W. Diamond Avenue, Suite 400, Gaithersburg, MD 20878, and all VA field facilities. A list of the field facilities may be found at the following Internet address: *http://www2.va.gov/directory/guide/home.asp.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records and related correspondence on individuals who have filed with VA:

a. Requests for information under the provisions of the Freedom of Information Act (5 U.S.C. 552), including requests for review of initial denials of such requests.

b. Requests under the provisions of the Privacy Act (5 U.S.C. 552a) for records about themselves where the FOIA is also relied upon to process the request and which then meet the Department of Justice's (DOJ) standard for required reporting in the Annual FOIA Report to the Attorney General of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence and other documents related to requests made by individuals to VA for:

a. Information under the provisions of the Freedom of Information Act (5 U.S.C. 552), including requests for review of initial denials of such requests.

b. Information under provisions of the Privacy Act (5 U.S.C. 552a) and requests for review of initial denials of such requests made under VA's Privacy Act regulations regarding requests for records about themselves where the FOIA is also relied upon to process the request and which then meet the Department of Justice's (DOJ) standard for required reporting in the Annual FOIA Report to the Attorney General of the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions and amendments:

The Privacy Act of 1974 (5 U.S.C. 552a); the Freedom of Information Act, as amended (5 U.S.C. 552); 5 U.S.C. 301 and 38 U.S.C. 501.

PURPOSE(S):

The system is maintained for the purpose of processing an individual's record request made under the provisions of the Freedom of Information and Privacy Acts. These records are also used by VA to prepare reports required by the Freedom of Information and Privacy Acts to the Office of Management and Budget and the Department of Justice. The proposed system of records will assist the Department of Veterans Affairs in carrying out its responsibilities under the Freedom of Information and Privacy Acts. The records maintained in the proposed system can originate in both paper and electronic format.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

System information may be accessed and used by authorized VA employees, with a legitimate need to know, to conduct duties associated with the management and operation of the FOIA–PA program. Information may also be disclosed as a routine use for the following purposes:

1. VA may disclose information from this system of records to the Office of Management and Budget (OMB) for the performance of its statutory responsibilities for evaluating Federal programs.

2. VA may disclose information from this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

3. VA may disclose information from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual.

4. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under Title 44 U.S.C.

5. VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

6. VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

7. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

8. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

9. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

10. VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

11. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic data are maintained on Direct Access Storage Devices at AINS Inc., 806 W. Diamond Avenue, Suite 400, Gaithersburg, Maryland 20878. AINS Inc. stores registry tapes for disaster back up at the storage location. Registry tapes for disaster back up are also maintained at an off-site location. VA Central Office and VA field facilities also maintain paper reports and electronic data.

RETRIEVABILITY:

Records are indexed by name of requester, date and any other identifier deemed appropriate.

SAFEGUARDS:

This list of safeguards furnished in this System of Records is not an exclusive list of measures that has been, or will be, taken to protect individually-identifiable information.

All records are maintained in compliance with applicable VA security policy directives that specify the standards that will be applied to protect sensitive personal information, including protection from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks and password protection identification features.

Authorized personnel are required to take annual VA mandatory data privacy and security training. Access to data storage areas is restricted to authorized VA employee or contract staff who have been cleared to work by the VA Office of Security and Law Enforcement. File areas are locked after normal duty hours. VA facilities are protected from outside access by the Federal Protective Service and/or other security personnel. Security complies with applicable Federal Information Processing Standards (FIPS) issued by the National Institute of Standards and Technology (NIST). Contractors and their subcontractors who access the data are required to maintain the same level of security as VA staff. Access to electronic files is controlled by using an individually unique password entered in combination with an individually unique user identification code.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States. Routine records will be disposed of when the agency determines they are no longer needed for administrative, legal, audit or other operational purposes. These retention and disposal statements are pursuant to the National Archives and Records Administration (NARA) General Record Schedules GRS–20, item 1c and GRS 24, item 6a.

SYSTEM MANAGER(S) AND ADDRESS:

Director, VA FOIA Service (005R1C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personnel identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where the request or appeal was submitted or to the Director, VA FOIA Service (005R1C), 810 Vermont Avenue, NW., Washington, DC 20420. Such requests must contain a reasonable description of the records requested. Inquires should also include the following:

a. Name

b. Telephone Number and Return Address

c. Date of Request or Appeal

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records maintained under his or her name may write or visit the nearest VA facility or write to their regional VA Public Liaison/FOIA officer listed at *http://www.foia.va.gov/FOIA_Contacts.asp*.

CONTESTING RECORDS PROCEDURES:

(See ''Record Access Procedures'' above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the following: Requests and administrative appeals submitted by individuals and organizations pursuant to the FOIA and Privacy Acts; VA personnel assigned to handle such requests and appeals; Agency records searched and identified as responsive to such requests and appeals; and requests referred by Agencies or other entities concerning VA records.

[FR Doc. E9–27448 Filed 11–16–09; 8:45 am]

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Federal Register

Tuesday,

November 17, 2009

Part II

Department of Homeland Security

Coast Guard

46 CFR Part 10, 11, 12, and 15

Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 10, 11, 12, and 15

[Docket No. USCG–2004–17914]

RIN 1625–AA16

Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations to fully incorporate the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention), as well as the Seafarer's Training, Certification and Watchkeeping Code (STCW Code) in the requirements for the credentialing of United States merchant mariners as found in 46 CFR Parts 10, 11, 12, and 15. The changes proposed incorporate lessons learned from implementation of the STCW Convention and STCW Code through the interim rule and attempt to clarify those regulations that have generated confusion in the past.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before February 16, 2010 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before February 16, 2010.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–17914 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.

(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 methods. *See* the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Collection of Information Comments: If you have comments on the collection of information discussed in section VII.D of this NPRM, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). To ensure that your comments to OIRA are received on time, the preferred methods of receipt are by e-mail to *oira_submission@omb.eop.gov* (include the docket number and ''*Attention:* Desk Officer for Coast Guard, DHS'' in the subject line of the e-mail) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, *Attn:* Desk Officer, U.S. Coast Guard.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1401. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of proposed rulemaking (NPRM), call or e-mail Mark Gould, Maritime Personnel Qualifications Division, U. S. Coast Guard, telephone 202–372–1409, e-mail *Mark.C.Gould@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents

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–2004–17914), 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*, in the ''Document Type'' drop down menu, select ''Proposed Rules'' and insert ''USCG–2004–17914'' as the ''Keyword.'' 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 them 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*, in the ''Document Type'' drop down menu, select ''Proposed Rules'' and insert ''USCG–2004–17914'' as the ''Keyword.'' 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

We plan to hold public meetings. We will announce the dates and locations of these meetings in a later **Federal Register** notice.

II. Abbreviations

A/B Able Seaman
ARPA Automatic Radar Plotting Aid
BCO Ballast Control Operator
BRM Bridge Resource Management
BS Barge Supervisor
BST Basic Safety Training
CFR Code of Federal Regulations
COI Certificate of Inspection
COLREGS International Regulations for Preventing Collisions at Sea
CPR Cardio-Pulmonary Resuscitation
DC Damage Control
DDE Designated Duty Engineer
DE Designated Examiner
DL Dangerous Liquid
DOT Department of Transportation
EEZ Exclusive Economic Zone
ERM Engine Room Resource Management
FCC Federal Communications Commission
F.H. Food Handler
FR **Federal Register**
GMDSS Global Maritime Distress and Safety System
GRT Gross Register Tons
GT Gross Tonnage
HP Horsepower
IMDG The International Maritime Dangerous Goods Code
IMO International Maritime Organization
IR Interim Rule
IRFA Initial Regulatory Flexibility Act
ISM International Safety Management Code
ISO International Organization for Standardization
ISPS International Ship and Port Facility Security
ITB Integrated Tug Barge
ITC International Tonnage Convention on Tonnage Measurement of Ships, 1969
KUP Knowledge, Understanding, and Proficiency
kW Kilowatts
LG Liquefied Gas
MARAD Maritime Administration
MARPOL 73/78 International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978
MERPAC Merchant Marine Personnel Advisory Committee
MMC Merchant Mariner Credential
MMD Merchant Mariner Document
MODUs Mobile Offshore Drilling Units
NAVSAC Navigation Safety Advisory Committee
NDR National Driver Register
NMC U.S. Coast Guard National Maritime Center
NEPA National Environment Policy Act of 1969
NPRM Notice of Proposed Rulemaking
NVIC Navigation and Vessel Inspection Circular
OCMI Officer in Charge, Marine Inspection
OICEW Officer in Charge of an Engineering Watch
OICNW Officer in Charge of a Navigation Watch
OIM Offshore Installation Manager
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OSVs Offshore Supply Vessels
OUPV Operator of an Uninspected Passenger Vehicle
PIC Person in Charge
PMS Preventive Maintenance System
PSC Proficiency in Survival Craft
QMED Qualified Member of the Engineering Department
QSS Quality Standard Systems
REC Regional Examination Center
RFA Regulatory Flexibility Act
RFPEW Ratings Forming Part of an Engineering Watch
RFPNW Ratings Forming Part of a Navigation Watch
SHIP Seafarers' Health Improvement Program
SOLAS The International Convention for the Safety of Life at Sea (1974)
STCW Code Seafarer's Training, Certification and Watchkeeping Code
STCW Convention International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as amended
STCW–F International Convention on Standards of Training, Certification, and Watchkeeping for Fishing Vessel Personnel
TOAR Towing Officer's Assessment Record
TRB Training Record Book
TSA Transportation Security Administration
TSAC Towing Safety Advisory Committee
UPVs Uninspected Passenger Vessels
UTV Uninspected Towing Vessels
VSO Vessel Security Officer

III. Background

The Coast Guard published an interim rule (IR) on June 26, 1997 (62 FR 34505), making changes to the regulations governing the credentialing of merchant mariners. A complete discussion of the background for the IR is found in the preamble to the IR (62 FR 34506). These changes were necessary to implement amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended (the STCW Convention), which the International Maritime Organization (IMO) adopted in 1995, and which entered into force on February 1, 1997. The 1997 IR ensured that U.S. merchant mariner credentials would meet International Maritime Organization (IMO) standards, thereby reducing the possibility that U.S. ships could be detained in a foreign port for non-compliance.

The Coast Guard proposes to update the changes made by the 1997 IR through experience gained during the implementation of that rule. This proposed rule will also incorporate all

effective amendments to the STCW Convention and Code up to and including the publication date of this proposed rule. The Coast Guard determined, as a result of comments from the public and federal advisory committees (the Merchant Marine Personnel Advisory Committee and the Towing Safety Advisory Committee), that more information, including more detailed regulation text, was required for the regulated public. We have identified a number of issues with the current regulations:

(1) There are several areas as outlined in the Table of Changes pertaining to the requirements a mariner must meet in order to obtain a credential, that need clarification and/or additional information;

(2) The Coast Guard conducted an independent evaluation of the credentialing program and found that, although the program was giving the STCW Convention full and complete effect, there were a number of areas that should be clarified, as outlined in the Table of Changes.

(3) In addition, we made several technical changes throughout parts 10, 11, 12, and 15 of 46 CFR, including the renumbering of part 12 to bring the numbering of the sections in line with the numbering in the other parts of subchapter B of title 46.

On May 20, 2008, the Coast Guard issued an interim rule amending its regulations to implement the vessel security officer training and certification amendments to the STCW Convention and the STCW Code (73 FR 29060). These amendments incorporate the training and qualification requirements for vessel security officers (VSOs) into the requirements for the credentialing of United States merchant mariners. These amendments (73 FR 29060) are not impacted by this proposed rulemaking.

The VSO requirements apply to all vessels subject to the STCW Convention under current regulations. This includes all seagoing vessels, defined in the proposed 46 CFR 10.107 (currently 15.1101) to mean self-propelled vessels that operate beyond the Boundary Line established by 46 CFR part 7, except those vessels which have been determined to be otherwise exempt from the STCW Convention as per 46 CFR 15.103(e) and (f).

On March 16, 2009, the Coast Guard published a final rule titled ''Consolidation of Merchant Mariner Qualification Credentials'' (74 FR 11196). This final rule streamlined regulations and consolidated four separate credentialing documents into one Merchant Mariner Credential (MMC), and also eliminated redundant burdens and government processes. As noted in the Table of Changes, some minor changes have been made in this proposed rule that would affect the portions of subchapter B revised by the MMC rulemaking.

IV. Discussion of Proposed Rule

A. Overview

This proposed rule is a result of ongoing work to ensure that U.S. mariners comply with the standards set forth in the STCW Convention. During the implementation process for the IR (from 1997 to the present), the Coast Guard recognized a need to make substantial changes to the merchant mariner licensing and documentation credentialing program. Because of these substantial changes, we recognized the necessity of developing a more comprehensive rule, and of providing additional opportunity—through this NPRM—for the public to comment on these changes.

Most seagoing merchant mariners must comply with the requirements of the STCW Convention. STCW requirements reflected in the CFR are not currently organized in a manner that is easy to read and understand. This NPRM seeks to make the requirements for merchant mariners clear and concise, and proposes a scheme that will make both domestic and international requirements easier to understand.

B. Differences Between This NPRM and the Coast Guard's Current Regulations

This list provides a brief summary of the significant changes proposed in this NPRM. The ''Table of Proposed Changes'' in part C of this section provides more detailed information and explanation of the changes in the summarized listing below.

1. Medical Competency

Would establish clear requirements for attaining competence as a person in charge (PIC) of medical care and as a medical first aid provider.

Would establish that all officers onboard seagoing ships must hold medical first aid competence.

2. Medical Standards for Issuance of STCW Endorsements

Would provide requirements on the medical fitness standards for merchant mariners. As part of this effort, a quick-reference table is provided.

Would establish physical abilities expected of merchant mariners.

Would clarify when the medical practitioner must conduct tests demonstrating the merchant mariner's physical ability.

Would provide clarification that staff officers and entry level ratings need only demonstrate physical ability when serving on vessels to which the STCW Convention applies.

3. Training Schools and Approved Courses

Would update the requirements for the material that must be submitted as part of an application for an approved course or training program.

Would require information that the Coast Guard had previously only requested from course developers for Coast Guard approval of training courses.

Would remove the specific requirements for radar courses, providing the industry more flexibility when developing courses and curriculum.

Would specify the requirement for providers of approved courses and training programs to be compliant with a quality standard systems (QSS). This would clarify that Coast Guard-accepted QSS organizations may accept and monitor training on behalf of the Coast Guard.

4. Acceptance of Military Sea Service and Training To Qualify for an STCW Endorsement

Would provide that a member of the military can qualify for an STCW endorsement after meeting the training and service requirements for merchant mariners.

5. Basic Safety Training Requirements

Would clarify that the requirement for basic safety training (BST) is no longer considered an STCW endorsement; BST continues to be a manning requirement.

Would add a manning requirement in part 15 for BST that is consistent with STCW Convention requirements.

6. Application of the STCW Convention to Mariners serving on Vessels of Less Than 200 Gross Register Tons (GRT)/ 500 Gross Tonnage (GT)

Would establish requirements for mariners serving on seagoing vessels of less than 200 GRT/500 GT on international voyages, whether they are near-coastal or oceans routes.

7. Deck Officer Progression

Would revise the deck officer progression to be consistent with the standards set forth by the STCW Convention.

Would remove the 200 GRT/500 GT-level endorsements.

Would revise service requirements for mariners qualifying for the 1,600 GRT/ 3,000 GT-level endorsements.

8. Engineer Officer Endorsements

Would revise the engineer officer progression to be consistent with the standards set forth by the STCW Convention.

Would provide limited engineer endorsements for service on vessels less than 10,000 horsepower (HP)/7,500 kilowatts (kW) on near-coastal waters.

9. Officer Endorsements

Would provide specific areas of knowledge, understanding, and proficiency (KUP) required for operational and management level licenses.

Would provide equivalencies between GRT and GT for use only with the issuance of mariner credentials.

10. Rating Endorsements

Would add sections for STCW-specific ratings.

Would add a new endorsement entitled ''Survivalman'' for individuals serving on vessels without installed lifeboats.

11. Manning

Would move sections detailing the certification requirements for ratings from part 12 to part 15.

12. Grandfathering

Would clarify that this proposed rule does not require a mariner to meet newly proposed requirements in order to retain a credential already held. However, a mariner would have to meet any newly proposed requirements in order to upgrade a credential. For example, under this proposed rule, a second mate/officer in charge of a navigational watch (OICNW) who seeks to obtain a chief mate endorsement would not be required to go back and complete training requirements for an OICNW.

13. Minimum Age

Would establish the minimum age for those applicants seeking a rating or STCW endorsement under Part 12.

Would incorporate the age of 16 as the minimum age for issuing a rating or STCW endorsement.

C. Table of Proposed Changes

This table provides a more-detailed, CFR-section-referenced summary of significant changes proposed in this NPRM. The table incorporates the changes noted in the brief summary of the significant changes listed in part C above, ''Differences between this NPRM and the Coast Guard's Current Regulations.'' This part, and part B above, discuss all substantive changes being proposed by this rulemaking.

Current cite	*Cite under proposed rule*	*Summary of proposed change*	*Explanation of proposed change*
10.107	10.107	Adds the definition of *boundary line*	Assists applicants in understanding the limits of the STCW Convention.
		Adds the definition of a *Coast Guard-accepted quality standards system (QSS) organization.*	Adds definition regarding those organizations that may conduct QSS activities in regard to training.
		Adds the definition of *domestic voyage*	Clarifies that domestic service does not include entering foreign waters. This clarification is necessary for those operating small passenger vessels in waters close to or adjacent to foreign waters to assist in determining whether the operator would be required to hold an STCW endorsement.
		Adds definition of *gross register tons (GRT)*	Provides definition for term used in the proposed rule and establishes an abbreviation for the use of this term throughout this subchapter.
		Adds the definition of *gross tonnage (GT)*	Provides definition for term used in the proposed rule consistent with the STCW Convention and establishes an abbreviation for use throughout this subchapter.
		Adds the definition of *international voyage*	Clarifies what constitutes an international voyage.
		Adds the definition of *kilowatt (kW)*	Provides the definition of a term used in conjunction with the implementation of the STCW Convention and STCW Code.
		Adds the definition of *management level*	Provides that master, chief mate, chief engineer and first assistant engineer (second engineer officer) are considered management level under the STCW Convention.
		Adds the definition of *operational level*	Provides that officer endorsements other than management level are considered operational level under the STCW Convention.
		Adds the definition of *propulsion power*	Provides a more general definition of a ship's power.
		Adds the definition of *quality standard system (QSS).*	Provides clarification of what is intended by this term when used in this subchapter.
		Adds the definition of *seagoing*	Assists in the interpretation of the requirements of the STCW Convention.
		Adds the definition of *seagoing vessel*	Adds definition to ensure it captures all vessels to which STCW applies. No commercial vessels restriction, as appears in current 46 CFR 15.1101 definition, because that would have excluded vessels such as yachts and government-owned vessels, which are required to be operated by mariners holding an STCW endorsement.

Current cite	*Cite under proposed rule*	*Summary of proposed change*	*Explanation of proposed change*
		Adds a definition of *survivalman*	Provides terminology for a new endorsement for persons serving in a position similar to lifeboatman but on a vessel without a lifeboat.
		Adds the definition of *training program*	Provides clarity regarding what is intended by this term.
		Revises the definition of *near coastal*	Reflects that this is a domestic definition and that another country may define the term differently.
None	10.205(b)(i)	Adds grandfathering provision for existing STCW endorsements.	Clarifies that this proposed rule does not require a mariner to meet newly proposed requirements in order to retain a credential already held.
10.215	10.215	Revises the physical requirements for mariners applying for a Coast Guard-issued credential. These changes include: Annual submission of physicals by pilots, removal of the specific tests for color vision, revision of vision standard, revision of hearing standard, clarification regarding demonstration of physical ability.	Provides the Coast Guard some flexibility in the acceptance of other tests, as well as acknowledgement that some of the vision tests are no longer available. The requirement to demonstrate physical ability provides information required for those mariners serving on vessels to which STCW applies.
11.202(b)	11.202(b)	Moves the requirement for basic safety training (BST) and refers to part 15.	Requires applicant to meet BST requirements as listed in § 15.1105. BST requirements are found in part 15 under manning, rather than as a professional requirement to obtain a certificate.
11.202(c)	11.407(a)(2)	Moves the requirement for automatic radar plotting aid (ARPA) from the general section.	Moves requirement to the appropriate operational-level certificate.
11.202(d)	11.407(a)(2)	Moves the requirement for the training and assessment on Global Maritime Distress and Safety System (GMDSS) from the general section.	Incorporates the GMDSS requirement with the requirement for the appropriate operational-level certificate.
11.202(e)	11.407(a)(2)	Moves the requirement for Bridge Resource Management (BRM) (formerly Procedures for Bridge Team Work) from the general section.	Moves the BRM requirement to the appropriate operational-level certificate.
11.213	11.213	Revises the rules affecting the credit of sea service towards a mariner's credential.	Clarifies that maritime service from the armed forces must be consistent with the requirements of other mariners, *i.e.*, an individual must first hold an operational-level credential in order to qualify for a management-level credential.
11.301	10.301	Revises the applicability to include training programs.	Clarifies that the STCW Convention covers all training used to pursue certification, whether or not it is part of an approved course or training program. See Regulation I/6 of the STCW Convention and Section A–I/6 of the STCW Code.
11.302	10.302	Revises the credit that can be provided by course approval to allow for multiple purposes.	Provides industry more flexibility to complete the requirements, as current regulations are too confining.
		Revises the requirements for the request for course approval.	Incorporates previously issued guidance documents to assist industry in understanding otherwise vague requirements.
		Clarifies the suspension of approval requirements.	Organizes the requirements for suspension of course approval.
		Revises the reasons for withdrawal of course approval.	Clarifies reasons for withdrawal of course approval.
11.303	10.303	Revises section to require that each student demonstrate practical skills appropriate for the course.	Ensures that the training provided meets the requirements of the STCW Convention, *i.e.*, not only ensuring applicant knowledge, understanding and proficiency (KUP), but also requiring a demonstration of skills. *See* STCW Regulation I/6 of the STCW Convention.
		Revises the records and reports required for each approved course.	Provides the Coast Guard the ability to fulfill its obligation under the STCW Convention to validate the training received by merchant mariners. *See* Regulation I/8 of the STCW Convention.

Current cite	Cite under proposed rule	Summary of proposed change	Explanation of proposed change
		Adds QSS requirements for an approved course.	Provides consistency with the obligation under the STCW Convention for approved training to be part of a QSS. See Regulation I/8 of the STCW Convention.
11.304	10.304	Revises the requirement to substitute all sea service for successful completion of an approved training program.	Provides service credit for training programs, since they regularly provide more extensive training situations and broader opportunities to demonstrate proficiency.
11.305	None	Removes specific requirements regarding radar-observer certificates and qualifying courses.	Removes requirements now unnecessary due to other proposed changes throughout this subpart.
None	10.305	Adds requirements for qualification as a designated examiner.	Ensures that qualified individuals conduct evaluations of mariners as required by the STCW Convention. *See* Section A–I/6 of the STCW Code.
None	10.308	Adds requirements for training programs to meet the proposed requirements for course approval and general training standards, which includes being part of a QSS.	Provides consistency with the obligation under the STCW Convention for approved training to be part of a QSS. *See* Regulation I/8 of the STCW Convention.
11.309	10.309	Revises section to reduce redundant language from other sections of this subpart.	Provides clarification with reference to § 10.302 for collecting the necessary information.
		Adds QSS requirements for accepted training	Provides consistency with the obligation under the STCW Convention for approved training to be part of a QSS. *See* Regulation I/8 of the STCW Convention.
None	10.311	Adds simulator performance standards	Provides consistency with existing requirements and Section A–I/12 of the STCW Code.
11.401	11.401	Revises section to more specifically reflect STCW Convention requirements. Provides clarification regarding the requirements for STCW endorsements for mariners on seagoing vessels.	Includes the STCW Convention requirements generally throughout the subpart in an effort to clarify regulations. *See* Part A, Chapter II of the STCW Code.
		Adds a requirement to complete an assessment of professional skills.	Provides a specific requirement for an STCW endorsement for those serving on seagoing vessels greater than 200 GRT/500 GT or any vessel on an international voyage. This requirement was previously listed in 46 CFR subpart I.
		Revises the list of requirements to obtain a master or mate endorsement for vessels of 200 GRT/500 GT or more and for all seagoing vessels on international voyages.	Provides consistency with the STCW Convention list of requirements for persons on that size vessel, including basic and advanced firefighting, ARPA, GMDSS, and radar observer.
		Revises the flashing light requirement	Extends the flashing light proficiency requirement to those to whom the STCW Convention applies, *i.e.*, all mariners serving on seagoing vessels. See Table A–II/1 of the STCW Code.
		Removes the requirement for deck officers to obtain a qualification as able seaman.	Provides consistency with the STCW Convention that does not require a qualification as able seaman for seagoing deck officers.
		Revises the application of equivalent sea service to mariners required to meet STCW standards.	Specifies that a course without seagoing service would not be granted equivalent service under the STCW Convention, which requires service at sea for various endorsements. *See* Chapter II of the STCW Code.
		Moves information requiring compliance with STCW Convention regulations and standards of competence from § 11.903.	Makes the existing requirements easier to locate and follow.
11.402	11.402	Adds a table providing equivalencies between GRT and GT.	Enables equating between the two systems, for credentialing purposes only.
		Revises tonnage limitations for an unlimited officer endorsement by setting the minimum to 2,000 GRT/3,300 GT.	Establishes a minimum tonnage limitation. It was previously possible to obtain a limitation of less than 2,000 GRT/3,300 GT; however, there is little reason to establish any limitation less than 2,000 GRT/3,300 GT.

Current cite	*Cite under proposed rule*	*Summary of proposed change*	*Explanation of proposed change*
11.403	11.403 (See also, 11.430(f) Structure of deck officer endorsements for Great Lakes and inland waters service).	Replaces deck officer endorsements structure diagram with new diagram showing progression of deck officer endorsements for seagoing service based on vessel tonnage.	Reflects the proposed progression for deck officer endorsements limited to seagoing service.
11.404	11.404	Revises the requirements to allow multiple routes for progression to master.	Allows advancement to master directly from either officer in charge of a navigation watch (OICNW) or chief mate, as provided in the STCW Convention. This progression would be allowed to assist those mariners who are unable to obtain service time as a chief mate. *See* Regulation II/2 of the STCW Convention.
		Revises the requirement to include meeting the training requirements for chief mate if the applicant does not hold an endorsement or license as chief mate.	Provides consistency with STCW Convention requirements allowing applicants meeting the same minimum training as an individual progressing through chief mate to progress. *See* Regulation II/2 of the STCW Convention.
11.405	11.405	Revises the requirement for chief mate (oceans and near coastal) to include the requirements for approved training required by the STCW Convention.	Provides a list of necessary KUPs and sets a requirement for assessment of an individual seeking an endorsement as chief mate. A chief mate serving on seagoing vessels must meet STCW Convention requirements. *See* Section A–II/2 of the STCW Code.
		Provides specific requirements for transition for an endorsed or licensed applicant to serve on seagoing vessels between 200 and 1,600 GRT/500 and 3,000 GT.	Provides necessary training requirements for mariners licensed at the management level for vessels between 200 and 1,600 GRT/500 and 3,000 GT. There are gaps currently in the requirements between these two vessel size categories.
		Revises to specifically state that service as a rating, while holding an officer endorsement, would not count toward a management-level officer endorsement.	Provides consistency with STCW Convention requirements, which do not allow service as a rating to count toward a management-level certificate. *See* Regulation II/2 of the STCW Convention.
11.406	11.406	Revises the service requirements for second mate to specify that the service must have been on a seagoing vessel.	Provides consistency with STCW Convention requirements that service towards those endorsements be on seagoing vessels.
11.407	11.407	Revises the requirement for OICNW (oceans and near coastal) to provide for approved training as required by the STCW Convention.	Provides a list of necessary KUPs and sets an assessment requirement for endorsement as chief mate. An OICNW serving on seagoing vessels must meet STCW Convention requirements. *See* Regulation II/1 of the STCW Convention.
		Revises the paragraph, allowing for graduation from a maritime academy to meet this requirement.	Clarifies that an individual must complete an approved program to qualify for this endorsement, and opens up the process to more programs.
11.410	11.410	Revises the section regarding the credential authorizing service on vessels of not more than 500 GRT/1,200 GT. No original endorsement with this tonnage, or a raise of grade to this tonnage, will be issued; however, renewals will continue to be issued.	Clarifies that this credential would no longer be issued as an original endorsement or as a raise of grade to this tonnage. There is limited need for the 500 GRT/1,200 GT level endorsement, and the need could be met with the credential for vessels less than 1,600 GRT/3,000 GT by revising the requirements for those endorsements.
		Restricts officer endorsements issued under this section using orally assisted exams to vessels to which the STCW Convention does not apply.	Provides consistency with STCW Convention requirement for persons serving on seagoing vessels of this size. Orally assisted exams do not satisfy the requirement. See Chapter II of the STCW Code.
11.412	11.412	Adds the requirement that applicants for an endorsement as master must be qualified as mate & OICNW for vessels of 200 GRT/500 GT or more.	Provides consistency with STCW Convention requirements that all persons seeking management-level endorsements qualify as OICNW for vessels of 200 GRT/500 GT or more. *See* Regulation II/2 of the STCW Convention.

Current cite	Cite under proposed rule	Summary of proposed change	Explanation of proposed change
		Revises the service required for an endorsement as master from 4 years total to either 36 months as OICNW, or 24 months including 12 months as chief mate.	Provides consistency with STCW Convention requirements for this level of endorsement. The total service time could now be between 5 and 6 years. *See* Regulation II/2 of the STCW Convention.
		Revises the process for obtaining this endorsement directly from OICNW or chief mate to include service.	Clarifies that the service, training, and assessment requirements of this section must be met to obtain an endorsement as master.
None	11.413	Adds new requirements for chief mate of self-propelled, seagoing vessels of less than 1,600 GRT/3,000 GT.	Provides consistency for this management-level credential, available through the STCW Convention. The Coast Guard received a recommendation from the Merchant Marine Personnel Advisory Committee (MERPAC) to include this level endorsement to assist domestic officers seeking service on foreign flag vessels. See Regulation II/2 of the STCW Convention.
11.414	11.414	Revises this section to require that a person applying for an endorsement as mate must meet the requirements for OICNW in § 11.407.	Provides consistency with STCW Convention requirements that an individual seeking this level endorsement meet the requirements of any other OICNW for seagoing vessels. *See* Regulation II/1 of the STCW Convention.
		Revises the service requirements for an endorsement as mate to allow service on vessels of 75 GRT or more.	Increases the number of mariners who would qualify for an endorsement as mate.
11.418	None	Removes the officer endorsement for master of vessels not more than 500 GRT.	This endorsement would no longer be required because it would lower the tonnage requirements for those serving on vessels of not more than 1,600 GRT/3,000 GT.
11.420	None	Removes the officer endorsement for mate of vessels not more than 500 GRT.	This endorsement would no longer be required because it would lower the tonnage requirements for those serving on vessels of not more than 1,600 GRT/3,000 GT.
11.422	11.422	Adds the specific requirement that additional service as a deck officer is required to raise a tonnage limitation.	Provides clarity as to what the Coast Guard would look for when evaluating an application for raising the tonnage limitation.
None	11.423	Adds new section providing requirements for those seeking officer and STCW endorsements as master of vessels of less than 200 GRT/500 GT on near-coastal waters.	Provides specific requirements for those seeking to obtain an STCW endorsement as master on vessels of less than 200 GRT/500 GT. *See* Regulation II/3 of the STCW Convention.
11.424	11.424	Revises section to address those seeking officer and STCW endorsements as mate or OICNW of vessels less than 200 GRT/500 GT on near coastal waters.	Provides specific requirements to meet STCW Convention requirements, including 36 months of service and meeting training and assessment requirements. *See* Regulation II/3 of the STCW Convention.
		Removes reference to masters of ocean, stream, or motor vessels of not more than 200 gross tons.	Provides consistency with the STCW Convention requiring that applicants seeking to operate vessels of 200 GRT/500 GT or less on ocean waters must meet the requirements for the endorsement as master of seagoing vessels of between 200 GRT/500 GT and 1,600 GRT/3,000 GT.
11.426	11.426	Revises this section, which is applicable only to those vessels to which the STCW Convention does not apply.	Clarifies existing regulations regarding the applicability of an endorsement as master of seagoing of less than 200 GRT limited to domestic near-coastal voyages.
11.427	11.427	Revises this section, which is applicable only to those vessels to which the STCW Convention does not apply.	Clarifies existing regulations regarding the applicability of an endorsement as mate of seagoing vessels of less than 200 GRT limited to domestic near-coastal voyages.
11.428	11.428	Revises this section, which is applicable only to those vessels to which the STCW Convention does not apply.	Clarifies existing regulations regarding the applicability of an endorsement as master of seagoing vessels of less than 100 GRT limited to domestic near-coastal voyages.
11.429	11.429	Revises this section, which is applicable only to those vessels to which the STCW Convention does not apply.	Clarifies existing regulations regarding the applicability of an endorsement as limited master of seagoing vessels of less than 100 GRT on domestic near-coastal voyages.

Current cite	*Cite under proposed rule*	*Summary of proposed change*	*Explanation of proposed change*
11.463	11.463	Adds the requirement for towing vessel officers serving on seagoing vessels to comply with the STCW Convention.	Clarifies the regulations and policy for officers on towing vessels.
11.467	11.467	Adds the limitation to the endorsement as operator of uninspected passenger vessels to not more than 100 nautical miles offshore.	Clarifies that this endorsement is limited to domestic near-coastal waters not more than 100 nautical miles offshore.
11.493	11.493	Revises language to require that Master (OSV) applicants complete a Coast Guard-approved program that meets STCW Convention requirements.	Eliminates unnecessary language and ensures that all programs approved by the Coast Guard are consistent with the STCW Convention. *See* Chapter II of the STCW Code.
11.495	11.495	Revises language to require that Chief Mate (OSV) applicants complete a Coast Guard-approved program that meets STCW Convention requirements.	Eliminates unnecessary language and ensures that all programs approved by the Coast Guard are consistent with the STCW Convention. *See* Chapter II of the STCW Code.
11.497	11.497	Revises language to require that Mate (OSV) applicants complete a Coast Guard-approved program that meets STCW Convention requirements.	Reduces unnecessary language and ensures that all programs approved by the Coast Guard are consistent with the STCW Convention. *See* Chapter II of the STCW Code.
§ 11.501	§ 11.501	Provides a list of engineer officer endorsements for the STCW Convention.	Includes the three endorsements allowed by the STCW Convention for the two levels of engineer officers. These would be included to provide clarity in the incorporation of the STCW Convention. *See* Chapter III of the STCW Convention.
		Moves information requiring compliance with STCW Convention regulations and standards of competence from § 11.903.	Makes the existing requirements easier to locate and follow.
		Adds a restriction regarding limitation for those who do not hold an STCW endorsement.	Provides the limitation for those without the endorsement to serve on vessels of limited horsepower because the STCW Convention applies to all seagoing vessels. *See* Chapter III of the STCW Convention.
§ 11.502	§ 11.502	Adds specific language requiring that training on any propulsion mode be added to an endorsement.	Provides consistency with the STCW Convention requiring that an individual receive the training and education for the authority placed upon a credential. *See* Chapter III of the STCW Convention.
§ 11.505	§ 11.505	Adds a new diagram showing the progression and crossover introduced in this rulemaking.	Provides a visual representation of the progression introduced in this rulemaking.
		Revises the existing engineer license structure diagram to remove chief engineer (limited oceans).	Provides consistency with the STCW Convention. This endorsement would no longer exist; those serving on seagoing vessels must hold an STCW endorsement.
None	§ 11.506	Adds section modifying the required service for chief engineer.	Provides consistency with the STCW Convention. *See* Regulation III/2 of the STCW Convention.
		Provides additional path to chief engineer from chief engineer (limited).	Provides this progression because the only difference between the two endorsements is the required training and education.
		Revises the service requirements to remove the opportunity to use a qualified member of the engineering department (QMED) service towards an endorsement as chief engineer.	Provides consistency with STCW Convention requirements, which count only service as an officer towards the management level endorsements. *See* Regulation III/2 of the STCW Convention.
None	§ 11.507	Adds section to make the prerequisite service be that of an officer in charge of an engineering watch (OICEW).	Provides consistency with STCW Convention requirements regarding service and qualification as OICEW. *See* Regulation III/2 of the STCW Convention.
		Adds a specific requirement to complete approved training for a management-level endorsement.	Includes in regulation the requirement (based upon STCW Convention requirements) previously published in a Coast Guard policy letter. *See* Regulation III/2 of the STCW Convention.
None	§ 11.508	Adds requirements for officer endorsement as second assistant engineer and STCW endorsement as OICEW.	Provides consistency with STCW Convention requirements regarding service and qualification. *See* Regulation III/1 of the STCW Convention.

Current cite	*Cite under proposed rule*	*Summary of proposed change*	*Explanation of proposed change*
None	§ 11.509	Adds requirements for officer endorsements as third assistant engineer for seagoing service with an STCW endorsement as OICEW.	Provides consistency with STCW Convention requirements regarding service and qualification. *See* Regulation III/1 of the STCW Convention
		Accepts the use of training programs as a process to achieve these endorsements.	Clarifies that successful completion of an approved program is the most specific method for meeting the requirement. This allows for a broader acceptance of training programs.
		Lists the training and education requirements for an endorsement as third assistant engineer and OICEW.	Provides consistency with STCW Convention requirements regarding specific training and education for these endorsements. *See* Regulation III/1 of the STCW Convention.
		Provides progression from assistant engineer (limited) and designated duty engineer (DDE) after completing approved or accepted training.	Allows those holding an approved STCW endorsement with limitations to only complete the additional training between the two endorsements. These requirements are based on STCW Convention requirements and were previously published in a Coast Guard policy letter. *See* Regulation III/1 of the STCW Convention.
§ 11.510	§ 11.510	Adds new section to allow an applicant to obtain a chief engineer endorsement limited to vessels less than 10,000 HP and near-coastal waters.	Provides U.S. mariners the opportunity to reduce the training and education requirements for service in near-coastal waters allowed by the STCW Convention. *See* Regulation III/2 of the STCW Convention.
	§ 11.520	Moves the requirements for chief engineer endorsements without STCW endorsements.	This requirement still exists for inland engineers.
None	§ 11.511	Adds new section allowing applicants to obtain a first assistant engineer endorsement limited to vessels less than 10,000 HP and near-coastal waters. This section provides the management-level training required for these limited endorsements.	Provides U.S. mariners the opportunity to reduce the training and education requirements for service in near-coastal waters allowed by the STCW Convention. *See* Regulation III/2 of the STCW Convention.
None	§ 11.512	Adds a new section for chief engineer, limited to vessels of less than 4,000 HP.	Provides for the training and education for vessels of this propulsion power, consistent with the STCW Convention. *See* Regulation III/3 of the STCW Convention.
None	§ 11.513	Adds requirements to qualify as first assistant engineer with an STCW endorsement as second engineer officer on motor or gas turbine propelled vessels of less than 4,000 HP/3,000 kW.	Provides consistency with STCW Convention requirements regarding service and qualification. *See* Regulation III/2 of the STCW Convention.
§ 11.514	§ 11.522	Moves and revises the requirements for second assistant engineer endorsements without STCW endorsements.	This requirement still exists for inland engineers.
	§ 11.514	Revises section to add requirements for assistant engineer on vessels of not more than 4,000 HP on near-coastal routes.	Provides an option consistent with the STCW Convention for a limited endorsement for engineers on vessels of limited propulsion on near-coastal routes. *See* Regulation III/3 of the STCW Convention.
§ 11.512	§ 11.521	Moves the requirements for first assistant engineer endorsements without STCW endorsements.	This requirement still exists for inland engineers.
§ 11.516	§ 11.523	Moves and revises the requirements for third assistant engineer endorsements without STCW endorsements.	This requirement still exists for inland engineers.
§ 11.518	§ 11.524	Moves and revises the requirements for chief engineer (limited) endorsements without STCW endorsements.	This requirement still exists for inland engineers.
§ 11.522	§ 11.525	Moves and revises the requirements for assistant engineer (limited) endorsements without STCW endorsements.	This requirement still exists for inland engineers.
§ 11.524	§ 11.526	Revises the requirement for DDE	Complies with STCW Convention requirements for service on vessels to which the STCW Convention doesn't apply, and to vessels on the Great Lakes and other inland waters. See Chapter III of the STCW Convention.

Current cite	*Cite under proposed rule*	*Summary of proposed change*	*Explanation of proposed change*
§ 11.551	11.551	Revises the section to provide the completion of a program of training, assessment, and sea service approved by the Coast Guard for offshore supply vessel (OSV) engineer endorsements.	Consolidates and clarifies the information that was previously in §§ 11.551, 11.553 and 11.555.
§ 11.811(b)	§ 10.215	Includes medical requirements for vessel security officer (VSO).	Meets the new STCW Convention requirements that come into force on July 1, 2009.
§ 11.901	11.901	Revises the section to require keeping the record of demonstrations of proficiency in the applicant's file.	Notifies applicants that the Coast Guard will maintain a record of completed assessments.
		Removes the list of endorsements requiring STCW endorsement.	Amends section because the list of endorsements was redundant and unnecessary in this location.
§ 11.903	11.903	Revises the list of endorsements requiring examination.	Removes the endorsements that don't require an examination, based on a change in policy and progression consistent with the STCW Convention, *i.e.*, master and second mate.
		Deletes the paragraph excluding master and mate of towing vessels.	The exclusion for master and mate of towing vessels would be provided in §§ 11.464 and 11.465
		Revises table 11.903(c) and moves it to the subpart on requirements for deck and engine officers in §§ 11.401 and 11.501, respectively.	Improves the use of the table as a reference for applicants seeking information on the requirements for various endorsements.
§ 11.910	11.910	Revises table 11.910–1	Reflects the combined endorsements at the management and operational levels.
		Revises table 11.910–2	Revises the table of subjects based on combined examinations at the operational and management levels and updates the information for the STCW Convention.
§ 11.950	11.950	Revised table 11.950 by creating table for seagoing vessels and another for Great Lakes and inland waters.	Reflects the combined endorsements at the management and operational levels and updates information for the STCW Convention.
None	§ 12.201	Adds a minimum age required to obtain a rating endorsement.	Incorporates STCW Convention requirements and current Coast Guard practices that use 16 as the minimum age for these credentials.
§ 12.03–1	Subpart C of part 10	Consolidates Coast Guard-accepted and approved training into one subpart.	Reduces regulatory redundancy.
§ 12.05–3	§ 12.412	Revises the general requirements to obtain an endorsement as able seaman (A/B) to include holding or qualified to hold an endorsement as lifeboatman or survivalman.	Clarifies the A/B requirement to allow being qualified for lifeboatman or survivalman, and removes the requirement to pass the lifeboatman exam if the individual already holds the appropriate endorsement.
§ 12.05–3(c)	§ 12.420	Adds a new section to provide the requirements for ratings forming part of a navigational watch (RFPNW).	Provides requirements for RFPNW, required by the STCW Convention, in one location. The regulations do not currently identify these requirements. See Regulation II/4 of the STCW Convention.
§ 12.05–5 [Reserved]	§ 10.215	Consolidates the physical and medical requirements with all other endorsements and provides specific requirements rather than referring the applicant to the requirements for deck officers.	Clarifies the requirements for this endorsement.
§ 12.05–9	§ 12.416	Adds the option of survivalman as meeting the requirements for lifeboatman.	Provides additional flexibility for mariners serving on vessels without lifeboats by allowing them the ability to obtain an A/B endorsement.
§ 12.05–11	§ 12.418	Adds the option of survivalman	Allows for additional flexibility for the industry.
§ 12.10–1	§ 15.403	Moves this requirement to § 15.403	Moves section to part 15 as it is a manning requirement.
§ 12.10–3	§ 12.610	Revises the section to add the STCW Convention requirements for proficiency in survival craft and rescue boats. Removes the list of specific programs from meeting the requirements.	Includes demonstrations of proficiency required by the STCW Convention. Lifeboatman endorsement must comply with the STCW Convention. There is no need to list the approved programs as they are in the list of approved courses. See Regulation VI/2 of the STCW Convention.

Current cite	*Cite under proposed rule*	*Summary of proposed change*	*Explanation of proposed change*
§ 12.10–5	12.610	Incorporates revised examination and demonstration of ability requirements into § 12.610 with other requirements for lifeboatman.	Moves these requirements for clarity.
§ 12.10–7	None	Removes section	Information is provided under able seamen (*see* proposed § 12.418) and not required in this subpart.
§ 12.10–9	§ 12.620	Revises the requirements for certificates of proficiency in fast rescue boats, adding a specific number of drills and the specific areas of competence the STCW Convention requires.	Provides additional information clarifying the STCW Convention requirements to obtain an endorsement for proficiency in fast rescue boats. *See* Regulation VI/2 of the STCW Convention.
None	§ 12.630	Provides a new section for a survivalman endorsement.	Adds new section because there are individuals assigned to vessels without lifeboats who do not need to meet the full requirements for lifeboatman, but must still meet the proficiency in the survival craft installed on their vessels. *See* STCW Convention section VI/2.
§ 12.13–1	§ 15.403	Moves this documentary evidence section to part 15.	We made this section consistent with the similar section applicable to able seamen and moved it into part 15 regarding manning requirements.
§ 12.13–3	§ 12.640	Revises this basis-of- documentary- evidence section to include those persons who have alternative qualifications.	Adds the additional process to meet this requirement through the possession of a professional license or alternative professional qualification.
§ 12.15–1	§ 15.825	Moves section to part 15	We made this section consistent with the similar section applicable to able seamen and moved it into part 15 regarding manning requirements; removed requirement to produce an endorsement to the United States Customs and Border Protection Port Director or master.
§ 12.15–3(e)	§ 12.510	Revises the rating forming part of an engineering watch (RFPEW) requirement for QMED.	Removes the specific requirement for the STCW endorsement as RFPEW associated with QMED and moves it to its own subpart. Adds a note that RFPEW may be required for those QMEDs serving on seagoing vessels.
§ 12.15–5	§ 12.512	Moves the medical and physical exam requirements for QMED.	Places medical and physical requirements for all endorsements in part 10.
§ 12.15–7	§ 12.514	Revises the requirement to provide a more general requirement that a QMED endorsement applicant must complete an appropriate training program.	There is no need to provide specific information regarding the training programs and courses; this information is included in the course approval letters provided to each training provider.
§ 12.15–11	§ 12.518	Revises existing language without substantive changes.	Removes language that didn't add clarity.
None	§ 12.530	Adds new section providing the requirements for RFPEW.	Provides specific requirements for this STCW rating, even though this rating was part of the requirements for QMED. *See* Regulation III/4 of the STCW Convention.
§ 12.25–20	§ 12.706	Revises to refer to § 10.215	Refers to the medical and physical requirements section in part 10.
§ 12.25–45	§ 12.650	Revises section to provide more specific information regarding the qualification requirements for an endorsement as GMDSS at-sea maintainer.	Specifies the methods of qualification allowed to obtain the endorsement.
§ 15.103	§ 15.103	Adds clarification that a safe manning certificate may be issued to uninspected vessels on an international voyage.	Provides uninspected vessels on international voyages the necessary information they will need to provide port state control officers in foreign ports.
§ 15.301(b)	§ 10.109(d)	Revises section to add VSO to the list of endorsements under the STCW Convention.	Adds endorsement to meet the new STCW Convention requirements that will come into force on July 1, 2009.
Various	§ 15.403	Moves requirements from throughout subchapter B to this section, providing details for when various credentials are required.	Consolidates all manning requirements into part 15.
		Consolidates the general exception from the STCW Convention.	Moves the exception to part 15 because it is a manning issue.

Current cite	*Cite under proposed rule*	*Summary of proposed change*	*Explanation of proposed change*
None	§ 15.404	Adds this section to provide the various endorsements required for service.	Explains specific endorsements required and covered under these manning requirements.
§ 15.515	§ 15.515	Clarifies the requirement regarding passenger vessels.	Provides clarification to assist in understanding manning requirements because existing language is confusing.
§ 15.605	§ 15.605	Adds the requirement that individuals serving on uninspected passenger vessels (UPVs) on international voyages must comply with the STCW Convention.	UPVs operating on near-coastal domestic voyages are held to be substantially in compliance with the STCW Convention. However, the STCW Convention requires all individuals to be in compliance with the STCW Convention when on international voyages. *See* Article III of the STCW Convention.
§ 15.805	15.805	Provides for all UPVs on international voyages to be under the control of an individual holding a license or endorsement as master.	Provides consistency with the STCW Convention, which requires that all vessels on an international voyage, including UPVs, must be operated by an individual who complies with the STCW Convention. *See* Article III of the STCW Convention.
§ 15.845	15.845	Adds manning provision for survivalman rating.	Provides an alternative for those vessels without lifeboats and sets the provisions to use survivalmen in lieu of lifeboatmen.
§ 15.1109	15.705	Moves requirement that masters of seagoing vessels must observe the STCW Convention watchkeeping principles.	Consolidates watchkeeping requirements to meet the STCW Convention watchkeeping principles. *See* Chapter VIII of the STCW Convention.

D. Part 12 Renumbering

Part 12, Requirements for Rating Endorsements, was largely rewritten to incorporate the rating requirements of the STCW Convention. In addition, the numbering of part 12 was changed to reflect the numbering of the remainder of 46 CFR subchapter B.

Below is a quick-reference table showing the subparts and sections of the previous part 12 that were renumbered, revised, and inserted into the new part 12.

Old Reference	New Reference
Subpart 12.01	Subpart A
§ 12.01–1	§ 12.101
§ 12.01–3	§ 12.103
§ 12.01–9	§ 12.105
Subpart 12.02	Subpart B
§ 12.02–11	§ 12.201
§ 12.02–17	§ 12.203
Subpart 12.03	Subpart C
§ 12.03–1	§ 12.301
Subpart 12.05	Subpart D
§ 12.05–1	§ 12.410
§ 12.05–3	§ 12.412
§ 12.05–7	§ 12.414
§ 12.05–9	§ 12.416
§ 12.05–11	§ 12.418
§ 12.05–7(a)(5)	§ 12.420
Subpart 12.15	Subpart E
§ 12.15–3	§ 12.510
§ 12.15–5	§ 12.512
§ 12.15–7	§ 12.514
§ 12.15–9	§ 12.516
§ 12.15–11	§ 12.518
§ 12.15–13	§ 12.520
§ 12.15–15	§ 12.522
§ 12.15–7(C)	§ 12.530
	Subpart F
§ 12.10–3; –5	§ 12.610
§ 12.10–9	§ 12.620
	§ 12.630
§ 12.13–1; –3	§ 12.640
§ 12.25–45	§ 12.650
Subpart 12.25	Subpart G
§ 12.25–1	§ 12.702
§ 12.25–10	§ 12.704
§ 12.25–20	§ 12.706
§ 12.25–25	§ 12.710
§ 12.25–30	§ 12.720
§ 12.25–35	§ 12.730
§ 12.25–40	§ 12.740
Subpart 12.40	Subpart H
§ 12.40–1	§ 12.801
§ 12.40–5	§ 12.803
§ 12.40–7	§ 12.805
§ 12.40–9	§ 12.807
§ 12.40–11	§ 12.809
§ 12.40–13	§ 12.811
§ 12.40–15	§ 12.813

E. Request for Comments

The Coast Guard seeks specific comment on the requirements within proposed subpart E of part 11 of 46 CFR in regards to the proposed training for engineering officers and the current lack of approved courses. We would like public comment to determine when training facilities believe they will be able to develop the new training proposed in this rule.

V. Discussion of Comments on the Interim Rule (IR)

This section contains an analysis of 41 comments received in response to the IR. All references to specific regulations by commenters refer to regulations in existence at the time of the 1997 IR. Comments expressing support for a specific exemption are discussed below under the relevant sections.

1. Scope of Application—General

Seven comments were received expressing general views about the scope of application aspects listed in the IR. These commenters were opposed to or concerned about any exemption or relaxation of requirements for personnel on inland vessels, on small passenger vessels, on Great Lakes vessels, on offshore supply vessels (OSVs), on fishing boats, on mobile offshore drilling units (MODUs), and on vessels of less than 200 GRT/500 GT on domestic voyages. One commenter said the Coast Guard should take steps to ensure all personnel on exempted vessels are subject to special training requirements that are equivalent to the

STCW Convention and subject to a quality standards system (QSS). Another commenter agreed that exemptions could not be granted simply on the grounds that vessels operate domestically.

One commenter advocated that a unified set of standards should apply to all licensed officers in the merchant marine, and that, therefore, the STCW Convention standards should apply to all personnel serving not only at sea, but also on inland waters and the Great Lakes. This commenter recognized that this approach would exceed the scope and intent of this rulemaking and the STCW Convention, and suggested that unification of standards be introduced in due course under a separate set of proposals. The commenter said all personnel on seagoing ships, including those serving on smaller ships, should be subject to the full range of the STCW Convention requirements.

We do not propose to extend application of the STCW Convention to inland waters, since the scope of the STCW Convention is limited to seagoing ships. Our entire scheme of licensing, testing, inspection, and continued oversight for inland water and Great Lakes provides a level of safety equivalent to the STCW Convention.

One commenter said the exemption from the STCW Convention for vessels operating exclusively on the Great Lakes should be removed to allow licensed officers on those ships to obtain STCW endorsements.

The exemption does not entirely remove the possibility for such officers to receive an STCW endorsement if they are able to provide evidence of having completed the required training and assessment. It is not necessary or appropriate to expand the application of the STCW Convention requirements to the Great Lakes (which the U.S. considers to be outside the scope of the STCW Convention). We have worked with training facilities in the Great Lakes region, including the Great Lakes Maritime Academy, to provide a route for those mariners interested in acquiring an STCW endorsement for service outside the Great Lakes.

One commenter expressed the view that it would not be appropriate to issue an STCW endorsement for service on the ''Inside Passage,'' *i.e.,* international voyages between Seattle, WA, and Vancouver, British Columbia, to someone who had not demonstrated competence under the STCW Convention. Another commenter requested a determination that this route be considered ''within the boundary lines'' and, therefore, not subject to the STCW Convention implementation schedule. Yet another commenter expressly requested that no exemption be granted to vessels operating on the waters of the Inside Passage.

As explained in the preamble to the IR, we consider these waters to be inland waters, which are outside the scope of the STCW Convention. However, on request, we will issue an STCW endorsement limited to service on the Inside Passage to holders of U.S. inland licenses or endorsements, provided such documentation is necessary for operation in waters under Canadian jurisdiction. The limitation placed on the document should be sufficient indication to all concerned that the holder has not been subject to the full range of assessments necessary under the STCW Convention for service on seagoing ships when operating outside the boundary line.

Two commenters supported our implementation of the measurement system established by the International Convention of Tonnage Measurement of Ships. We have used both gross register tons (GRT), which is the domestic tonnage measurement, and gross tonnage (GT), which is the international tonnage measurement, in this NPRM. The GRT/GT tonnage equivalencies are found in the table at 46 CFR 11.402(a).

One commenter did not support the exemption that allowed for ''short'' voyages.

This exemption has been retained in § 15.103 due to industry needs of the small vessel community, such as towing vessels and small passenger vessels on domestic near-coastal voyages. In addition, STCW provides the administrative flexibility to provide exemptions on such vessels.

One commenter stated that the interchanging of the terms ''certificate'' and ''endorsement'' in the IR is confusing.

This issue has been overcome by the development of the MMC rulemaking, which establishes the use of endorsements as the method of placing qualifications on a mariner's Coast Guard-issued credential. The previous concerns related to the STCW Convention's use of certificate and endorsement, as implemented by each administration. These certificates and endorsements are referenced in the MMC final rule (74 FR 11196, Mar. 16, 2009). The definition of ''endorsement'' may be found at 46 CFR 10.107.

2. Application to Fishing Industry Vessels

Six comments noted that the IR, as written, applies only to fish-processing vessels. In general, the commenters said all fishing industry vessels should be treated the same, and opposed application of STCW Convention requirements to any fishing industry vessel, including fish-processing vessels. The commenters suggested that the Coast Guard should exempt fish-processing vessels from the STCW Convention requirements or be more flexible in applying it, and should seek legislative authority, if necessary, to allow for such an exemption.

We are obligated to treat fish-processing vessels differently from fishing vessels and fish-tender vessels because fish-processing vessels are distinctively defined by legislation (46 U.S.C. 2101(11b)) as ''a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.'' Only vessels actively engaged in fishing are excluded under the terms of the STCW Convention, and the Coast Guard has determined that fish-processing vessels are not actively engaged in fishing. Therefore, we have no authority to fully exempt fish-processing vessels from the STCW Convention requirements without a legislative change. Where flexibility does exist, we have made every effort to ensure the fishing vessel industry can operate under a uniform system. For example, this NPRM proposes retaining the provision from the IR that recognizes compliance with the regulations in 46 CFR part 28 as meeting STCW Convention requirements for basic safety training (BST).

Two comments stated that it would be preferable to address all fishing industry vessels under the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW–F).

The STCW–F applies only to fishing vessels which do not include fish-processing vessels. We are obligated to treat fish-processing vessels differently from fishing vessels and fish-tender vessels because fish-processing vessels are distinctively defined by legislation (46 U.S.C. 2101(11b)), and as stated in our response to the previous comment.

Three commenters stated that there are competitive impacts from imposing STCW Convention requirements on only one segment of the fishing industry; for example, when fish-processing vessels, which are included, must compete for business with factory trawlers, which are exempt.

We are obligated to treat fish-processing vessels differently from fishing vessels and fish-tender vessels because fish-processing vessels are distinctively defined by legislation (46

U.S.C. 2101(11b)). Only vessels actively engaged in fishing are excluded under the terms of the STCW Convention, and the Coast Guard has determined that fish-processing vessels are not actively engaged in fishing. Therefore, we have no authority to fully exempt fish-processing vessels from the STCW Convention without a legislative change. Where flexibility does exist, we have made every effort to ensure the fishing vessel industry can operate under a uniform system.

Six commenters said it was not logical to apply the STCW Convention (and impose extra costs) on fish-processing vessels, which typically operate while anchored in protected waters, while exempting fishing vessels operating at sea, where the risks are higher.

As noted in response to the previous comment, we are obligated to treat fish-processing vessels differently from fishing vessels and fish-tender vessels because fish-processing vessels are distinctively defined by legislation (46 U.S.C. 2101(11b)). Only vessels actively engaged in fishing are excluded under the terms of the STCW Convention, and the Coast Guard has determined that fish-processing vessels are not actively engaged in fishing. Therefore, we have no authority to fully exempt fish-processing vessels from the STCW Convention without a legislative change. As indicated previously, where flexibility does exist, we have made every effort to ensure the fishing vessel industry can operate under a uniform system.

One commenter said STCW Convention requirements should only be imposed on fishing industry vessels operating outside of the U.S. exclusive economic zone (EEZ) rather than outside the boundary line.

The Coast Guard does not concur with this comment. The STCW Convention applies to all ocean waters, which have been interpreted as those waters outside the boundary line and would include the entire EEZ.

One commenter did not consider the requirements of 46 CFR part 28 on drills and safety instruction comparable to the STCW Convention requirement and recommended deleting this option.

We do not agree that removing this option would be appropriate because the STCW Convention does not apply to fishing vessels. Additionally, the fishing vessel industry has built its safety training programs around the requirements of 46 CFR part 28, and we believe there is a strong interest in having uniform standards wherever possible.

3. Application to Towing Industry Vessels

We received three comments concerning the application of the STCW Convention to the towing vessel industry. Two commenters expressed support for the approach taken in the IR, which effectively exempted towing vessels of less than 200 GRT/500 GT on domestic voyages from additional regulation. These comments also endorsed our intent to avoid duplicate regulation by taking into account the final rule on licensing and manning requirements for towing vessel operators, published on June 17, 2003 (68 FR 35801). One of these commenters said we should proceed with the development of clear policy guidance for vessel owners and operators as well as for regional examination centers (RECs) to ensure consistent implementation of new requirements. One commenter said the application to uninspected towing vessels (UTVs) operating beyond the boundary line was not clear.

While this NPRM proposes to retain the approach taken in the IR, we have clarified that UTVs operating beyond the boundary line are subject to the STCW Convention. Furthermore, since the comment was received (in December 1997), we issued Navigation and Vessel Inspection Circulars (NVIC) 4–01—available at *http://www.uscg.mil/hq/cg5/NVIC/*—to address credentialing of towing vessel officers.

4. Application to Small Passenger Vessels

There were four comments regarding the passenger vessel industry. Two comments expressed support for the approach taken in the IR, which, on the basis of equivalencies in existing regulations, effectively exempted small passenger vessels on domestic voyages from additional regulation. However, one of these commenters urged us to re-draft the equivalency as a general exemption and extend this equivalency exemption to include small passenger vessels on international voyages. This commenter suggested that, if we were unable to issue such an exemption, then we should hold a public hearing to explore the issues of the applicability of the STCW Convention to vessels on domestic voyages, and the ''subordination of U.S. regulation to an international organization.''

Regarding the need for a public meeting on the relationship of maritime treaty law to vessels in domestic or international service, we do not consider that such a meeting would contribute directly to this rulemaking project. As a party to the STCW Convention since 1991, the U.S. is committed to its terms, including any revisions that have been adopted in accordance with its amendment procedures. Whether it is proper for U.S. vessels under other circumstances to be subject to international conventions is outside the scope of this rulemaking project.

Two commenters did not support the approach introduced in the IR that would allow holders of licenses for small passenger vessels operating beyond the boundary line to obtain STCW endorsements without being observed by a designated examiner (DE) or completing an approved training program. One of the commenters said an exemption was inconsistent with the revised STCW Convention.

We have maintained the approach taken by the IR in this NPRM. The STCW Convention clearly provides a sufficient range of administrative flexibility to allow for exemptions from requirements for smaller ships on domestic voyages. However, for personnel serving on vessels in international service, where foreign port state control officers can be expected to insist on strict compliance with the STCW Convention, the scope of administrative discretion is very limited. We would consider approving specially tailored training programs, if submitted, for personnel serving on smaller vessels in international service (with a resulting limitation on the licenses, certificates, endorsements, and documents issued).

5. Application to Offshore Supply Vessels

We received 10 comments concerning the offshore supply vessel (OSV) industry as discussed below. Three of the commenters supported the approach taken in the IR, which allows the issuance of a special category of licenses for the OSV industry.

One commenter favored some form of relief for OSVs from the application of STCW Convention and Code, but said the exemption the Coast Guard proposed did not go far enough and should be extended up to 500 GRT. This commenter also disagreed on the use of a license restricted to OSVs and doubted that any mariner would want it.

Four commenters disagreed with the approach taken in the IR, because the STCW Convention does not identify OSVs as a special vessel type.

Two commenters focused on training aspects. One commenter said equivalencies should not be applied by a local Officer in Charge, Marine Inspection (OCMI) but, rather, on a

uniform national criterion. One commenter said the Coast Guard should hold a public meeting to educate mariners in the Gulf of Mexico region about STCW Convention requirements and the implications of the IR.

This NPRM retains the approach taken in the IR. It is clear from working with individuals and companies in the OSV industry that not all the areas of knowledge, understanding and proficiency (KUP), as set out in the tables in the STCW Code (incorporated by reference in the IR and available for viewing at the address under **ADDRESSES**), are relevant to the OSV industry. Additionally, certain areas of proficiency that are not included or emphasized in the tables of the STCW Code are required for competence in the OSV industry. We will continue to work with companies operating OSVs, individuals who work on OSVs, and organizations that train personnel for service on OSVs to find the right balance of proficiencies needed for this limited license. If any equivalency is ultimately introduced for this license, we will develop the criteria as a national policy to provide the necessary uniformity in local application by OCMIs and RECs.

We do not consider the types of ships identified in Chapter V of the STCW Convention (*i.e.,* tankers, passenger ships, and Ro-Ro passenger ships) to be the only possible categories of ships for which a special or limited license can be issued under the STCW Convention. The STCW Convention clearly allows for limitations to be placed on the STCW endorsement. In the present case, the holder would be limited to service on OSVs unless assessed in those areas of proficiency that would allow removal of the limitation.

One commenter stated that it is necessary to improve the methods used for communicating with active mariners who are directly affected by these regulations.

The Coast Guard agrees and, in an effort to make information on the STCW Convention more easily available, we have launched an STCW Convention Web site, *http://www.uscg.mil/STCW/.*

Two commenters offered suggestions on specific areas of training and service that need to be emphasized in an OSV-based program of training and experience.

These recommendations do not affect the wording of the regulation and will be considered in developing policy guidance for the approval of OSV training programs.

One commenter said the OSV license provisions (*i.e.*, those formerly found in §§ 10.493, 10.495, and 10.497) should each explicitly state, ''The STCW Convention certificate or endorsement will be expressly limited to service on the vessel or class of vessels and will not establish qualification for any other purpose.''

We do not consider it necessary to add this to the regulation since the title and description of the license as given in the regulations and used on the STCW endorsement will expressly limit service to OSVs.

6. Tonnage Issues

Three commenters expressed opinions on the application of the regulatory and international tonnage systems to licensing and to OSVs. One commenter supported the use of the 3,000 GT threshold for unlimited U.S. licenses based on the International Tonnage Convention on Tonnage Measurement of Ships, 1969 (ITC). Another commenter urged the Coast Guard to make every effort to promote the use of the ITC for tonnage measurement.

We are obligated not only to operate within the framework of the ITC requirements, but also within the framework of the U.S. statutory requirements, which allow for a domestic tonnage measurement system. Because of the differences between the two measurement systems, we have developed table 11.402(a), which establishes the equivalencies that the Coast Guard will use when evaluating credentials.

A small number of comments from the five commenters above fall outside the scope of this rulemaking.

7. STCW Certificate or Endorsement

One commenter said the use of the terms STCW ''certificate'' and STCW ''endorsement'' should be clarified. Another commenter supported the idea of combining the U.S. license and STCW endorsement into a single document.

Subchapter B of 46 CFR was revised under the MMC final rule, which changed the terminology to use the phrase ''STCW endorsement'' (74 FR 11217, 11219). Additionally, that rulemaking consolidates all our domestic credentials into one document.

8. Length of Service Requirement

One commenter requested clarification of the reference to ''remaining service'' in 46 CFR 10.304(e). Essentially, the commenter suggests that the provision, which requires applicants for an STCW endorsement as officer in charge of a navigational watch (OICNW) to have ''not less than one year of remaining service'' as part of an approved training program, does not specify the actual total service required.

We agree that the section is unclear and have clarified the requirements in proposed § 11.407 to address the difference between: (1) Completion of the service and training requirements; and (2) completion of an approved program which includes service.

One commenter suggested that more discussion is needed to resolve inconsistencies between the seagoing service requirements in 46 CFR part 10 and the STCW Convention regulations.

We propose incorporating the sea service requirements of the STCW Convention into the proposed 46 CFR part 11, including the alternate sea service requirements for paths of progression to management level certificates. As with other provisions of this proposed rule, we seek public comment on the proposed 46 CFR part 11.

9. Qualifications of Instructors and Designated Examiners (DEs)

One commenter suggested revising 46 CFR 10.309(a)(3)(iii) to allow those with expired licenses to serve as instructors. The commenter observed that performance evaluations from on-the-job experience may be sufficient to enable an individual to qualify as a DE.

We agree and propose to revise the requirement to provide an appropriate balance between the need for instructors to ''hold the level of license, endorsement or other professional credential'' required of those who would use the knowledge and skills necessary to teach onboard a vessel, and the need to ensure that qualified and experienced instructors are not prevented from giving instruction for lack of a license. A professional credential can be something other than a license if the qualification to perform the skill on a vessel is a special endorsement (as in the case of radar or Global Marine Distress and Safety System (GMDSS)).

This commenter also expressed concern that the Coast Guard would use the recommended timetable from the International Maritime Organization (IMO) model course on ''Train the Trainer'' as the mandatory length of training for qualifying instructors under U.S. regulations.

The IMO model courses are non-mandatory. They serve as a useful reference point for a wide range of training programs which cover the same basic material.

One commenter said the definition of DE should be expanded to include

licensed engineers and mates performing as instructors at schools operated for the deep sea industry such as the Maritime Institute of Technology and Graduate Studies, the Maritime Administration (MARAD), the Harry Lundeberg School of Seamanship, and the American Maritime Officers' STAR Center. Four other commenters agreed with the view that instructors from union schools should receive the same automatic designation as qualified instructors and DEs as provided to instructors at the maritime academies. One of these commenters said an alternative would be to delete the recognition granted to maritime academy instructors in the IR.

We note that the comments did not provide information to substantiate the proposed revision with respect to instructors at training facilities that are not subject to independent academic accreditation. However, we remain open to the possibility of granting a general approval for instructors at any single training facility to act as DEs within their respective approved training programs. We would grant this approval after establishing that the system used to employ instructors at the facility is effective and reliable in maintaining qualified staff who conduct assessments of proficiency. This can be accomplished through normal course approval procedures as outlined in 10 CFR Subpart C—Training Schools with Approved Courses. In addition, we are satisfied that the special system of oversight maintained jointly by the Coast Guard and MARAD is adequate to verify that academy instructors are qualified.

Three commenters suggested there should be two DE levels: One for shipboard examiners and one for shoreside examiners. One of these commenters said this would address concerns of shipboard officers who are reluctant to perform assessments of proficiency and to make entries in training record books (TRBs).

We do not concur that a two-tier concept for DEs should be introduced in this rulemaking. While the scope of guidance necessary for performing an assessment of proficiency should relate to the range of skills assessed, that assessment, whether performed onshore or onboard a ship, should use the same criteria. The distinction between shoreside and onboard assessment may be important for developing an assessment situation or scenario, but should not require a different set of assessment standards.

10. License Structure

One commenter favored retaining the current four-tier system of licenses rather than the three-tier system used in the STCW Convention. Another commenter recommended that no changes should be made to the domestic licensing system without careful study by the Merchant Marine Personnel Advisory Committee (MERPAC).

We asked MERPAC to study this issue, and they recommended that we retain the current four-tier system. Consequently, we have not altered the basic four-tier system of licenses in this NPRM; however, we have provided alternative paths of progression.

11. Bridge Teamwork Procedures

Two commenters said it was important to include shipboard training in bridge teamwork procedures for unlicensed personnel (*i.e.*, helmsman and lookout), and to provide bridge teamwork training for ratings forming part of a navigational watch (RFPNWs).

We agree that this is desirable, and that this should be understood within the context of Table A–II/4 of the STCW Code, which lists the following among the required KUPs for qualifying as an RFPNW: The ''ability to understand orders and communicate with the officer of the watch in matters relevant to watchkeeping duties * * * procedures for the relief, maintenance, and handover of a watch * * * [and] information required to maintain a safe watch.'' The level of training and assessment does not have to be of the same scope and depth as required for an officer in charge of a navigation watch (OICNW) in Table A–II/1 of the STCW Code and in 46 CFR 11.407(a)(2).

One commenter requested clarification as to whether the Coast Guard must approve training in bridge teamwork procedures. Another commenter was not opposed to in-service, onboard assessments of competence in bridge teamwork, but stated that the Coast Guard should verify that the resulting level of competence is equal to structured training. A third commenter said the Coast Guard should require formal classroom and simulator instruction in bridge teamwork and bridge resource management (BRM) in all cases.

As a general matter, all training that is provided to meet an STCW Convention requirement must be monitored under an approved QSS. During the transition period, we accepted assessment as one method of proving competence to allow for those who had previously completed BRM or had extensive experience on vessels that practiced BRM. Now that the transition period has ended, we propose requiring formal training and assessment. Furthermore, we are proposing a requirement for training in BRM at the operational level.

One commenter expressed support for the list of items that the preamble to the IR indicated should be covered in the assessment of proficiency in bridge teamwork procedures (62 FR 34519). These items were included in the guidance contained in NVIC 4–97 on company responsibilities.

12. License Renewal and Refresher Training

One commenter felt that the options available in the IR for renewing licenses should be revised to require refresher training in the International Safety Management Code (ISM), GMDSS, and other new technologies.

We drafted the IR to reflect or retain the options made available in section A–I/11 of the STCW Code. These include passing an approved test or performing functions equivalent to seagoing service. Refresher training is also an option. Therefore, we do not consider a revision restricting U.S. license holders to any one of these options appropriate.

13. QSS and ISM Code

One commenter said that before the Coast Guard accepts the ISM certificate as sufficient evidence of a QSS for in-house training and assessment, it should review the ISM certification process to ensure there is sufficient time and scope to verify evidence of compliance with the STCW Convention. This commenter expressed doubt that the current procedures were adequate to encompass STCW Convention requirements.

The preamble to the IR stated that we were planning to ''accept the ISM Certificate of a company as sufficient evidence of a QSS for in-house training and assessment, provided the company incorporates, in its ISM program, a commitment to comply with 46 CFR 10.309,'' which sets out the elements of a Coast Guard-accepted QSS (62 FR 34513). We provided further guidance on company roles and responsibilities in NVIC 4–97, which states that a valid Safety Management Certificate and Document of Compliance by themselves establish a presumption of compliance with STCW Convention regulation I/14 (Company responsibilities). This is a limited presumption that does not extend to other STCW Convention regulations such as I/8 on Quality Standards. We consider the ISM system to offer a solid basis for adopting the STCW Convention requirements if the

company is providing opportunities for onboard training and assessment. However, some modifications to the company's ISM system are essential to ensure that the special requirements of 46 CFR 10.309 are fulfilled.

Two commenters said that ISM audits would not accomplish STCW Convention audits in the same time period during which both systems are being implemented.

At this time, there hasn't been an instance of an approved use of ISM to encompass STCW Convention audits. Three classification society systems of evaluation are Coast Guard-accepted QSSs, but the system is not designed to ''piggyback'' on an ISM audit.

One commenter said if the ISM certificate process is used as evidence of QSS for in-house training, increases in manning should be considered.

The Coast Guard is not considering a specific manning requirement at this time because it is beyond the scope of this rulemaking, which seeks merely to incorporate the STCW Convention into our regulations.

14. QSS, Coast Guard Course Approval, and Maritime Academies

One commenter, while expressing general support for the IR, said that, in the absence of any Coast Guard-accepted QSSs, there might be a need to delegate course approvals from the U.S. Coast Guard National Maritime Center (NMC) to the local OCMIs.

We are not endorsing this proposal for several reasons. First, NMC oversight provides a higher degree of nationwide consistency in course approvals. Adding workload to local Coast Guard units would not necessarily increase the efficiency of the approval process. Since receiving the comment, we have approved two classification societies and one accreditation service to act as Coast Guard-accepted QSSs.

One commenter said the system of monitoring the training programs at the maritime academies and the Coast Guard's own course approval system did not comply with STCW Convention Regulation I/8 on QSS. This commenter suggested using International Organization for Standardization (ISO) 9002 and applying it across the board to all maritime training and to the Coast Guard's course approval system.

The Coast Guard has developed a comprehensive QSS for the merchant marine personnel qualification system. We agree that all training courses and programs used for qualification under the STCW Convention should be monitored under a QSS and, in this rulemaking, we are proposing that all training courses and programs used for qualification under the STCW Convention be monitored under a QSS, including those training programs provided by the maritime academies. While the standard used within the Coast Guard is based upon ISO 9001:2000, we have not required a specific standard to use in this rulemaking.

15. QSS Alternatives

Three commenters supported the concept of employing a panel of maritime education specialists from maritime associations, maritime trade organizations, maritime training institutions, corporations, or other organizations that meet the requirements of 46 CFR 10.309(a) as an alternative to a Coast Guard-accepted QSS. One commenter said the Coast Guard should assemble and manage teams of visitors to ensure national uniformity. Another commenter expressed concern about this concept, particularly in the areas of potential conflicts of interest and lack of administrative structure.

If submitted, we will consider any viable proposal for such a concept to be implemented under NVIC 7–97 (Guidance on STCW Quality Standards Systems for Merchant Marine Courses or Training Programs). No regulatory revision is necessary to accommodate this concept.

One commenter said it was important for the Coast Guard to retain the no-cost course approval process and consider the costs associated with third-party QSSs.

We will continue to approve training programs for the foreseeable future because of effectiveness of third-party oversight.

16. Simulators

One commenter said the Coast Guard should not allow or approve ''personal computer/PC-based training,'' as it does not constitute satisfactory simulator training involving spatial and equipment duplication. This commenter added that technical performance standards should be developed for ''full-task simulators, part-task simulators, and personal computers used to provide limited visual scenes, diagnostics, and memory'' and that the regulations should stipulate the simulators required for radar and automatic radar plotting aid (ARPA) training.

At this time, many questions remain about the effectiveness of simulator technology in maritime training. We will continue working with MERPAC and others in the maritime training community to develop guidance related to simulator technology in maritime training for use in Coast Guard course approvals or by Coast Guard-accepted QSSs that may be interested in implementing this type of technology.

Regarding computer-based training, the Coast Guard continues to accept this type of training under our course approval process.

17. Basic Safety Training and Ship-Specific Familiarization

Three commenters raised issues concerning the four elements of basic safety training (BST): Basic fire-fighting, elementary first aid, personal survival, and personal safety/social responsibility. One commenter asked when the Coast Guard would make a notation on the STCW endorsement indicating that the holder had been trained and assessed in BST.

It is unnecessary for such a notation to be placed on the STCW endorsement. Other forms of documentary proof, such as a course completion certificate, meet this STCW Convention requirement. The IR allowed for the possibility that such a notation could be made by the Coast Guard; however, since then, changes in interpretation of the STCW Convention by IMO and the Coast Guard allow a mariner to retain competency in BST through continued sea service.

Another commenter sought consistency between the STCW Convention requirements for BST and other requirements for crew training, particularly requirements associated with life saving appliances and arrangements (46 CFR part 199). The commenter noted that the requirement for drills under part 199 allowed some time for a new crewmember to be trained, while the STCW Convention requirement for ship-specific training required similar training before any shipboard duties could be assigned.

The two sets of regulations have different purposes. Title 46 CFR 199.180(c) focuses on the drills that are essential to ensure the crew can respond to an emergency and coordinate its activities. The STCW Convention requirement focuses on the individual seafarer who must be familiarized with the ship-specific arrangements, installations, equipment, procedures, and ship characteristics relevant to his or her routine or emergency duties, and the ship's written procedures, which must ensure that newly employed seafarers are given a reasonable opportunity to reach an acceptable level of familiarization ''before being assigned to those duties'' (*See* Section A–I/14 of the STCW Code). The two regulations are consistent. The onboard written procedures can certainly take into account the schedule of drills as part of

the ship-specific familiarization process before a newly employed seafarer is assigned duties.

One commenter asked whether familiarization training requires an ability to read. The commenter referred to guidance included in the preamble to the IR (62 FR 34520) where the following was included in the recommended checklist of items to be addressed with newly employed crew members: ''Read and understand relevant standing orders, safety and environmental-protection procedures, and company policies clarifying any unclear or confusing material.'' The commenter did not believe that the STCW Convention requires or mentions any reading capability.

The STCW Convention requires deck officers to have an adequate knowledge of English, and for engineer officers to be able to use English in oral and written form. Therefore, when we refer to reading and understanding ''relevant'' orders, procedures, and policies, this guidance would apply to those to whom such documents are addressed. If an individual is employed on a ship in a capacity where reading is not required, familiarization training could be provided by another means.

One commenter said the requirement for training in personal safety and social responsibility can be accomplished on the job as part of a company's Safety Management System under the ISM Code, and a certificate of completion by a company should be accepted as evidence of such training; therefore, we should revise 46 CFR 10.205(l) accordingly.

A company-issued certificate could serve as documentary proof of this element of basic training and assessment, provided the program of training is approved by the NMC or monitored by a Coast-Guard-accepted QSS in accordance with § 10.309 and NVIC 7–97, and provided the assessment is conducted by a DE. The ISM system can readily be adapted to encompass these elements and no change to the regulation is needed to accommodate such actions.

One commenter said the requirements for BST or instruction, as presented in 46 CFR 15.1105(c), are broader than the STCW Convention requirement because they address all crewmembers who are assigned a duty on the muster list. This commenter suggested requiring only familiarization training for those crewmembers on a cruise ship who have minimal duties on the muster list (such as carrying a blanket to the muster station), will assist passengers in emergencies, or have other specific emergency duties (such as lifeboatman).

We raised this issue at the IMO Maritime Safety Committee in June 1997. The United States stated its support for the new amendments to the STCW Convention to focus on personnel on passenger ships ''with the understanding that basic safety training requirements in chapter VI already apply to personnel on passenger ships who are nominated or designated to assist passengers in emergencies.'' The IMO Committee ''agreed with this understanding, recognizing that training should be related to the duties assigned to such personnel.'' Therefore, we do not see a need to revise 46 CFR 15.1105.

This commenter also expressed the opinion that evidence of having received the appropriate BST or instruction can be met by company-maintained records and need not be in the form of individual certificates. Therefore, the rule should be revised to reflect this view.

We agree that company-maintained records can serve as evidence to be produced to establish that crewmembers have received approved BST or instruction, provided the scope and date of training or instruction are itemized for each crewmember in such records. The wording used in 46 CFR 15.1105(c) and (d) (*i.e.*, ''produce evidence'') is directly derived from the relevant wording in the STCW Code (''provide evidence''), and would allow the use of company-maintained records as long as the individual concerned has convenient access to the records when he or she needs them for license or document renewal, as well as for port state control purposes. Therefore, no revision to the regulation appears necessary or appropriate.

One commenter endorsed the idea that the companies use a checklist for ensuring that new crewmembers are familiarized with ship-specific procedures, equipment and arrangements.

This idea is included in NVIC 4–97 on company responsibilities.

18. Training Record Books

One commenter noted that his training record book (TRB) should capture all shipboard training and assessment, although he did not view shipboard assessment as required to satisfy STCW Convention competency standards. This commenter noted that his TRB would also serve as documentary evidence of BST.

Another commenter suggested re-drafting the regulation to encourage using the TRB to record all required training, including training in hazardous materials and refrigerants.

This suggested change is not necessary or appropriate. TRBs have a special limited purpose under 46 CFR 10.304 as part of the licensing process to obtain an operational level endorsement. There is nothing in the regulation that prevents the use of an expanded TRB to encompass other records of training. The subjects suggested as examples go beyond the scope of this rulemaking.

A commenter suggested citing the TRB as ''essential documentary evidence'' under 46 CFR 10.207 for the purpose of raising the grade of a license.

The TRB has a special limited purpose under the regulations. This purpose is consistent with the TRB requirement under the STCW Convention. Documentary proof of competence based on the relevant tables in the STCW Code would be required for anyone applying for a raise in grade of a license if the sea service or training commenced on or after August 1, 1998, or when the application is submitted. It is unnecessary to revise the regulations to establish a single fixed format for this proof.

19. Standards of Medical Fitness

One commenter suggested the Coast Guard revise NVIC 6–89 on physical evaluation guidelines for merchant mariners' documents and licenses, and that it should hold a public meeting to present Coast Guard and MERPAC proposals and receive general industry suggestions and comments.

Since receiving this comment, we replaced NVIC 6–89 with NVIC 2–98. After consulting with MERPAC to solicit their views, we subsequently decided to replace NVIC 2–98 and published a draft document in the **Federal Register** seeking public comment (71 FR 56998, Sept. 28, 2006). After addressing these public comments (73 FR 56600, Sept. 29, 2008), we issued NVIC 04–08 and made it effective October 29, 2008. The Coast Guard will continue to work with MERPAC and other advisory committees when considering medical fitness standards.

One commenter believed the Coast Guard might use a revision of NVIC 6–89 as a means of imposing the Seafarers' Health Improvement Program (SHIP) on the maritime industry as a mandatory standard.

After considering the use of SHIP, the Coast Guard chose to work in consultation with MERPAC to develop the revised NVIC 04–08 that provides guidance to mariners and their physicians in the evaluation of medical conditions.

Three commenters supported a proposal submitted to the docket in

response to the NPRM that the Coast Guard require mariners to report any prescription drugs they are taking.

We did not require this in the IR because it was not mandated by the STCW Convention. However, this information is already included on the form submitted by the mariner with his or her application (the CG–719K), as required by 46 CFR 10.225(b)(7).

20. Training for Those Providing Medical First Aid or for Qualification as Person in Charge (PIC) of Medical Care Onboard Ship

One comment said the Coast Guard should revise 46 CFR 12.13–1 to require that applicants provide documentation of training within the previous 5 years for certification to provide medical first aid or be in charge of medical care onboard a ship.

Recent qualifying service, or ''recency,'' generally means 90 days of service on vessels of appropriate tonnage or horsepower within the 3 years immediately preceding the date of application. The STCW Convention does not stipulate a period of recency, and we do not consider it appropriate to add a requirement to this rulemaking that exceeds the requirements of the STCW Convention.

21. Fatigue and STCW—General

One commenter suggested that increased requirements for obtaining an original license or to renew a license might result in a shortage of qualified officers at a time when more crewmembers are necessary to allow increased off-watch time for operating personnel to reduce fatigue. The commenter suggested ''incentives'' might be needed to attract new recruits to the maritime industry.

We have no way to make the determination whether increased requirements would result in individuals choosing or not choosing to enter the maritime profession. The Coast Guard is not the appropriate agency to determine incentives to be provided to the maritime industry in order to attract new recruits. That falls within the purview of MARAD.

22. STCW Rest Periods for Watchkeeping Personnel

Following the publication of the IR, in March 1998, the Coast Guard's Navigation Safety Advisory Committee (NAVSAC) proposed to allow a deviation from the required rest periods in 46 CFR 15.1111 for circumstances that ''could not reasonably have been anticipated at the commencement of the voyage,'' which is directly derived from the wording of section B–VIII/1 of the STCW Code.

NAVSAC proposed that this phrase should be interpreted narrowly to include only unexpected circumstances developing during a voyage that cannot normally be avoided by good voyage planning, effective management practices, and a comprehensive, scheduled maintenance program. Such circumstances impose on the crew a temporary increase in workload to maintain the operational status of the ship, but they should not be based on economic considerations, pressure to meet commercial deadlines, or regulatory requirements. Examples of circumstances that ''could not reasonably have been anticipated at the commencement of the voyage'' include, but are not limited to: Sudden severe weather; a prolonged period of fog; failure of equipment that is fundamental to the safe operation of the ship; and re-assignment of workload due to the illness or incapacity of a crew member. This guidance should not be interpreted as undermining the master's authority to take action when necessary for the safety of the ship, the crew, and persons in danger at sea. Several commenters made reference to this proposal.

One commenter supported this proposal. This commenter also supported the definitions of ''rest'' and ''overriding operational conditions'' as used in 46 CFR 15.1101 in the IR. Another commenter specifically said he agreed with the principle that proper voyage planning can minimize operational emergencies. This commenter also agreed that when there is a difference between a statutory requirement and the STCW Convention rest periods, the stricter of the two rules should apply.

One commenter supported the provision that permits the interruption of rest periods to ensure full crew participation in drills. This provision directly reflects the wording of the STCW Convention (*See* A–VIII/1, paragraph 3).

One commenter requested the Coast Guard revise the rule on rest periods to take into account situations where the unlicensed crewmembers work on a schedule of ''one week on, one week off'' on a ''six hours on, six hours off basis,'' but they are also called out during off-watch periods to assist in line handling and vehicle loading, and therefore do not always get 70 hours of rest in the 7-day work week. This commenter says some adjustment is possible in work schedules, but tides and currents also affect the operational schedule. Almost all of the vessels operated by the commenter are documented for lakes, bays, and sounds.

The STCW rest requirement does not apply to personnel on vessels operating within the boundary line.

23. GMDSS—General

One commenter observed that there were difficulties in achieving implementation of the GMDSS, and, therefore, that the Coast Guard should consider either introducing a new license for radio officers on GMDSS-equipped ships, or establish a new shipboard position called ''communications and electronics officer,'' which would be filled by someone qualified to be both a GMDSS radio operator and an at-sea maintainer.

In the IR, we retained the provisions on radio officer licenses (46 CFR 10.603), provided for STCW endorsement for competence as a GMDSS radio operator (46 CFR 10.205(n) and 10.603(d)) and as a GMDSS at-sea maintainer (46 CFR 12.25–45). We are proposing to retain these provisions in this NPRM (*See* proposed § 11.603 and § 12.650). Anyone qualified under either of the GMDSS provisions can receive the appropriate STCW endorsement, and a single individual can receive STCW endorsements for both areas of competence, if qualified. Therefore, there is no need to create a new category of license. The proposal to create a new shipboard position to address difficulties in implementing GMDSS is beyond the scope of this rulemaking.

24. GMDSS and ARPA

One commenter suggested the Coast Guard revise 46 CFR 15.1103(e) and (g) to impose an earlier compliance date for certification of deck watch officers in GMDSS (January 1999) and ARPA (January 1998).

We are not adopting this suggestion for several reasons:

(1) We maintained the requirements of the IR during the transitional period to avoid the confusion that might arise as a result of modifying those requirements;

(2) The dates used in the IR were consistent with the requirements of the STCW Convention;

(3) The dates proposed in the comment have passed; and

(4) As the comment noted, the IR did not preclude earlier implementation by a company or an individual license holder.

Another commenter said the regulations should not permit issuance of a license for service on unlimited tonnage vessels unless the applicant has met the ARPA training requirements.

We do not agree. Currently mariners serving on seagoing vessels equipped with ARPA must meet training and assessment standards for that equipment. Some mariners hold upper-level licenses, but never serve on seagoing vessels. Requiring training and assessment for such mariners imposes an unnecessary economic burden. The statement that service is limited to ships not fitted with ARPA on the face of the STCW endorsement should preclude any chance of confusion over the scope or validity of the license.

25. GMDSS and Electronics Technician

Three commenters said they had hoped the Coast Guard would include a new rating for ''electronics technician'' in the IR. One commenter wanted this endorsement available for unlicensed mariners. Another commenter wanted the skills associated with this rating to be addressed by creating a new license for radio officer/GMDSS maintainer. This commenter expressed concern that a person could serve as a GMDSS at-sea maintainer without completing an approved training program, by holding only a Federal Communications Commission (FCC) license. Another commenter said the concept of an ''electronics technician'' should address the maintenance associated with the increasing complexity of all the electronic systems on a ship, and not be narrowly linked to GMDSS maintenance.

As noted in the preamble to the IR (62 FR 34516), we will reconsider the concept of an ''electronics technician'' when developing a proposal for revision of 46 CFR part 12. Based on this concept, and the fact that all essential elements for GMDSS certification under the STCW Convention are in the IR (as indicated above in section 23 on GMDSS—General), we have not included this new rating in this NPRM.

26. Proficiency in Survival Craft and Lifeboatman

Seven commenters suggested that proof of proficiency in survival craft in the STCW Convention (section A–VI/2, paragraphs 1 to 4 of the STCW Code) and 46 CFR 10.209 should only be necessary within 5 years of original or initial certification, and not subsequently required.

We agree, provided the mariner maintains continued proficiency in accordance with regulation I/11 of the STCW Code and 46 CFR 10.209 (under the renumbered § 10.227 in this NPRM). No revision is necessary to reflect this interpretation.

One commenter asked the Coast Guard whether certification as lifeboatman would entitle the holder to a 1995 STCW endorsement for proficiency in survival craft to the same extent that it now entitles the holder to a 1978 STCW endorsement.

After February 1, 2002, all mariners with certification as lifeboatman should have held an endorsement for proficiency in survival craft. Any individual who does not hold such an endorsement would have to meet the requirements of 46 CFR 12.610 and 12.630 as proposed in this NPRM.

27. Proficiency in Fast Rescue Boats

One commenter would like requirements for training personnel in fast rescue boats in 46 CFR 12.10–9 to be extended to allow scheduling of training to avoid disrupting normal vessel operations.

The MMC final rule removed the deadline of July 1998.

28. Company Recordkeeping Responsibilities

One commenter said that, as a vessel owner and operator, his company had ''no means of maintaining comprehensive files'' on individuals who move from ship to ship and company to company. This commenter suggested the records should be ''centralized either with the individual, the appropriate union or the Coast Guard.'' The commenter suggested limiting the recordkeeping responsibility under 46 CFR 15.1107 to the period of service ''on the company's vessel'' and that the Coast Guard consider developing a centralized, accessible database to track seafarer-specific information. Another commenter supported the idea of permitting an agent acting on behalf of the company to maintain seafarer records, and asked that the Coast Guard allow this in the regulations.

The wording of 46 CFR 15.1107 does not require ''comprehensive'' recordkeeping, but only recordkeeping relevant to the mariner's medical fitness, training and experience relevant to his or her assigned duties, and competency in assigned shipboard duties. Furthermore, as stated in section 4(b) of NVIC 4–97, Guidance on Company Roles and Responsibilities Under STCW, the company is responsible for keeping appropriate records, but a third-party agent (such as a union) can maintain custody of the records, provided they are accessible when needed. We do not consider a revision necessary to accommodate this approach. Although we do encourage efforts to develop databases to support the implementation of the STCW Convention, which has its own recordkeeping obligations (Regulation I/9 of the STCW Code), there are financial, administrative, and privacy implications of a centralized database that would necessitate examination before any concrete steps could be taken in that direction.

29. Special Requirements for Personnel on Ro-Ro Passenger Ships

One commenter said that the requirements for training personnel on Ro-Ro passenger ships should allow additional time to develop an in-house training program.

The original deadline for certification (February 1, 1997) was imposed by the 1995 STCW Amendments, and the IR was effective well before the due date. Because the deadline has long since passed, a relaxation of the deadline at this stage would be meaningless.

30. Special Requirements for Personnel on Passenger Ships

One commenter suggested the Coast Guard incorporate the amendments that IMO adopted in 1996 concerning special training for personnel on passenger ships other than Ro-Ro passenger ships (*i.e.*, new Regulation V/3 and Section A–V/3 of the STCW Code).

We implemented these IMO amendments as regulations in the final rule, ''Training and Qualifications for Personnel on Passenger Ships,'' published on June 10, 2004 (69 FR 32465).

31. Publication of STCW Convention Requirements in the Code of Federal Regulations (CFR)

Two commenters said the Coast Guard should publish all applicable sections of the STCW Convention requirements as part of the rules in the CFR to make the regulations more user-friendly.

Although we will continue to incorporate by reference the STCW Convention and Code (rather than reproducing them wholesale in our regulations), *see,* 1 CFR part 51, we have included the pertinent requirements of the STCW Convention in regulations containing requirements to qualify for an officer's endorsement, a rating's endorsement, or other STCW qualification. This eliminates the layering of the STCW Convention requirements on top of the requirements for our domestic regulations. An applicant who meets the requirements of the domestic regulations would automatically meet the STCW Convention requirements.

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in §§ 10.103, 11.102, 12.103, and 15.105. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in §§ 10.103, 11.102, 12.103, and 15.105.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

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 (OMB) has not reviewed it under that Order.

A combined preliminary Regulatory Analysis and an Initial Regulatory Flexibility Analysis is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. A summary of the analysis follows:

This proposed rule seeks to more fully incorporate the requirements of the Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention) in the credentialing of United States merchant mariners. The STCW Convention requires, among other actions, that mariners who apply for certain endorsements to obtain specified training and/or meet service requirements as a condition for obtaining the endorsement.

The majority of the STCW Convention training and service requirements were added to Coast Guard rules as a result of the 1997 interim rule. In addition, Coast Guard clarified requirements in the interim rule by issuing a series of policy documents from 1997 through 2003. The costs incurred to comply with the interim rule are not included in the cost estimates for this proposed rule, as these costs were accounted for in the regulatory analysis of the interim rule. The cost estimates for the proposed rule focus on the incremental costs triggered by the additional requirements imposed by the proposed rule.

In brief, the STCW Convention sets the standards of competence for seafarers internationally. Virtually every maritime country, including the U.S., is a Party to this Convention. The Convention brings U.S. mariners in line with training and certification standards developed by the International Maritime Organization (IMO). The major elements of this proposed rule would specify STCW Convention requirements for mariner training and skill for both officer and ratings (enlisted) applicants. It would increase reporting requirements for the providers of mariner training, and would require the providers to adopt a quality standards system (QSS) for their training facilities.

The changes in this proposed rule that result in additional costs can be divided into the following categories:

(1) *Training Requirements, Officers*—Proposed changes to our regulations regarding STCW Convention training and assessment of skills requirements for seagoing deck and engineering officer endorsements.

(2) *Training Requirements, Ratings*—Proposed changes to our regulations regarding STCW Convention training and skill requirements for the ratings forming part of a navigational watch (RFPNW) and the ratings forming part of an engineering watch (RFPEW); would specify the number of man overboard drills for proficiency in fast rescue boats; and would establish a new ratings endorsement for survivalman.

(3) *Training Requirements, Engineers*—Would add the requirement that engineer officers adding a mode of propulsion to their endorsement must receive training in that mode.

(4) *Sea Service Requirements*—Increase sea service requirements for deck officer endorsements for master on seagoing vessels between 200 GRT/500 GT and 1,600 GRT/3,000 GT; and would increase sea service requirements for deck officer endorsements for mate of near-coastal vessels of less than 200 GRT/500 GT.

(5) *Training Provider Requirements*—Require training providers to adopt a quality standards system (QSS); would require an internal audit of Coast Guard-approved courses midway during the validity period of a course's acceptance; and would require providers to send an annual report to the Coast Guard regarding each course they teach.

We estimate this proposed rule would affect 5,230 mariners who would apply for an STCW endorsement over a 10-year period (2009–2018). We used Coast Guard mariner data, publicly available information on training costs and mariner wages, and other available industry information to develop the estimates of potential costs to mariners for each proposed requirement.

We estimate that this proposed rule would also affect 160 STCW training providers by requiring them to provide the Coast Guard's National Maritime Center (NMC) with an annual report on all courses. Training providers choosing to offer STCW Convention training would also have to implement a quality standards system (QSS) and write and maintain a QSS manual; conduct internal and external audits of each Coast Guard-approved course, and keep a paper or electronic record on each student completing a course.

The costs of the proposed rule are presented in Table 1. We estimate the total present value cost over the 10-year period of analysis (from 2009 to 2018) to be $87.1 million at a 7 percent discount rate and $105.4 million at a 3 percent discount rate. Over the period of analysis, the present value annual costs decline from about $13.3 million in the first year to about $6.2 million in the 10th year using a 7 percent discount rate.[1]

TABLE 1—SUMMARY OF PRESENT VALUE COSTS OF PROPOSED RULE

[$Millions]

Year	Discount rate	
	7%	3%
2009	$13.3	$13.8
2010	10.6	11.4
2011	9.9	11.1
2012	9.2	10.8
2013	8.6	10.5
2014	8.1	10.2
2015	7.5	9.9
2016	7.1	9.6
2017	6.6	9.3
2018	6.2	9.0
Total*	87.1	105.4
Annualized	12.4	12.4

*Totals may not sum due to rounding.

We estimate the proposed changes to mariner training requirements for officer, engineer and rating endorsements are the primary cost driver in the first year of the proposed rule. *See* Table 2 for a summary of initial costs by requirement category.

[1] We estimate the annualized cost of this proposed rule over the 10-year period to be about $12.4 million (at either a 3 or 7 percent discount rate when rounded to the nearest million).

TABLE 2—SUMMARY OF THE INITIAL (FIRST YEAR) COSTS OF THE PROPOSED RULE

[$Millions]

Category	Initial costs *	
	7%	3%
Mariner Training **	$7.0	$7.3
Sea Service	3.5	3.6
Training Provider	2.8	2.9
Total	13.3	13.8

* Discounted in the first year at 7 and 3 percent discount rates.
** Includes changes for officer, engineer and rating endorsements.

The proposed changes to mariner training requirements for officer, engineer and rating endorsements make up more than 50 percent of the costs in the initial year of the proposed rule. These requirements also represent more than 60 percent of the annualized costs of the proposed rule over the 10-year period of analysis. Table 3 below presents a summary of the costs by requirement as a percentage of the total initial and annualized costs of the proposed rule.

TABLE 3—SUMMARY OF COSTS BY REQUIREMENT OF THE PROPOSED RULE

[As a percentage of initial and annualized cost]

Requirements	Initial first year cost (percent)	Annualized cost (percent)
Mariner Training *	53	61
Training Providers	26	9
Sea Service	21	30
Total	100	100

* Includes changes for officer, engineer and rating endorsements.

The primary benefit of the proposed rule is an increase in vessel safety and a resulting decrease in the risk of shipping casualties. According to one study, the human element is involved in 80 percent of shipping casualties, with 45 percent of the casualties primarily due to human error, and another 35 percent in which humans failed to adequately respond to threats. Lack of training in situational awareness and situational assessment are top causes of human error.[2] The enhanced training and service requirements of the STCW Convention are expected to increase mariners' situational awareness and situational assessment. Mariners are also expected to be able to better respond to threats. With more than 1,725 casualties and 123 fatalities in 2005 related to events on vessel types covered by the STCW Convention, the value of the people and property at risk is very high. Even small increments of reduced risk are expected to result in substantial benefits.

Additional benefits are expected to accrue to the U.S. economy in the form of: (1) Preventing and mitigating casualties on STCW Convention-compliant vessels in U.S. waters; (2) Maintaining U.S. status on the so-called ''White List'' (a list of countries assessed to be properly implementing the revised STCW Convention, and is updated regularly), which avoids the detention of non-compliant U.S. flag vessels in foreign ports; (3) Ensuring U.S. mariners can compete in the global workforce market; and (4) Equalizing the competitive global standing of U.S. flag vessels by narrowing the performance gap and cost structure between vessel owners and operators relying on a wide range of standards of training and watchkeeping.

We provide a qualitative discussion of these benefits in the preliminary Regulatory Analysis available in the docket. In the same analysis, we also estimate the break-even point of the proposed rule (*i.e.,* the reduction in risk that results in economic benefits equaling or exceeding the costs). We found that the benefits of the proposed rule will exceed the costs if the STCW Convention training and experience requirements reduce the risk of accidents by only 2 percent. If only fatalities are considered, the risk reduction would need to be 2.6 percent to reach the break-even point. If only property damage were considered, a risk reduction of 7.9 percent would be needed.

We considered three alternatives for this proposed rule: (1) Maintain the current STCW Convention interim rule, which gives effect to most, but not all, of the STCW Convention requirements; (2) Implement the STCW Convention regulations fully and completely, requiring re-certification for existing endorsements; or, (3) Implement the STCW Convention fully and completely, ''grandfathering'' existing endorsements. The first alternative was not feasible as they would not meet U.S. responsibilities as a party to the STCW Convention. The second alternative, while meeting the U.S. responsibilities, would place an undue burden on U.S. mariners and the U.S. shipping industry by requiring the re-certification of thousands of existing endorsements. We are proposing the third alternative. Overall, the Coast Guard believes that the full and complete implementation of the STCW Convention would have beneficial impacts—such as improved management skills and judgment and greater situational awareness—to mariners, while contributing to improvements in the safety of the nation's seagoing fleet.

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.

An initial regulatory flexibility analysis (IRFA) discussing the impact of this proposed rule on small entities is included within the preliminary Regulatory Analysis document and is available in the docket where indicated under the **ADDRESSES** section of this preamble. A summary of the analysis follows:

The proposed rule would regulate mariners and training providers. Individuals, such as the mariners regulated by this rule are not small entities under the definition of a small entity in the Regulatory Flexibility Act (RFA).

As the Coast Guard anticipates that mariners will bear the costs for additional training based on past experience, this rulemaking would not directly impact owners and operators of vessels that employ mariners affected by this NPRM. The rulemaking would propose clarifying revisions to the existing ''§ 15.1107 Maintenance of merchant mariners' records by owner or operator''. These changes are not substantive and include removing unnecessary text and shortening the section. We do not anticipate owners and operators to incur additional costs from this proposed rule.

The proposed rule also included audit and quality system requirements for training providers. Based on the Coast Guard data, there are 160 maritime training providers that offer some type of Coast Guard approved training and could be affected by this proposed rule.

[2] Clifford C. Baker and Denise B. McCafferty. 2004. ABS Review and Analysis of Accident Databases. American Bureau of Shipping. Accessed at *http://www.slc.ca.gov/Division_Pages/MFD/Prevention_First/Documents/2004/Human%20and%20Organizational%20Factors/McCafferty%20paper.pdf.*

Of the 160 potentially affected training providers, our analysis indicated that 100 are potentially small entities.

While we do not expect training providers to offer new training programs unless it is beneficial to their business model, we have estimated the impact of the proposed rule to training providers as if they would not pass any of their costs to mariners. Therefore, the following revenue impacts may be overestimates:

We found that this proposed rule would have a revenue impact of less than 1 percent on 43 percent of small training providers, and a revenue impact of less than 3 percent on 75 percent of them, in the first year.

After the first year, we found that the proposed rule would have a recurring revenue impact of less than 1 percent on 73 percent of small training providers and an impact of less than 3 percent on 85 percent of them.

We are interested in the potential impacts from this proposed rule on small businesses and we request public comment on these potential impacts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking 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 Mark Gould, Maritime Personnel Qualifications Division, U.S. Coast Guard, telephone 202–372–1409. 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 a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). It would modify an existing Office of Management and Budget (OMB) Collection of Information, OMB Control Number 1625–0028, ''Course Approvals for Merchant Marine Training Schools.''

As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This proposed rule would add to recordkeeping and reporting requirements of training providers.

Training providers that teach STCW Convention courses would: (1) Write and maintain a QSS manual on those courses; (2) Arrange an internal audit of each Coast Guard approved STCW Convention course twice every 5 years and keep the audit records for Coast Guard inspection as needed; (3) Conduct a survey among students and employers; (4) Furnish an annual report to the U.S. Coast Guard National Maritime Center (NMC) on all its Coast Guard-approved courses; and (5) Store student course completion certification for an additional 4 years.

Since training providers are currently required to store student records for 1 year and many of them store records for several years more, the burden of the new requirement that would extend recordkeeping from 1 year to 5 years is small. In addition, STCW Convention training providers presently conduct surveys among students and employers on each course they teach as industry best practice. Requiring them to conduct a survey on STCW Convention courses would not be an additional burden.

Title: Course Approval and Records for Merchant Mariner Training Schools.

OMB Control Number: 1625–0028.

Summary of the Collection of Information: Training providers would be required to write and maintain a QSS manual, arrange two internal audits of STCW Convention courses within 5 years and furnish a report to NMC every year for each STCW course.

Need for Information: The information is necessary to show evidence that training providers meet the quality, minimum standard and recordkeeping requirements of each STCW Convention course as established by the International Maritime Organization (IMO).

Proposed Use of Information: The Coast Guard would use this information to document that the training level of mariners meets international requirements.

Description of the Respondents: The respondents are the mariner training schools that would be required to complete form CG–719B.

Number of Respondents: The number of respondents is 160 STCW training providers in the first year and recurring annually.

Frequency of Response: Respondents are required to write a QSS manual in the first year and modify it as needed. They would also arrange internal audits on their STCW courses every two and a half years. Training providers would furnish a report on their Coast Guard-approved courses to NMC every year.

Burden of Response: Writing a QSS manual would take a training provider approximately 206 hours in the first year (205 hours for reporting and 1 hour for recordkeeping), and modifying it would take 9 hours every year (8 hours for reporting and 1 hour recordkeeping). We estimate that it would take 10 hours for each respondent to complete an internal audit twice every 5 years (9 hours for reporting and 1 hour for recordkeeping), and 14 hours to furnish a report on STCW courses to NMC in the first year (12 hours for preparing the report, 1 hour for reporting, and 1 hour for recordkeeping) and 2 hours each year after the first year (1 hour for reporting and 1 hour for recordkeeping).

Estimate of Total Annual Burden: The existing OMB-approved total annual burden, as adjusted in January 2009, is 97,260 hours. This rule would increase the burden for 160 training providers by approximately 241 hours each. The total additional hours requested for this rulemaking is 38,560 [160 × (206 + 9 + 10 + 14 + 2)]. The new annual burden for the first year is 32,960 hours and about 5,600 hours each year after the first year. In addition, there would be 1,650 hours for the two internal audits every 5 years. The annual cost burden for the first year and each year after the first year are $1,186,560 and $201,600, respectively.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this

proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them to both OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

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.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (*See* the decision of 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).) Since this NPRM involves the credentialing of merchant mariners, it relates to personnel qualifications and is foreclosed from regulation by the states. Because the States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

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 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. Though it is a ''significant regulatory action'' under Executive Order 12866, it 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.

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 call for the use of a specific technical standard. Therefore, we did not consider the use of voluntary consensus standards. We do, however, incorporate material by reference. Please see the incorporation by reference of this preamble for specifics related to materials incorporated by reference.

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. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(c), of the Instruction, and neither an environmental assessment nor an environmental impact statement is required. This rule involves the training and qualifying of maritime personnel. A preliminary ''Environmental Analysis Check List'' supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

46 CFR Part 10

Incorporation by reference, Penalties, Reporting and recordkeeping

requirements, Schools, Seamen, Transportation Worker Identification Card.

46 CFR Part 11

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Schools, Seamen, Transportation Worker Identification Card.

46 CFR Part 12

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Seamen, Transportation Worker Identification Card.

46 CFR Part 15

Incorporation by reference, Reporting and recordkeeping requirements, Seamen, Vessels, Transportation Worker Identification Card.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 10, 11, 12, and 15 as follows:

TITLE 46 CFR—SHIPPING

PART 10—MERCHANT MARINER CREDENTIAL

1. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 72; 46 U.S.C. chapter 75; 46 U.S.C. 7701, 8906 and 70105; Executive Order 10173; Department of Homeland Security No. 0170.1.

2. In § 10.101, revise the section heading to read as set out below and, in paragraph (b), remove the word ''their'' and add, in its place, the words ''his or her''.

§ 10.101 Purpose.

* * * * *

§ 10.103 [Amended]

3. In § 10.103(b)(1), remove the text ''10.107, 10.109, and 10.231'' and add, in its place, the text ''10.303, 10.304, and 10.309''; and remove and reserve paragraph (b)(2).

4. Amend § 10.107 by:

a. Revising paragraph (a) to read as set out below;

b. Redesignating paragraph (b) as paragraph (c);

c. Adding a new paragraph (b) to read as set out below;

d. Amending newly designated paragraph (c) by adding definitions for Boundary lines, Coast Guard-accepted QSS organization, Coastwise voyage, Domestic voyage, Dual-mode integrated tug barge, Gross register tons or GRT, Gross tonnage or GT, Increase in scope, Integrated tub barge or ITB, International voyage, Kilowatt or kW, Lifeboatman, Management level, Officer in charge of an engineering watch in a manned engine room or designated duty engineer in a periodically unmanned engine room or OICEW, Officer in charge of a navigational watch or OICNW, Operational level, Overriding operational condition, Propulsion power, Push-mode ITBs, Quality Standard System or QSS, Rest, Seagoing, Seagoing vessel, Second engineer officer, STCW Convention, STCW endorsement, Survivalman, Training program; and

e. Amending newly designated paragraph (c) by revising the definitions for Approved, Approved training, Assistance towing, Assistant Engineer, Chief mate, Coastwise seagoing vessel, Competent person, Credential, Day, Designated duty engineer or DDE, Designated examiner, Drug test, Entry-level mariner, First assistant engineer, Harbor assist, Horsepower or HP, Large passenger vessel, Lower level, Master, Mate, Near coastal, Non-resident alien, Officer endorsement, Orally assisted examination, Rating endorsement, Self-propelled tank vessel, Senior company official, Simulated transfer, Staff officer, STCW, STCW Code, Tankerman assistant, Tankerman engineer, Tankerman-PIC (Barge), Tankship, Transfer, Upper level, Vessel Security Officer (VSO) and Western rivers, to read as follows:

§ 10.107 Definitions in subchapter B.

(a) With respect to part 16 of this subchapter only, if the definitions in paragraph (c) of this section differ from those set forth in § 16.105, the definition set forth in § 16.105 applies.

(b) As used in this subchapter, the following terms apply only to merchant marine personnel credentialing and the manning of vessels subject to the manning provisions in the navigation and shipping laws of the United States.

(c) Terms used in this subchapter:

* * * * *

Approved means approved by the Coast Guard according to § 10.302 of this chapter.

Approved training means training that is approved by the Coast Guard or meets the requirements of § 10.309 of this chapter.

Assistance towing means towing a disabled vessel for consideration (for hire).

Assistant engineer means a qualified officer in the engine department other than the chief engineer.

* * * * *

Boundary lines as defined in 46 CFR part 7.

* * * * *

Chief mate means the deck officer next in seniority to the master and upon whom the command of the vessel will fall in the event of incapacity of the master, and who holds a valid officer endorsement as chief mate.

* * * * *

Coast Guard-accepted QSS organization means an entity that has been approved to accept and monitor training on behalf of the Coast Guard.

Coastwise seagoing vessel means a vessel that is authorized by its Certificate of Inspection (COI) to proceed beyond the Boundary Line established in part 7 of this chapter and is limited to coastwise voyages by its COI.

Coastwise voyage means a voyage in which a vessel proceeds from one port or place in the United States to another port or place in the United States, or from a port or place in a possession to another port or place in the same possession, and passes outside the line dividing inland waters from the high seas, as well as a voyage in which a vessel proceeds from a port or place in the United States or her possessions and passes outside the line dividing inland waters from the high seas and navigates on the high seas, and then returns to the same port or place.

Competent person as used in part 13 of this subchapter only, means a person designated as such under 29 CFR 1915.7.

* * * * *

Credential means any or all of the following:

(1) Merchant mariner's document.

(2) License.

(3) STCW endorsement.

(4) Certificate of registry.

(5) Merchant mariner credential.

* * * * *

Day means, for the purpose of complying with the service requirements of this subchapter, 8 hours of watchstanding or day-working not to include overtime. On vessels where a 12-hour working day is authorized and practiced, each work day may be creditable as one and one-half days of service. On vessels of less than 100 GRT/250 GT, a day is considered as 8 hours unless the Coast Guard determines that the vessel's operating schedule makes this criteria inappropriate; in no case will this period be less than 4 hours. When computing service required for MODU endorsements, a day is a minimum of 4 hours, and no additional credit is received for periods served over 8 hours.

* * * * *

Designated duty engineer or DDE means a qualified engineer who may serve as the sole engineer on vessels of less than 500 GRT/1,200 GT with a periodically unattended engine room.

Designated examiner or DE means a person who has been trained or instructed in techniques of training or assessment and is otherwise qualified to evaluate whether an applicant has achieved the level of competence required to hold an endorsement on a merchant mariner credential (MMC). This person may be designated by the Coast Guard or by a Coast Guard-approved or accepted program of training or assessment. A faculty member employed in or instructing a navigation or engineering course at the U.S. Merchant Marine Academy or at a State maritime academy operated under 46 CFR part 310 is qualified to serve as a designated examiner in his or her area(s) of specialization without individual evaluation by the Coast Guard.

* * * * *

Domestic voyage means a voyage from one U.S. port to another U.S. port, without entering foreign waters. This includes a voyage to nowhere that returns to the originating port.

Drug test means a chemical test of an individual's urine for evidence of dangerous drug use, as required by 46 CFR part 16.

Dual-mode integrated tug barge means those *ITBs* typically involving an articulated (flexible) coupling system where the towing unit rolls and heaves (articulates) about a horizontal pivot point. Dual mode units resemble a conventional tug and are fully capable of towing in other configurations (astern or alongside).

* * * * *

Entry-level mariner means a mariner holding no rating other than ordinary seaman, wiper, steward's department, or steward's department—food handler (F.H.).

* * * * *

First assistant engineer (second engineer officer) means an engineer officer next in rank to the chief engineer and upon whom the responsibility for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship will fall in the event of the incapacity of the chief engineer, and who holds a valid officer endorsement as first assistant engineer.

* * * * *

Gross register tons or GRT means the gross ton measurement of the vessel under 46 U.S.C. chapter 145, Regulatory Measurement. For a vessel measured under only 46 U.S.C. chapter 143, Convention Measurement, the vessel's gross tonnage is used to apply all thresholds expressed in terms of gross register tons.

Gross tonnage or GT means the gross tonnage measurement of the vessel under 46 U.S.C. chapter 143, Convention Measurement.

* * * * *

Harbor assist means the use of a towing vessel during maneuvers to dock, undock, moor, or unmoor a vessel, or to escort a vessel with limited maneuverability.

Horsepower or HP means, for the purpose of this subchapter, the total maximum continuous shaft horsepower of all the vessel's main propulsion machinery. This term is used when describing a vessel's propulsion power and also when placing limitations on an engineer officer license or endorsement. One horsepower equals 0.75 kW.

* * * * *

Increase in scope means additional authority added to an existing credential.

* * * * *

Integrated tug barge or ITB means any tug barge combination which, through the use of special design features or a specially designed connection system, has increased seakeeping capabilities relative to a tug and barge in the conventional pushing mode. An ITB can be divided into either a dual-mode ITB or a push-mode ITB. The definitions for those categories can be found elsewhere in this section.

International voyage means a sea voyage between a port in the United States or its territories and a port in a foreign country or its waters, or a voyage between ports within foreign countries or their waters.

* * * * *

Kilowatt or kW means one and one-third horsepower. This term is used when describing a vessel's propulsion power and also when placing limitations on an engineer officer license or endorsement.

Large passenger vessel, for the purposes of Subpart H of Part 12, means a vessel of more than 70,000 gross tons, as measured under 46 U.S.C. 14302 and documented under the laws of the United States, with capacity for at least 2,000 passengers and a coastwise endorsement under 46 U.S.C. chapter 121.

* * * * *

Lifeboatman means a mariner who is qualified to take charge of, lower, and operate a lifeboat and other survival equipment on a vessel.

* * * * *

Lower level is used as a category of deck and engineer officer endorsements established for the assessment of fees. Lower-level officer endorsements are other than those defined as upper level, for which the requirements are listed in subparts D, E, and G of part 11 of this subchapter.

Management level means the level of responsibility associated with serving as master, chief mate, chief engineer officer or second engineer officer onboard a seagoing ship.

* * * * *

Master means the officer having command of a vessel, and who holds a valid officer endorsement as master.

Mate means a qualified officer in the deck department other than the master, and who holds a valid officer endorsement as mate.

* * * * *

Near coastal means, for waters off the United States, ocean waters not more than 200 miles offshore. Near-coastal waters for other countries are established by their Administrations.

Non-resident alien, for the purposes of subchapter H of part 12, means an individual who is not a citizen or alien lawfully admitted to the United States for permanent residence, but who is employable in the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), including an alien crewman described in section 101(a)(15)(D)(i) of that Act who meets the requirements of 46 U.S.C. 8103(k)(3)(A).

* * * * *

Officer endorsement means an annotation on a merchant mariner credential that allows a mariner to serve in the capacities in § 10.109(a) of this part. The officer endorsement serves as the license and/or certificate of registry pursuant to 46 U.S.C. subtitle II part E.

* * * * *

Officer in charge of an engineering watch in a manned engine room or designated duty engineer in a periodically unmanned engine room or OICEW means an engineering officer qualified at the operational level.

Officer in charge of a navigational watch or OICNW means a deck officer qualified at the operational level.

* * * * *

Operational level means the level of responsibility associated with serving as officer in charge of a navigational or engineering watch or as designated duty engineer for periodically unmanned machinery spaces or as GMDSS radio operator onboard a seagoing ship.

* * * * *

Orally assisted examination means an examination as described in part 10,

subpart I of this subchapter verbally administered and documented by a Coast Guard examiner.

* * * * *

Overriding operational condition means circumstances in which essential shipboard work cannot be delayed for safety or environmental reasons, or could not reasonably have been anticipated at the commencement of the voyage.

* * * * *

Propulsion power means the total maximum continuous-rated output power of all of the main propulsion machinery of a vessel, in either kilowatts or horsepower, which appears on the ship's Certificate of Registry or other official document and excludes thrusters and other auxiliary machinery.

Push-mode ITBs means those *ITBs* that typically involve a rigid coupling system and, when not coupled to the barge, they are incapable of conducting towing in any other configuration (such as astern or alongside) because, by themselves, they have very limited seakeeping capability. The propelling unit moves as one with the barge unit.

* * * * *

Quality Standard System or QSS means an organization of policy, procedures, processes, and data working together to establish and fulfill its objectives. A QSS is a required component of any entity offering STCW training, assessment of competence, certification, endorsement and/or revalidations of activities.

* * * * *

Rating endorsement is an annotation on a merchant mariner credential that allows a mariner to serve in those capacities set out in § 10.109(b) and (c) of this part. The rating endorsement serves as the merchant mariner's document pursuant to 46 U.S.C. subtitle II part E.

* * * * *

Rest means a period of time during which the person concerned is off duty, is not performing work (which includes administrative tasks, such as chart corrections or preparation of port-entry documents), and is allowed to sleep without interruption.

* * * * *

Seagoing means operating beyond the boundary line.

Seagoing vessel means a self-propelled vessel that operates beyond the boundary line established by 46 CFR part 7.

Second engineer officer means an engineer officer next in rank to the chief engineer officer and upon whom the responsibility for the mechanical propulsion and the operation and maintenance of the mechanical and electrical installations of the ship will fall in the event of the incapacity of the chief engineer officer and who holds a valid STCW endorsement as second engineer officer.

* * * * *

Self-propelled tank vessel means a tank vessel propelled by machinery other than a tankship.

Senior company official means the president, vice president, vice president for personnel, personnel director, or similarly titled or responsible individual, or another employee designated in writing by one of these individuals for the purpose of certifying employment and whose signature is on file at the REC at which application is made.

* * * * *

Simulated transfer means a transfer practiced in a course meeting the requirements of § 13.121 of this subchapter that uses simulation supplying part of the service on transfers required for tankerman by § 13.203 or 13.303 of this subchapter.

Staff officer means a person who holds an MMC with an officer endorsement listed in § 10.109(a)(34) through (a)(41) of this part.

* * * * *

STCW means the STCW Convention.

STCW Code means the Seafarer's Training, Certification and Watchkeeping Code.

STCW Convention means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended.

STCW endorsement means an annotation on a merchant mariner credential that allows a mariner to serve in those capacities under § 10.109(d) of this part. The STCW endorsement serves as evidence that a mariner has met the requirements of the STCW Convention.

* * * * *

Survivalman means a mariner who is qualified as a lifeboatman limited to service on vessels where lifeboats are not installed.

* * * * *

Tankerman assistant means a person holding a valid ''Tankerman-Assistant'' endorsement on his or her merchant mariner credential.

Tankerman engineer means a person holding a valid ''Tankerman-Engineer'' endorsement on his or her merchant mariner credential.

* * * * *

Tankerman-PIC (Barge) means a person holding a valid ''Tankerman-PIC (Barge)'' endorsement on his or her merchant mariner credential.

Tankship means any self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or as cargo residue.

Training program means a combination of training, practical assessment, and service which provides an individual with the necessary knowledge, understanding, and proficiency required for a specific qualification.

Transfer means any movement of dangerous liquid or liquefied gas as cargo in bulk or as cargo residue to, from, or within a vessel by means of pumping, gravitation, or displacement.

* * * * *

Upper level is used as a category of deck and engineer officer endorsements established for assessment of fees. Upper-level endorsements are those for which the requirements are listed in §§ 11.404 to 11.407 of this subchapter and §§ 11.506 to 11.509 of this subchapter.

Vessel Security Officer or VSO means a person onboard the vessel accountable to the Master, designated by the Company as responsible for security of the vessel, including implementation and maintenance of the Vessel's Security Plan, and for liaison with the Facility Security Officer and the vessel's Company Security Officer.

Western rivers means: (1) the Mississippi River; (2) its tributaries, South Pass, and Southwest Pass, to the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States; (3) the Port Allen-Morgan City Alternate Route; (4) that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternate Route including the Old River and the Red River; and (5) those waters specified in 33 CFR 89.25.

* * * * *

5. Amend § 10.109 as follows:

a. Revise paragraph (b)(3) introductory text, redesignate current paragraphs (b)(5) through (b)(11) as new paragraphs (b)(6) through (b)(12), and add new paragraph (b)(5) to read as set out below; and

b. Revise paragraph (d) introductory text and add new paragraph (d)(18) to read as follows and, in paragraph (d)(4), after the word ''engineer'', add the word ''officer''.

§ 10.109 Classification of endorsements.

* * * * *

(b) * * *

(3) QMED including the following specialty endorsements:

* * * * *

(5) Survivalman.

* * * * *

(d) The following STCW endorsements are issued according to the STCW Convention, the STCW Code, and parts 11 and 12 of this subchapter. The endorsements indicate that an individual holding a valid MMC with this endorsement is qualified to serve in that capacity and the endorsement has been issued under the requirements contained in parts 11 or 12 of this subchapter as well as the STCW Convention and STCW Code:

* * * * *

(18) Vessel security officer.

Subpart B—General Requirements for all Merchant Mariner Credentials

§ 10.201 [Amended]

6. In § 10.201(a), after the word ''Code'', remove the words ''incorporated by reference in § 10.103''.

§ 10.203 [Amended]

7. In § 10.203 paragraphs (c) and (d), remove the text ''as identified in 33 CFR 101.515(d)''.

8. In § 10.205(d), after the section number ''10.227'', add the words ''of this part'' and add paragraph (i) to read as follows:

§ 10.205 Validity of a merchant mariner credential.

* * * * *

(i) A mariner holding a valid STCW endorsement on or before [EFFECTIVE DATE OF THE FINAL RULE] does not need to take additional training to retain the authority granted by that endorsement, and at such time as that mariner is upgrading his or her credential, he or she will only need to meet the requirements for the credential being sought.

9. Amend § 10.209 as follows:

a. In paragraph (a), in the first sentence after the word ''whether'' and, before the word ''original'', add the words ''for an''; and, after the word ''establish'' remove the phrase, ''to the Coast Guard'';

b. In paragraph (b), add after section numbers 10.225, 10.227, 10.229 and 10.231 the phrase ''of this part'';

c. In paragraph (d) introductory text, after the word ''submitted'' and before the words ''by mail'', add the words ''in person,'';

d. In paragraph (d)(4), remove the word ''chapter'' and add, in its place, the word ''subchapter'';

e. In paragraph (d)(6), after the text ''§ 11.807'', add the words, ''of this subchapter'';

f. In paragraph (d)(7), remove the word ''chapter'' and add, in its place, the word ''subchapter'';

g. In paragraph (e)(3), remove the text ''Beginning on April 15, 2009,'' capitalize the word ''no'', and remove the words ''United States'' and ''Nationality with'';

h. In paragraph (f), remove the text ''Beginning on April 15, 2009,'' and capitalize the word ''the''; and

i. Revise paragraph (h) to read as follows:

§ 10.209 General application procedures.

* * * * *

(h) No MMC will be issued if the applicant fails a chemical test for dangerous drugs as required in paragraphs 10.225(b)(8), 10.227(d)(5), and 10.229(c)(6) of this section.

§ 10.211 [Amended]

10. Amend § 10.211 as follows:

a. In paragraph (a), in the last sentence after the word ''all'' and before the word ''convictions'', add the word ''prior'';

b. In paragraph (b), after the section number ''10.229'', add the words ''of this part'';

c. In paragraph (c), in the first sentence remove the text ''Beginning April 15, 2009,'' capitalize the word ''the'', and remove the words '', or the fingerprints taken by the Coast Guard at an REC,'';

d. In paragraph (d), remove the word ''disapproved'' and add, in its place, the word ''denied'';

e. In paragraph (e), remove the word ''disapproved'' and add, in its place, the word ''denied'', and remove the word ''disapproval'' and add, in its place, the word ''denial'';

f. In paragraphs (g), (h), (i), and (k), add, after the text ''table 10.211(g)'', wherever it appears, the words ''of this section'';

g. In footnote 3 to table 10.211(g), remove the word ''shall'' and add, in its place, the word ''must''; and

h. In paragraph (j), remove the word ''their'' and add, in its place, the words ''his or her'', and remove the word ''disapprove'' and add, in its place, the word ''deny''; and

i. In paragraph (k), remove the word ''their'' and add, in its place, the words ''his or her''.

§ 10.213 [Amended]

11. Amend § 10.213 as follows:

a. In paragraph (b), after the text ''table 10.213(c)'', add the words ''of this section'';

b. In paragraph (c), after the section number ''10.211'', add the words ''of this part'', and remove the third sentence;

c. In footnote 1 to table 10.213(c), remove the word ''shall'' and add, in its place, the word ''must'';

d. In paragraph (d), after the words ''responsibilities of the'' and, before the word ''endorsement'', remove the words ''MMC or''; remove the word ''disapproved'' in both places it appears, and add, in its place, the word ''denied''; and remove the word ''disapproval'', and add, in its place, the word ''denial''; and

e. In paragraph (e), remove the word ''disapproving'' and add, in its place, the word ''denying''.

§ 10.214 [Removed]

12. Remove § 10.214.

13. Amend § 10.215 as follows:

a. In paragraph (a), after the text ''table 10.215(a)'' and before the word ''provide'', add the words ''of this section'', and in paragraph (a)(2), remove the word ''exams'' and add, in its place, the word ''examinations'';

b. In paragraph (b)(1), remove the numbers ''20/200'' and add, in their place, the numbers ''20/400'';

c. In paragraph (b)(3), after the characters ''(3)'' and before the words ''Any applicant'', add the word ''*Waiver.* '';

d. In paragraph (g), remove the word ''Where'' and add, in its place, the word ''If'';

e. Revise table 10.215(a), and paragraphs (a)(1), (b)(2), and (c); and

f. Add new paragraph (b)(4) to read as follows:

§ 10.215 Medical and physical requirements.

(a) * * *

(1) First-class pilots, and those serving as pilots under § 15.812 of this subchapter, on vessels and tank barges of 1,600 GRT/3,000 GT or more must satisfactorily complete medical examinations every 12 months and submit the results to the Coast Guard.

* * * * *

TABLE 10.215(A)—MEDICAL AND PHYSICAL REQUIREMENTS FOR MARINER ENDORSEMENTS

Credential	Vision test	Hearing test	General medical exam	Demonstration of physical ability
1	2	3	4	5
(i) Deck officer, including pilot	§ 10.215(b)(1)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1).
(ii) Engineering officer	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1).
(iv) Radio officer	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1).
(v) Offshore installation manager, barge supervisor, or ballast control operator.	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1).
(vi) Able seaman	§ 10.215(b)(1)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1).
(vii) QMED	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1).
(viii) RFPNW	§ 10.215(b)(1)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1).
(ix) RFPEW	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1).
(x) Tankerman	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1).
(xi) Food handler serving on vessels to which STCW does not apply.			§ 10.215(d)(2).	
(xii) Food handler serving on vessels to which STCW applies.			§ 10.215(d)(2)	§ 10.215(e)(1).
(xiii) Ratings, including entry level, serving on vessels to which STCW applies, other than those listed above.				§ 10.215(e)(2).
(xiv) Vessel security officer	§ 10.215(b)(1)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1).

(b) * * *

(2) *Engineering, radio officer, tankerman, and MODU standard.* An applicant must have correctable vision of at least 20/50 in one eye and uncorrected vision of at least 20/400 in the same eye and need only have the ability to distinguish the colors red, green, blue and yellow. The color sense must be determined to be satisfactory when tested by any color-vision test accepted by the Coast Guard without the use of color-sensing lenses.

* * * * *

(4) *Loss of vision.* An applicant having lost vision in one eye must wait 6 months from the date of the vision loss before submitting any application, and must provide a statement of demonstrated ability on his or her medical examination.

(c) *Hearing test.* If the medical practitioner conducting the general medical examination has concerns that an applicant's ability to hear may impact maritime safety, the examining medical practitioner must refer the applicant to an audiologist or other hearing specialist to conduct an audiometer test and/or a speech discrimination test, as appropriate.

* * * * *

14. In § 10.217, revise paragraph (a) to read as follows:

§ 10.217 Merchant mariner credential application and examination locations.

(a) Applicants for an MMC may apply to the Coast Guard National Maritime Center or any of the Regional Examination Centers. Applicants may contact the National Maritime Center at 100 Forbes Drive, Martinsburg, WV 25404, or by telephone 1–888–427–5662 or 304–433–3400. A list of Regional Examination Center locations is available through the Coast Guard Web site at *http://www.uscg.mil.*

* * * * *

15. Amend § 10.219 as follows:

a. In paragraph (d)(4), remove the words ''are to'' and add, in their place, the word ''must'';

b. In paragraph (g), remove the word ''subpart'' and add, in its place, the word ''section'';

c. In paragraph (h)(3), after the word ''applicant'' and before the word ''eligible'', remove the words ''then is'' and add, in their place, the words ''will then be'', and in paragraph (h)(4), after the word ''section'' and, before the word ''endorsed'', remove the word ''is'' and add, in its place, the words ''will be''; and

d. Revise paragraph (d)(3) to read as set forth below; and revise table 10.219(a) to read as follows:

§ 10.219 Fees.

* * * * *

TABLE 10.219(A)—FEES

If you apply for	And you need . . .		
	Evaluation then the fee is . . .	Examination then the fee is . . .	Issuance then the fee is . . .
MMC with officer endorsement:			
Original			
Upper level	$100	$110	$45.
Lower level	$100	$95	$45.
Renewal	$50	$45	$45.
Raise of grade	$100	$45	$45.
Modification or removal of limitation or scope	$50	$45	$45.
Radio officer endorsement:			
Original	$50	$45	$45.
Renewal	$50	n/a	$45.
Staff officer endorsements:			
Original	$90	n/a	$45.
Renewal	$50	n/a	$45.

TABLE 10.219(A)—FEES—Continued

If you apply for	And you need . . .		
	Evaluation then the fee is . . .	Examination then the fee is . . .	Issuance then the fee is . . .
MMC with rating endorsement:			
Original endorsement for ratings other than qualified ratings	$95	n/a	$45.
Original endorsement for qualified rating	$95	$140	$45.
Upgrade or raise of Grade	$95	$140	$45.
Renewal endorsement for ratings other than qualified ratings	$50	n/a	$45.
Renewal endorsement for qualified rating	$50	$45	$45.
STCW endorsement:			
Original	No fee	No fee	No fee.
Renewal	No fee	No fee	No fee.
Reissue, replacement, and duplicate	n/a	n/a	$45 [1].

[1] Duplicate for MMC lost as result of marine casualty—No Fee.

* * * * *

(d) * * *

(3) Payments submitted by mail may not be made in cash.

* * * * *

§ 10.221 [Amended]

16. In § 10.221 (a)(1), remove the word ''part'' and add, in its place, the word ''subchapter''.

§ 10.223 [Amended]

17. Amend § 10.223 as follows:

a. In paragraphs (c)(3)(i), (c)(3)(ii) and (c)(3)(iii), remove the word ''chapter'' wherever it appears and add, in its place, the word ''subchapter'';

b. In paragraph (c)(3)(iv), remove the text ''chapter and in the STCW Convention and Code (incorporated by reference, see § 10.103)'' and add, in its place, the word ''subchapter''; and

c. In paragraph (c)(5), remove the word ''old'' and add, in its place, the word ''canceled''.

18. Amend § 10.225 as follows:

a. Revise paragraphs (b)(2) and (b)(7) to read as set out below;

b. In paragraph (a)(2), remove the words ''they do'' and add, in their place, the words ''the applicant does'', and, in paragraphs (a)(2) and (a)(3), remove the word ''their'', wherever it appears, and add, in its place, the words ''his or her'';

c. In paragraphs (b)(3)(i), (b)(3)(ii) and (b)(3)(iii), remove the word ''chapter'', wherever it appears, and add, in its place, the word ''subchapter''; in paragraph (b)(3)(iv), remove the text ''chapter and in the STCW Convention and Code (incorporated by reference, see § 10.103)'' and add, in its place, the word ''subchapter''; in paragraph (b)(6), remove the word ''Discharges'' and add, in its place, the words ''Where sea service is required, discharges''; and

d. In paragraph (c), after the section number ''§ 10.217'' and before the words ''must be verified'', add the words ''of this part''.

§ 10.225 Requirements for original merchant mariner credentials.

* * * * *

(b) * * *

(2) Proof that the mariner either holds a valid TWIC or has applied for a TWIC within the past 30 calendar days;

* * * * *

(7) Proof, documented on CG–719–K or CG–719–K/E, as appropriate, that the applicant passed all applicable vision, hearing, medical and/or physical examinations as required by § 10.215 of this part;

§ 10.227 [Amended]

19. Amend § 10.227 as follows:

a. In paragraph (a), after the words ''before the'', remove the words ''renewal MMC will be issued'', and add, in their place, the words ''MMC will be renewed'';

b. In paragraph (d)(8)(i)(D), after the word ''knowledge'', remove the words ''on an'' and add, in their place, the words ''of the''; in paragraphs (d)(8)(ii) and (iii), remove the word ''chapter'', wherever it appears, and add, in its place, the word ''subchapter''; in paragraph (d)(8)(iv), after the word ''present'' and, before the words ''a currently'', remove the words ''evidence of'', and remove the words ''If submitted, the original'' and add, in their place, the word ''This''; in paragraph (d)(8)(vii), remove the word ''chapter'' and add, in its place, the word ''subchapter''; and, in paragraph (d)(9), remove the text ''chapter and must meet the requirements of section A–VI/2, paragraphs 1 to 4 of the STCW Code (incorporated by reference in § 10.103)'' and add, in its place, the word ''subchapter'';

c. In paragraph (e)(1), after the section number ''§ 10.215'', add the words ''of this part'' and, after the text ''paragraph (d)'' in the final sentence, add the words ''of this section'';

d. In paragraph (e)(2)(ii), remove the words ''their inability'' and add, in their place, the words ''his or her ineligibility'';

e. In paragraph (f), remove the words ''To obtain a re-issuance of the credential'' and add, in their place, the words ''For a credential to be re-issued by the Coast Guard more than 12 months after its expiration'';

f. In paragraph (g)(1), remove the word ''Whenever'' and add, in its place, the word ''If''; after the words ''12 months after'', and before the word ''expiration'', add the word ''its''; after the words ''credential was awarded'', remove the word ''on'' and add, in its place, the words ''based on the results of''; after the section number ''§ 10.219'', add the words ''of this part''; and, in paragraph (g)(2), remove the word ''shall'' and add, in its place, the word ''must''.

§ 10.229 [Amended]

20. Amend § 10.229 as follows:

a. In paragraph (a), remove the first sentence and add, in its place, the following sentence: ''A mariner may be issued a duplicate credential upon request and without examination, after submitting an application with an affidavit describing the circumstances of the loss.''; and

b. In paragraphs (c) and (d), after the word ''duplicate'', add the word ''credential'', and, in paragraph (d), after the section number ''§ 10.219'', add the words ''of this part''.

§ 10.231 [Amended]

21. Amend § 10.231 as follows:

a. In paragraphs (c)(3)(i), (ii), and (iii), remove the word ''chapter'', wherever it appears, and add, in its place, the word ''subchapter'';

b. In paragraph (c)(3)(iv), remove the text ''chapter and in the STCW Convention and Code (incorporated by

reference, *see* § 10.103)'' and add, in its place, the word ''subchapter'';

c. In paragraph (c)(7), remove the words ''An applicant for an endorsement where sea service is required'' and add, in their place, the words ''If sea service is required, an applicant for endorsement'';

d. In paragraph (c)(8), remove the words ''Applicants who have'' and add, in their place, the words ''Any applicant who has'', remove the words ''they have'' and add, in their place, the words ''he or she has'', and, after the section number ''§ 10.215'', add the words ''of this part'';

e. In paragraph (d)(1), in the third sentence, move the word ''therefore,'' to before the words ''service acquired'';

f. In paragraph (d)(2), remove the word ''on'' and add, in its place, the word ''with'', and remove the words ''a citizen of the United States by birth'' and add, in their place, the words ''a native-born U.S. citizen'';

g. In paragraph (d)(3), after the word ''tonnage,'' and before the words ''and operating conditions'', remove the words ''horsepower, waters,'' and add, in their place, the words ''propulsion power, waters upon which service occurred,'', remove the word ''shall'' and add, in its place, the word ''must'', and, after the words ''into English)'' and before the words ''the forms'', remove the word ''in'' and add, in its place, the word ''on'';

h. In paragraph (d)(4), remove the words ''the applicant's'' in both places they appear and add, in their place, the words ''his or her''; and

i. In paragraph (d)(5)(i), remove the words ''to be'' and add, in their place, the word ''is''; in paragraph (d)(5)(ii), remove the word ''chapter'' and add, in its place, the word ''subchapter''; and, in paragraph (d)(5)(iii), remove the word ''appear'' and add, in its place, the words ''are found'', and remove the text ''I of this chapter'' and add, in its place, the text ''I of this subchapter''.

§ 10.235 [Amended]

22. Amend § 10.235 as follows:

a. In paragraph (d), after the words ''suspended or revoked,'', and before the words ''will be issued'', remove the words ''the mariner'' and add, in their place, the words ''he or she'';

b. In paragraph (f), after the text ''§ 10.227(d)(8)(vi) (A)'', add the words ''of this part'';

c. In paragraph (g), remove the text ''Beginning April 15, 2009,'' and capitalize the word ''if''; and

d. In paragraph (h), remove the words ''Beginning April 15, 2009, a mariner that'', and add, in their place, the words, ''A mariner who''.

23. In § 10.237, revise paragraph (a) to read as follows:

§ 10.237 Right of appeal.

(a) If the Coast Guard refuses to grant an applicant an MMC or endorsement, it will provide a written statement listing the reason(s) for denial.

* * * * *

24. In § 10.239, revise table 10.239 to read as follows:

§ 10.239 Quick reference table for MMC requirements.

Table 10.239 of this section provides a guide to the requirements for officer endorsements. Provisions in the reference section are controlling.

TABLE 10.239

Endorsement category	Minimum age	Citizenship	Medical and physical exam	Experience	Recommendations and character check	Firefighting	Professional exam	Demonstration of professional ability	Recency of service	First aid and CPR
Master, mates and operators of uninspected passenger vessels (original).	21, 11.201(e); Note: exceptions.	U.S., 11.201(d); Note: exception for OUPV.	Yes, 10.215; Note: exceptions.	Yes, 11.205(b); subpart D.	11.205(c)	11.205(d); Note: exceptions.	Yes, 11.205(f); 11.903; 11.910; Note: 11.903(b).	Yes, 11.205(g); 11.901(c); 11.903(c).	Yes, 3 months in past 3 years, 11.201(c).	11.205(e); Note: exceptions.
Engineers (original).	21, 11.201 (e); Note: exceptions.	U.S., 11.201(d);no exceptions.	Yes, 10.215; Note: exceptions.	Yes, 11.205(b); subpart E.	11.205(c)	11.205(d)	11.205(f); 11.903; 11.950.	Yes, 11.205(g); 11.901(c); 11.903(c).	Yes, 3 months in past 3 years, 11.201(c).	11.205(e); Note: exceptions.
Officer raises of grade.	21, 11.201(e); Note: exceptions.	U.S., 11.201(d); no exceptions.	Yes, 10.215; Note: exceptions.	Yes, 10.231(c); subpart D and E.	N/A	Yes, 10.231(e)	Yes, 10.231(d); 11.903; 11.910; 11.920; 11.950.	Yes, 11.205(g); 11.901(c); 11.903(c).	Yes, 3 months in past 3 years, 11.201(c).	N/A.
Officer renewals.	N/A	U.S., 11.201(d); no exceptions.	Yes, 10.215; Note: exceptions.	Yes, 10.227(g); Note: exceptions.	N/A	N/A	10.227(g)	Towing officers, 10.227(i).	Yes, 1 year in past 5, 10.227(g); Note: alternative.	N/A.
Pilot	21, 46 U.S.C. 7101.	U.S., 11.201(d); no exceptions.	Yes, 10.215; Note: exceptions.	Yes, 11.703 ...	11.205(c)	N/A	11.707; 11.903; 11.910.	N/A	Yes, 11.703, 11.75(e), 11.713.	11.205(e); Note: exceptions.
Towing vessels	21, Master 19, Mate 18, App. Mate 11.201(e).	U.S., 11.201(d); no exceptions.	Yes, 10.215; Note: exceptions.	Yes, 10.464; 10.465; 10.466.	11.205(c)	Yes, 11.205(d) oceans.	Yes, 11.205(f); 11.903; 11.910; Note: 11.903(b).	Yes, 11.464; 11.465; 11.205(g); 11.901(c).	Yes, 3 months in past 3 years, 11.201(c).	11.205(e); Note: exceptions.
Uninspected fishing industry vessels.	21, 11.201(e); Note: exceptions.	U.S., 11.201(d); no exceptions.	Yes, 10.215; Note: exceptions.	Deck: 11.462; Eng: 11.530.	11.205(c)	11.205(d); Note: exceptions.	Yes, 11.205(f); 11.903; 11.910; Note: 11.903(b).	N/A	Yes, 3 months in past 3 years, 11.201(c).	11.205(e); Note: exceptions.
Radio officer ...	19, 11.201 (e)(1).	U.S., 11.201(d); no exceptions.	Yes, 10.215; Note: exceptions.	11.603	11.205(c)	N/A	N/A	N/A	N/A	11.205(e); Note: exceptions.
Staff officer	N/A	U.S., 11.201(d); no exceptions.	Yes, 10.215; Note: exceptions.	11.807	11.205(c)	N/A	N/A	N/A	N/A	N/A.
Staff officer renewals.	N/A	U.S., 11.201(d); no exceptions.	Yes, 10.215; Note: exceptions.	10.227 (g)(5) ..	N/A	N/A	N/A	N/A	N/A	N/A.

Offshore installation manager, barge supervisor, ballast control operator.	21, 11.201(e); Note: exceptions.	U.S., 11.201(d); no exceptions.	Yes, 10.215; Note: exceptions.	OIM: 11.470 B.S.: 11.472 BCO: 11.474 Eng: 11.540.	11.205(c)	11.205(d)	Yes, 11.205(f); 11.903; 11.920.	N/A	Yes, 3 months in past 3 years, 11.201(c).	11.205(e); Note: exceptions.
Able seamen ..	18, 12.412 (a)(1).	U.S. or alien admitted for permanent residence, 10.221.	Yes, 10.215; Note: exceptions.	12.414	N/A	N/A	Yes, 12.412(a); 12.416.	Yes, 12.412(c); 12.416.	Renewal only, 1 year in past 5, 10.227(g); Note: alternative.	12.412(b).
Qualified members of engine department.	16, 12.201(e)	U.S. or alien admitted for permanent residence, 10.221.	Yes, 10.215; Note: exceptions.	12.514	N/A	N/A	Yes, 12.516 ...	Yes, 12.510(d)	Renewal only, 1 year in past 5, 10.227(g); Note: alternative.	12.503(d).
Entry level ratings.	16, 12.201(e)	U.S. or alien admitted for permanent residence, 10.221.	Yes, 10.215 Note:; exceptions.	N/A	N/A	N/A	N/A	N/A	N/A	N/A.
Ratings for forming a navigational watch.	12.203(e)	U.S. or alien admitted for permanent residence, 10.221.	Yes, 10.215; Note: exceptions.	12.420	.....	N/A	N/A	Yes, 12.420 ...	.....	N/A.
Ratings for forming an engineering watch.	12.203(e)	U.S. or alien admitted for permanent residence, 10.221.	Yes, 10.215; Note: exceptions.	12.530	N/A	N/A	N/A	Yes, 12.520(e)	.....	N/A.
Lifeboatman ...	12.610(a)	U.S. or alien admitted for permanent residence, 10.221.	Yes, 10.215; Note: exceptions.	10.610(c)(4) ...	N/A	N/A	12.610	12.610(c)(2), (c)(3).	.....	12.610(c)(5).
Survivalman ...	N/A	U.S. or alien admitted for permanent residence, 10.221.	Yes, 10.215; Note: exceptions.	10.630 (c)(4) ..	N/A	N/A	N/A	12.630(c)(3), (c)(4).	.....	12.630(c)(5).

Subpart C [Redesignated]

25. Redesignate part 11, subpart C, consisting of §§ 11.301 through 11.309, as part 10, subpart C, §§ 10.301 through 10.309.

26. Revise newly redesignated part 10, subpart C to read as follows:

Subpart C—Training Schools With Approved Courses

Sec.

Subpart C—Training Schools With Approved Courses

§ 10.301 Applicability.

This subpart prescribes the general requirements applicable to all approved courses and training programs.

§ 10.302 Course approval.

(a) Courses may be approved to fulfill the following requirements:

(1) In lieu of service experience;

(2) In lieu of examination required by the Coast Guard;

(3) Course completion requirements; and

(4) Regulatory requirements.

(b) Organizations desiring course approval by the Coast Guard must submit a written request, either by mail or e-mail, to the National Maritime Center, that contains:

(1) *A cover letter.* The cover letter must contain:

(i) The name of the course;

(ii) The location(s) where it will be held;

(iii) A general description and overview of the course;

(iv) The category of acceptance being sought as listed in paragraph (a) of this section; and

(v) Individual major components of the course.

(2) *A goal statement.* The goal statement should describe:

(i) A specific performance behavior to be measured;

(ii) The conditions under which that performance behavior will be exhibited; and

(iii) A level of performance behavior that is to be achieved.

(3) *Performance objectives.* Performance Objectives are statements which identify the specific knowledge, skill, or attitude the student should gain and display as a result of the training or instructional activity. A performance objective is made up of three elements: student performance, condition, and criterion.

(4) *Assessment instruments.* Assessment instruments are any tools used to determine whether the student has achieved the desired level of knowledge, understanding or proficiency.

(5) *Instructor information.* Each instructor must:

(i) Have either experience, training, or evidence of instruction in effective instructional techniques within the past five years;

(ii) Be qualified in the task for which the training is being conducted and have relevant experience; and

(iii) Hold a license, endorsement, or other professional credential that provides proof of having attained a level of qualification equal or superior to the relevant level of knowledge, skills and abilities described in the performance objective.

(6) *Site information.* Site information must include a description of the facility at which the training will be held.

(7) *A teaching syllabus.* A detailed teaching syllabus providing the following information:

(i) Instructional strategy. Aspects of instructional strategies should include:

(A) The order of presentation;

(B) The level of interaction, including the student teacher ratio;

(C) Feedback;

(D) Remediation;

(E) Testing strategies; and

(F) Media used to present information.

(ii) Instructional materials, including lesson plans containing:

(A) Pre-instructional activities;

(B) Content presentation;

(C) Student participation;

(D) Assessment processes; and

(E) Follow-up activities.

(iii) Course surveys on the relevance and effectiveness of the training completed by students and their employers.

(iv) Course schedule, including the duration and order of lessons, and an indication as to whether each lesson is:

(A) A classroom lecture;

(B) A practical demonstration;

(C) A simulator exercise;

(D) An examination; or

(E) Another method of instructional reinforcement.

(c) The Coast Guard will notify each applicant for course approval when an approval is granted or denied. If the Coast Guard denies a request for approval, the Coast Guard will inform the applicant of the reasons for the denial and describe the corrections required for granting an approval.

(d) Unless surrendered, suspended, or withdrawn, an approval for a course expires 5 years after issuance, unless:

(1) The school ceases operation;

(2) The course has not been presented in the previous 12 months;

(3) The school gives notice that it will no longer offer the course;

(4) The owner or operator fails to submit any required report; or

(5) Any change occurs in the management of the school to which the approval was issued.

(e) If the owner or operator of a training school desires to have a course's approval renewed, the owner or operator must submit a request to the NMC. If satisfied that the content and quality of instruction remain satisfactory, the NMC will approve the request. The renewed approval is valid as detailed in paragraph (d) of this section.

(f) *Suspension of approval.* (1) The Coast Guard may suspend the approval, require the holder to surrender the certificate of approval, and may direct the holder to cease claiming the course is Coast Guard-approved, if it determines that a specific course does not comply with the:

(i) Applicable provisions of 46 CFR parts 11, 12, or 13;

(ii) Requirements specified in the course's approval; or

(iii) Course's curriculum package as submitted for approval;

(2) The Coast Guard will notify the approval holder in writing of the intent to suspend course approval and the reasons for suspension. If the approval holder fails to correct the reasons for suspension, the course will be suspended. The NMC will notify the approval holder that the specific course fails to meet applicable requirements and explain how those deficiencies can be corrected;

(3) The NMC may grant the approval holder up to 60 days in which to correct deficiencies; and

(4) Course completion certificates will not be accepted if dated during a period of suspension.

(g) *Withdrawal of approval.* The NMC may withdraw approval for any course:

(1) When the approval holder fails to correct the deficiency(ies) of a suspended course within 60 days; and

(2) Upon determining that the approval holder has demonstrated a pattern or history of:

(i) Failing to comply with the applicable regulations or the course approval requirements;

(ii) Deviating from approved course curricula;

(iii) Presenting courses in a manner that does not achieve the learning objectives; or

(iv) Falsifying any document required and integral to the conduct of the course, including but not limited to attendance records, written test grades, course completion grades, or assessment of practical demonstrations.

(h) *Appeals of suspension or withdrawal of approval.* Anyone directly affected by a decision to suspend or withdraw an approval may appeal the decision to the Commandant via the NMC as provided in § 1.03–40 of this chapter.

§ 10.303 General standards.

(a) Each school with an approved course must:

(1) Have a well-maintained facility that accommodates the students in a safe and comfortable environment conducive to learning;

(2) Have visual aids for realism, including simulators where appropriate, which are modern and well maintained and sufficient for the number of students to be accommodated;

(3) Give written examinations to each student appropriate for the course material and of such a degree of difficulty that a student who successfully completes them would most likely pass, on the first attempt, an examination prepared by the Coast Guard based upon the knowledge requirements of the position or endorsement for which the student is being trained;

(4) Require each student to successfully demonstrate practical skills appropriate for the course material and equal to the level of endorsement for which the course is approved;

(5) Effective [EFFECTIVE DATE OF FINAL RULE], keep physical or electronic copies of the following records for at least 5 years after the end of each student's enrollment:

(i) A copy of each student's written examination answers;

(ii) A copy of each written examination or, in the case of a practical test, a report of such test;

(iii) A record of each student's classroom attendance; and

(iv) A copy of each student's course completion certificate;

(6) Not change its approved curriculum without approval from the NMC;

(7) Provide an annual report to the NMC to include a summary for each of the provider's approved courses. For each approved course, the report will contain the following information:

(i) A summary of changes or modification to the last course submittal;

(ii) A list of all locations at which the training course was presented and the number of times it was presented at each location;

(iii) The name(s) of the instructor(s) who taught the course;

(iv) The number of students who began the training;

(v) The number of students who successfully completed the training;

(vi) The number of students who were required to retest;

(vii) The number of students who were required to retake the entire course; and

(viii) The number of students who were required to retake a portion of the course;

(8) Conduct an internal audit midway through the term of the course's approval and submit the results to the NMC. The audit will evaluate whether:

(i) Records are being maintained according to these regulations;

(ii) The course is being presented in accordance with the approval letter;

(iii) Surveys from employers and students indicate that the course is meeting their needs; and

(9) At any time, allow the Coast Guard to:

(i) Inspect its facilities, equipment, and records, including scholastic records;

(ii) Conduct interviews and surveys of students to aid in course evaluation and improvement;

(iii) Assign personnel to observe or participate in the course of instruction; and

(iv) Supervise or administer the required examinations or practical demonstrations, including the substitution of an applicable Coast Guard examination;

(10) Be subject to the offerer's QSS and monitored by the Coast Guard—or a Coast Guard-accepted QSS organization—when providing training to meet STCW requirements, in accordance with Regulation I/8 of the STCW Convention (incorporated by reference in § 10.103).

(b) When the Coast Guard is monitoring the QSS, the course provider must:

(1) Maintain a QSS manual that defines the objectives, authorities, and responsibilities and essential controls for:

(i) Planning and scheduling of courses;

(ii) Designing courses to fulfill learning objectives and regulatory requirements;

(iii) Verifying the competence of all instructors and training provider examiners;

(iv) Validating simulators used for training or testing;

(v) Maintaining the learning environment and teaching of mariners;

(vi) Certifying mariner, skills, knowledge, and abilities per applicable regulatory requirements;

(vii) Enabling mariner completion of Coast Guard applications for Merchant Mariner Credentials;

(viii) Filing and archiving of records so they are retrievable and legible;

(ix) Taking action to stop recurrence of system, process and product nonconformity; and

(x) Auditing, reviewing and improving the performance of the training management system.

(2) Arrange for an audit to be conducted twice in a 5-year period.

§ 10.304 Substitution of training for required service, use of training-record books, and use of towing officer assessment records.

(a) Satisfactory completion of an approved training course may be substituted for a portion of the required service on deck or in the engine department for deck or engineer endorsements. Satisfactory completion of an approved training program which includes sea service may be substituted for all of the required service on deck or in the engine department, except as limited by law for ratings. The list of all currently approved courses of instruction, including the equivalent service and applicable endorsements, is maintained by the NMC.

(b) Recency requirements may not be achieved by service granted as a result of successful completion of approved training or by training on a simulator; however, underway service obtained as a portion of an approved course or program may be used for this purpose.

(c) Unless otherwise allowed, training obtained before receiving an endorsement may not be used for subsequent raises of grade, increases in scope, or renewals.

(d) A training-record book required as part of an approved training program for OICNW and OICEW must contain at least the following:

(1) The name of the applicant;

(2) The tasks to be performed or the skills to be demonstrated, with reference to the standards of competence set forth in the tables of the appropriate sections in part A of the STCW Code (incorporated by reference in § 10.103);

(3) The criteria to be used in determining that the tasks or skills have been performed properly, with reference

to the standards of competence set forth in the tables of competence in the appropriate sections in part A of the STCW Code;

(4) A place for a qualified instructor to indicate by his or her initials that the applicant has received training in the proper performance of the task or skill;

(5) A place for a designated examiner to indicate by his or her initials that the applicant has successfully completed a practical demonstration and has proved competent in the task or skill under the criteria, when assessment of competence is to be documented in the record books;

(6) The name of each qualified instructor, including any MMC endorsements held, and the instructor's signature; and

(7) The name of each designated examiner, when any assessment of competence is recorded, including any MMC endorsement, license, or document held, and the examiner's signature confirming that his or her initials certify that he or she has witnessed the practical demonstration of a particular task or skill by the applicant.

(e) The training-record book referred to in paragraph (d) of this section may be maintained electronically, provided the electronic record meets Coast Guard-accepted standards for accuracy, integrity, and availability.

(f) Each applicant for an endorsement as master or mate (pilot) of towing vessels, and each master or mate of self-propelled vessels of 200 GRT/500 GT or more, seeking an endorsement for towing vessels, must complete a towing officers' assessment record (TOAR) that contains at least the following:

(1) Identification of the applicant, including his or her full name, home address, photograph or photo-image, and personal signature;

(2) Objectives of the training and assessment;

(3) Tasks to perform or skills to demonstrate;

(4) Criteria to use in determining that the tasks or skills have been performed properly;

(5) A place for a qualified instructor or credentialed officer (with authority to operate a towing vessel) to indicate by his or her initials that the applicant has received training in the proper performance of the tasks or skills;

(6) A place for a designated examiner (DE) to indicate by his or her initials that the applicant has successfully completed a practical demonstration and has proved proficient in the task or skill under the criteria;

(7) Identification of each qualified instructor or credentialed officer (with authority to operate a towing vessel) by his or her full name, home address, employer, job title, ship name or business address, TWIC and serial number of the MMC, license, or document held, and personal signature; and

(8) Identification of each designated examiner by his or her full name, home address, employer, job title, ship name or business address, TWIC and serial number of the MMC, license, or document held, and personal signature confirming that his or her initials certify that he or she has witnessed the practical demonstration of a particular task or skill by the applicant.

§ 10.305 Qualification as designated examiner (DE).

(a) To become a DE, an applicant must have documentary evidence to establish:

(1) Experience, training, or instruction in assessment techniques;

(2) Qualifications in the task for which the assessment is being conducted; and

(3) Possession of the level of endorsement, or other professional credential, which provides proof that he or she has attained a level of qualification equal or superior to the relevant level of knowledge, skills and abilities described in the training objectives.

(b) Documentary evidence may be in the form of performance evaluations, which include an evaluation of effectiveness in on-the-job organization and delivery of training, and/or a certificate of successful completion from a ''train-the-trainer'' course. A train-the-trainer course must be based on the International Maritime Organization's (IMO) model course 6.09 (Training Course for Instructors), or on another Coast Guard-accepted syllabus.

§ 10.307 Approved courses.

The NMC maintains the list of training organizations and the approved training they offer. This information is available on the Internet at: *www.uscg.mil/nmc.*

§ 10.308 Coast Guard-approved training program requirements for STCW endorsements.

Training programs used to qualify a mariner to hold an STCW endorsement must meet the same standards as those found in §§ 10.302 and 10.303 of this part.

§ 10.309 Coast Guard-accepted training other than approved courses and programs.

(a) When the training and assessment of competence required by this part are used to qualify a mariner to hold an endorsement, the offerer of the course or program must ensure that:

(1) Such training and assessment meets the same standards as those found in §§ 10.302 and 10.303 of this part; and

(2) Such training is subject to the offerer's QSS and monitored by the Coast Guard or a Coast Guard-accepted QSS organization, in accordance with Regulation I/8 of the STCW Convention (incorporated by reference in § 10.103). The purpose of the offerer's QSS is to document and implement a quality policy and organizational structure, responsibilities, procedures, processes, resources and equipment necessary to implement a QSS to monitor mariner training and assessment of competence in accordance with the STCW Convention and STCW Code. The QSS should include the following information:

(i) Course design, organization and implementation to fulfill learning objectives and regulatory requirements;

(ii) Verification of the competence of all instructors and training provider examiners;

(iii) Validation of simulators used for training or testing;

(iv) Certification of mariner knowledge, skills, and abilities per applicable regulatory requirements;

(v) Record-keeping procedures that ensure that records are retrievable and legible;

(vi) Non-conformity reporting, analysis and implementation of corrective actions; and

(vii) Conducting annual internal audits for each core and core support process, reviewing and improving the performance of the training management system.

(3) Arrangements are made for a complete external audit to be conducted twice in a 5-year period.

(b) The Coast Guard will accept courses approved by a Coast Guard-accepted QSS organization. The Coast Guard maintains a list of training organizations conducting accepted training and who are independently monitored by a Coast Guard-accepted QSS organization. The Coast Guard-accepted QSS organization must:

(1) Submit a certificate of acceptance of training to the Coast Guard;

(2) Wait at least 45 days after Coast Guard recognition before offering the course for credit;

(3) Submit an updated certificate of acceptance to the Coast Guard annually; and

(4) Sign each certificate by the training organization owner or operator, or its authorized representative(s), stating that the training fully complies with the requirements of this section,

and identifying the Coast Guard-accepted QSS organization being used for independent monitoring.

(c) If the Coast Guard determines, on the basis of observations or conclusions either of its own or by someone authorized to monitor the training, that the particular training does not satisfy one or more of the conditions described in paragraph (a) of this section:

(1) The Coast Guard will so notify the offerer of the training by letter, enclosing a report of the observations and conclusions;

(2) The offerer may, within a period specified in the notice, either appeal the observations or conclusions to the Commandant (CG–543) or bring the training into compliance; and

(3) If the appeal is denied—or the deficiency is not corrected in the allotted time, or within any additional period judged by the Coast Guard to be appropriate, considering progress toward compliance—the Coast Guard will remove the training from the list maintained under paragraph (b) of this section until it can verify full compliance; and it may deny applications for licenses for officer or STCW endorsements based in whole or in part on training not on the list, until additional training or assessment is documented.

§ 10.311 Simulator performance standards.

Any simulators used in assessment of competence must meet the appropriate performance standards set out in Section A–I/12 of the STCW Code (incorporated by reference in § 10.103). However, a simulator installed or brought into use before February 1, 2002, need not meet those standards if they fulfill the objectives of the assessment of competence or demonstration of proficiency.

PART 11—REQUIREMENTS FOR OFFICER ENDORSEMENTS

27. The authority citation for part 11 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906, and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

Subpart A—General

28. Amend § 11.101 as follows:

a. Revise section heading to read as set out below;

b. Revise paragraph (a) introductory text and paragraph (a)(2) to read as set out below;

c. In paragraph (a)(1), after the word ''engineer'', add the word ''officer''; and

d. Remove paragraph (c).

§ 11.101 Purpose.

(a) The purpose of this part is to provide:

* * * * *

(2) A means of determining that an applicant is competent to serve as a master, chief mate, officer in charge of a navigational watch, chief engineer officer, second engineer officer (first assistant engineer), officer in charge of an engineering watch, designated duty engineer, or GMDSS radio operator, in accordance with the provisions of the STCW Convention, and other laws, and to receive the appropriate certificate or endorsement as required by the STCW Convention.

* * * * *

29. Amend § 11.102 by revising paragraph (b) to read as follows:

§ 11.102 Incorporation by reference.

* * * * *

(b) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, England:

(1) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the STCW Convention or the STCW), approved for incorporation by reference in §§ 11.401, 11.493, 11.495, 11.497, 11.514, and 11.551.

(2) The Seafarers' Training, Certification and Watchkeeping Code, as amended (the STCW Code), approved for incorporation by reference in §§ 11.205, 11.401, 11.405, 11.412, 11.413, 11.424, 11.501, 11.507, 11.509, 11.511, 11.513, 11.551, 11.603, and 11.901.

§ 11.107 [Amended]

30. In § 11.107, in paragraph (b)(2) remove the section numbers ''11.302, 11.303, 11.304,'', and remove paragraph (b)(3).

Subpart B—General Requirements for Officer Endorsements

§ 11.201 [Amended]

31. Amend § 11.201 as follows:

a. In paragraph (b), remove the text ''(h)'' and add, in its place, the text ''(g)'';

b. In paragraph (e)(1)(i), after the text ''25–200 GRT'', add the text ''/500 GT'';

c. In paragraph (e)(1)(iv), remove the text ''200–1,600 GRT'' and add, in its place, the text ''200 GRT/500 GT–1,600 GRT/3,000 GT''; in paragraph (e)(1)(x), remove the word ''oceans''; in paragraph (e)(1)(xi), remove the word ''horsepower'' and add, in its place, the text ''HP/3,000 kW''; in paragraphs (e)(2)(i) and (ii), after the text ''100 GRT'', add the text ''/250 GT''; in paragraphs (e)(2)(iii) and (iv), after the text ''25–200 GRT'', add the text ''/500 GT''; and, in paragraph (e)(2)(vi), remove the word ''horsepower'' and add, in its place, the text ''HP/750 kW'';

d. In paragraph (f), after the words ''general physical condition'', remove the words ''where required'';

e. In paragraph (h), remove the words ''meet the requirements for an officer endorsement'' and add, in their place, the words ''also meet the requirements of paragraph (a) of this section''; and

f. In paragraph (i), remove the text ''Officer in Charge, Marine Inspection (OCMI),'' and add, in its place, the words ''Coast Guard''.

32. Revise § 11.202 to read as follows:

§ 11.202 STCW endorsements.

(a) When an original MMC for service on seagoing vessels is issued, renewed, upgraded, or otherwise modified, the Coast Guard will determine whether the applicant meets the standards for an STCW endorsement for service on a seagoing vessel. If the applicant is qualified, the Coast Guard will issue the appropriate endorsement. The Coast Guard will also issue an STCW endorsement at other times, if circumstances so require and if the applicant is qualified to hold the endorsement.

(b) Basic safety training or instruction for applicants who will serve on seagoing vessels will have to meet the requirements of § 15.1105 of this subchapter.

(c) Notwithstanding § 11.901 of this part, each mariner found qualified to hold any of the following officer endorsements will also be entitled to hold an STCW endorsement corresponding to the service or other limitations of the license or officer endorsements on the MMC, because the vessels concerned are not subject to further obligation under the STCW because of their special operating conditions as small vessels engaged in domestic, near-coastal voyages:

(1) Masters, mates, or engineers endorsed for service on small passenger vessels that are subject to subchapter T or K of this chapter and that operate beyond the boundary line.

(2) Masters, mates, or engineers endorsed for service on seagoing vessels of less than 200 GRT/500 GT, other than passenger vessels subject to subchapter H of this chapter.

(3) Operators of uninspected passenger vessels as defined in 46 U.S.C. 2101(42)(B).

(d) No mariner serving on, and no owner or operator of any of the following vessels, need hold an STCW endorsement, because they are exempt from application of STCW:

(1) Fishing vessels as defined in 46 U.S.C. 2101(11)(a).

(2) Fishing vessels used as fish-tender vessels as defined in 46 U.S.C. 2101(11)(c).

(3) Barges as defined in 46 U.S.C. 2101(2), including non-self-propelled mobile offshore drilling units.

(4) Vessels operating exclusively on the Great Lakes or on the inland waters of the U.S. in the Straits of Juan de Fuca inside passage.

33. Revise § 11.205 to read as follows:

§ 11.205 Requirements for original officer endorsements and STCW endorsements.

(a) *General.* In addition to the requirements in part 10 of this subchapter and §§ 11.201 through 11.202 of this part, the applicant for an original officer endorsement must also satisfy the requirements of this section.

(b) *Experience or training.* (1) All applicants for original officer or STCW endorsements must present to the Coast Guard letters, discharges, or other documents certifying the amount and character of their experience and the names, tonnage, waters, and propulsion power of the vessels on which the experience was acquired. The Coast Guard must be satisfied as to the authenticity and acceptability of all evidence of experience or training presented. Certificates of discharge will be returned to the applicant. The Coast Guard will annotate on the application that service represented by these documents has been verified. All other documentary evidence of service, or authentic copies thereof, will be filed with the application. An MMC is not considered satisfactory evidence of any qualifying experience.

(2) No original officer or STCW endorsement may be issued to any naturalized citizen based on less experience in any grade or capacity than would have been required of a citizen of the United States by birth.

(3) No applicant for an original officer or STCW endorsement who is a naturalized citizen and who has obtained experience on foreign vessels will be given an original officer endorsement in a grade higher than that upon which he or she has actually served while acting under the authority of a foreign credential.

(4) Experience and service acquired on foreign vessels is creditable for establishing eligibility for an original officer or STCW endorsement, subject to evaluation by the Coast Guard to determine that it is a fair and reasonable equivalent to service acquired on merchant vessels of the United States, with respect to grade, tonnage, propulsion power, waters upon which service occurred, and operating conditions. An applicant who has obtained qualifying experience on foreign vessels must submit satisfactory documentary evidence of such service (including any necessary translation into English) in the forms prescribed by paragraph (b)(1) of this section.

(c) *Character check and references.* Each applicant for an original officer or STCW endorsement must submit written recommendations concerning the applicant's suitability for duty from a master and two other individuals holding officer endorsements or licenses on vessels on which the applicant has served.

(1) For an officer endorsement as engineer or as pilot, at least one of the recommendations must be from the chief engineer or pilot, respectively, of a vessel on which the applicant has served.

(2) For an officer endorsement as engineer where service was obtained on vessels not carrying a credentialed engineer, and for an officer endorsement as master or mate (pilot) of towing vessels, the recommendations may be by recent marine employers with at least one recommendation from a master, operator, or person in charge (PIC) of a vessel upon which the applicant has served.

(3) For an officer endorsement as offshore installation manager (OIM), barge supervisor (BS), or ballast control operator (BCO), at least one recommendation must be from an offshore installation manager of a unit on which the applicant has served.

(4) Where an applicant qualifies for an endorsement through an approved training school or program, one of the character references must be from an official of that school or program.

(5) For an endorsement for which no commercial experience may be required, such as master or mate 25–200 GRT/500 GT, operator of uninspected passenger vessel (OUPV), radio officer, or certificate of registry, the applicant may have the written recommendations of three persons who have knowledge of the applicant's suitability for duty.

(6) An individual may apply for an original officer or STCW endorsement, or officer or STCW endorsement of a different type, while on probation as a result of administrative action under part 5 of this chapter. The offense for which the applicant was placed on probation will be considered in determining his or her fitness to hold the endorsement applied for. An officer or STCW endorsement issued to an applicant on probation will be subject to the same probationary conditions as were imposed against the applicant's other credential. An applicant may not take an examination for an officer or STCW endorsement during any period when a suspension without probation or a revocation is effective against the applicant's currently held license, merchant mariner's document, or MMC, or while an appeal from these actions is pending.

(7) If an original license, certificate of registry, or officer endorsement has been issued when information about the applicant's habits of life and character is brought to the attention of the Coast Guard, if such information warrants the belief that the applicant cannot be entrusted with the duties and responsibilities of the license, certificate of registry, or officer endorsement issued, or if such information indicates that the application for the license, certificate of registry, or officer endorsement was false or incomplete, the Coast Guard may notify the holder in writing that the license, certificate of registry, or officer endorsement is considered null and void, direct the holder to return the credential to the Coast Guard, and advise the holder that, upon return of the credential, the appeal procedures of § 10.237 of this subchapter apply.

(d) *Firefighting certificate.* Applicants for the officer endorsements in the following categories must present a certificate of completion from a firefighting course of instruction which has been approved by the Coast Guard. The course must meet the requirements in Regulation VI/3 of the STCW Convention and section A–VI/3 of the STCW Code (both incorporated by reference in § 11.102). The course must have been completed within five years before the date of application for the license requested.

(1) All master endorsements for service on vessels of 200 GRT/500 GT or less in ocean service.

(2) All master or mate endorsements for service on vessels over 200 GRT/500 GT.

(3) All endorsements for master or mate of towing vessels, except apprentice mate of such vessels, on oceans.

(4) All endorsements on mobile offshore drilling units.

(5) All engineer officer endorsements.

(e) *First aid and cardiopulmonary resuscitation (CPR) course certificates.* All applicants for an original officer endorsement, except as provided in §§ 11.429, 11.456, 11.466, and 11.467 of

this part, must present to the Coast Guard:

(1) A certificate indicating completion of a first aid course not more than 1 year from the date of application from:

(i) The American National Red Cross *Standard First Aid* or *Community First Aid & Safety;*

(ii) A Coast Guard-approved first aid training course; or

(iii) A course the Coast Guard determines meets or exceeds the standards of the American Red Cross courses; and

(2) A currently valid certificate of completion of a CPR course from either:

(i) The American National Red Cross;

(ii) The American Heart Association;

(iii) A Coast Guard-approved CPR training course; or

(iv) A course the Coast Guard determines meets or exceeds the standards of the American Red Cross or American Heart Association courses.

(3) In lieu of completing the required training in (e)(1) and (2) of this section, to obtain a seagoing officer endorsement, applicants must complete and provide evidence of approved training as medical first aid provider or person in-charge medical care.

(f) *Professional Examination.* (1) When the Coast Guard finds the applicant's experience and training to be satisfactory, and the applicant is eligible in all other respects, the Coast Guard will authorize the examination in accordance with the following requirements:

(i) Except for an endorsement required by the STCW Convention, any applicant for a deck or engineer officer endorsement limited to vessels not exceeding 200 GRT/500 GT, or an officer endorsement limited to uninspected fishing industry vessels, may request an orally assisted examination in lieu of any written or other textual examination. If there are textual questions that the applicant has difficulty reading and understanding, the Coast Guard will offer the orally assisted examination. Each officer endorsement based on an orally assisted examination is limited to the specific route and type of vessel upon which the applicant obtained the majority of service.

(ii) The general instructions for administration of examinations and the lists of subjects for all officer endorsements appear in subpart I of this part. The Coast Guard will place in the applicant's file a record indicating the subjects covered.

(2) When the application has been approved, the applicant should take the required examination as soon as practicable. If the applicant cannot be examined without delay at the office where the application is made, the applicant may request that the examination be given at another office.

(3) An examination is not required for a staff officer or radio officer endorsement.

(g) *Practical demonstration of skills.* Each applicant for an original STCW endorsement must successfully complete any practical demonstrations required under this part and appropriate to the particular endorsement concerned, to prove that he or she is sufficiently proficient in the skills required under subpart I of this part. The Coast Guard must be satisfied with the authenticity and acceptability of all evidence that each applicant has successfully completed the demonstrations required under this part in the presence of a designated examiner. The Coast Guard will place a written or electronic record of the skills required, the results of the practical demonstrations, and the identification of the designated examiner in whose presence the requirements were fulfilled, in the file of each applicant.

(h) *Radar observer.* Applicants for an endorsement as radar observer must present a certificate of completion from a radar observer course as required by § 11.480 of this part.

§ 11.211 [Amended]

34. Amend § 11.211 as follows:

a. In paragraph (a), remove the words ''gross tons'' and add, in their place, the text ''GRT/500 GT'', remove the words ''shaft horsepower'' and add, in their place, the words ''propulsion power'', and, before the words ''dates of service'', remove the word ''approximate'';

b. In paragraph (b), remove the word ''Port'' and add, in its place, the words ''Service as port'', and remove the text '', as appropriate, using the following:'' and add, in its place, the words ''; however, it may not be used for obtaining an original management-level endorsement. The service is creditable as follows:''; and

c. In paragraph (e), remove the text ''OCMI and forwarded to the Commandant'' and add, in its place, the words ''Coast Guard''.

35. Amend § 11.213 as follows:

a. In paragraph (a), remove the words ''Officer in Charge, Marine Inspection'' and add, in their place, the words ''Coast Guard with'', remove the word ''horsepower'' and add, in its place, the words ''propulsion power'', remove the words ''OCMI and forwarded to the Commandant'' and add, in their place, the words ''Coast Guard'', and revise the last sentence to read as set forth below;

b. Revise paragraph (c) to read as set forth below; and

c. In paragraph (e), remove the words ''is evaluated by the OCMI and forwarded to the National Maritime Center'' and add, in their place, the words ''will be evaluated by the Coast Guard''.

§ 11.213 Sea service as a member of the Armed Forces of the United States and on vessels owned by the United States as qualifying experience.

(a) * * * In order to be eligible for a management level officer or STCW endorsement, the applicant must have acquired equivalent service while holding an appropriate officer or STCW endorsement at the operational level.

* * * * *

(c) In addition to service on vessels that get underway regularly, members of the Armed Forces may obtain creditable service for assignment to vessels that get underway infrequently, such as tenders and repair vessels. Normally, a 25 percent factor is applied to these time periods. This experience can be equated with general shipboard familiarity, training, ship's business, and other related duties.

* * * * *

36. In § 11.217, in paragraph (a)(1), remove the word ''OCMI'' and add, in its place, the words ''Coast Guard'', and revise paragraph (b) to read as follows:

§ 11.217 Examination procedures and denial of officer endorsements.

* * * * *

(b) If the Coast Guard refuses to grant an applicant the endorsement applied for due to the applicant's failure to pass a required examination, the Coast Guard will provide the applicant with a written statement setting forth the portions of the examination which must be retaken and the date by which the examination must be completed.

37. Add subpart C to read as follows:

Subpart C—Approved and Accepted Training

§ 11.301 Coast Guard-approved and accepted training.

Coast Guard-approved training must meet the requirements found in 46 CFR part 10 subpart C.

Subpart D—Professional Requirements for Deck Officer Endorsements

38. Revise § 11.401 and add new table 11.401(a) to read as follows:

§ 11.401 Ocean and near-coastal or STCW endorsements.

(a) Each applicant for any of the following endorsements (except for

persons serving on those vessels listed in 46 CFR 15.103 (e) and (f)) must meet the requirements of the appropriate STCW Convention regulations and standards of competence, and those in part A of the STCW Code (incorporated by reference in § 11.102), as indicated in table 11.401(a) of this section:

(1) Master of ocean or near-coastal, self-propelled vessels of unlimited tonnage.

(2) Chief mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage.

(3) Master of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT.

(4) Chief mate of ocean or near-coastal, self-propelled, vessels of less than 1,600 GRT/3,000 GT.

(5) Second mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage.

(6) Third mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage.

(7) Mate of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT.

(8) Master of towing vessels of 200 GRT/500 GT or more, oceans and near-coastal.

(9) Mate of towing vessels of 200 GRT/500 GT or more, oceans and near coastal.

(10) Master or mate, near coastal, less than 200 GRT/500 GT1.

(11) Master (OSV).2

(12) Chief mate (OSV).2

(13) Mate (OSV).

TABLE 11.401(A)

	1*	2	3	4	5	6	7	8	9	10[1]	11[2]	12[2]	13
Regulation II/1 of the STCW Convention[3]					X	X	X		X				X
Regulation II/2 of the STCW Convention, pp. 1 & 2[3]	X	X									X	X	
Regulation II/2 of the STCW Convention, pp. 3 & 4[3]			X	X				X			X	X	
Regulation II/3 of the STCW Convention[3]										X			

* Column headings coincide with subparagraphs of paragraph (a) of this section.
[1] Not applicable to persons serving on those vessels listed in 46 CFR 15.103 (e) and (f).
[2] Based upon the tonnage limitation on the endorsement.
[3] Regulations of the STCW Convention are incorporated by reference in § 11.102 of this part.

(b) Every applicant for an ocean or near-coastal officer endorsement of 200 GRT/500 GT or more, or an officer endorsement for less than 200 GRT/500 GT intending to serve on a passenger vessel of 100 GRT/250 GT or more, or on any vessel engaged on an international voyage, must hold the appropriate STCW endorsement. The STCW endorsement will also authorize service in the capacities stated on the endorsement subject to any limitations stated on it.

(c) Subject to the provisions of §§ 11.464(d) and 11.465(b) of this part, any license or officer endorsement for service as master or mate on ocean waters qualifies the holder to serve in the same grade on any waters, subject to the limitations of the endorsement.

(d) Subject to the provisions of §§ 11.464(d) and 11.465(b) of this part, any license or officer endorsement issued for service as master or mate on near-coastal waters qualifies the holder to serve in the same grade on near-coastal, Great Lakes, and inland waters, subject to the limitations of the endorsement.

(e) Near-coastal endorsements of unlimited tonnage require the same number of years of service as the ocean unlimited endorsements. The primary differences in these endorsements are the nature of the service, reduced training, lack of assessment in areas not relevant, and the scope of the professional examination.

(f) The holder of a master or mate license or MMC officer endorsement for near-coastal service may obtain an MMC officer endorsement for ocean service by completing training, assessments of professional skills, and the appropriate examination relevant to ocean service.

(g) A master or mate endorsement for service on vessels of 200 GRT/500GT or more, and a master or mate endorsement for service on vessels under 200 GRT/500GT issued under §§ 11.423 or 11.424 of this part, may be endorsed for sail or auxiliary sail as appropriate. The applicant must present the equivalent total qualifying service required for conventional officer endorsements, including at least 1 year of deck experience on that specific type of vessel. For example, for an officer endorsement as master of vessels of less than 1,600 GRT/3,000 GT endorsed for auxiliary sail, the applicant must meet the total experience requirements for the conventional officer endorsement, including time as mate, and the proper tonnage experience, including at least 1 year of deck service, on appropriately sized auxiliary sail vessels. For an endorsement to serve on vessels of less than 200 GRT/500 GT, see the individual endorsement requirements.

(h) To obtain a master or mate endorsement with a tonnage limit of 200 GRT/500 GT or more, an endorsement for less than 200 GRT/500 GT with an ocean route, or an endorsement issued under § 11.426 of this part, the applicant must successfully complete the following approved training:

(1) Basic and advanced firefighting;

(2) Automatic radar-plotting aids (ARPA), or the endorsement will be limited to service on vessels not equipped with ARPA;

(3) Global Maritime Distress and Safety System (GMDSS), and hold the license for operator of radio in the GMDSS issued by the Federal Communications Commission, or the endorsement will be limited to service on vessels not equipped with GMDSS; and

(4) Radar observer unlimited.

(i) An applicant for his or her first deck officer endorsement authorizing service on vessels of 200 GRT/500GT or more on ocean or near-coastal waters must pass a practical signaling examination (flashing light). If the original or raise of grade did not require passing a practical signal examination, an applicant for a raise in grade or renewal will be required to pass this examination.

(j) Training and shoreside employment may not be accepted as equivalent to sea service under the STCW Convention, except as part of an approved training program. However, it may be allowed for specific domestic officer endorsements. Sea service equivalency may be substituted for sea service required to qualify for an endorsement as second mate.

39. Revise § 11.402 to read as follows:

§ 11.402 Tonnage requirements for ocean or near-coastal endorsements for vessels of 1,600 GRT/3,000 GT or more.

(a) With the exception of offshore supply vessels (OSVs), for the purposes of this subpart only, the following equivalencies between GRT and GT are established:

TABLE 11.402(A)—GROSS REGISTER TONS TO GROSS TONNAGE EQUIVALENCIES

Gross register tonnage (GRT)	Gross tonnage (GT)
100	250
150	375
200	500
300	700
500	1,200
1,000	2,000
1,600	3,000
2,000	3,300
3,000	3,700
4,000	4,000

Above 4,000 tons, the GRT and the GT are considered equal.

(b) To qualify for an ocean or near-coastal endorsement for service on vessels of unlimited tonnage:

(1) All the required experience must be obtained on vessels of 200 GRT/500 GT or more; and

(2) At least one-half of the required experience must be obtained on vessels of 1,600 GRT/3,000 GT or more.

(c) If an applicant for an endorsement as master or mate does not have the service on vessels of 1,600 GRT/3,000 GT or more as required by paragraph (b) of this section, a tonnage limitation will be placed on the MMC based on the applicant's qualifying experience. The endorsement will be limited to the maximum tonnage on which at least 25 percent of the required experience was obtained, or 150 percent of the maximum tonnage on which at least 50 percent of the service was obtained, whichever is higher. However, the minimum tonnage limitation calculated according to this paragraph will be 2,000 GRT/3,300 GT. Limitations are in multiples of 1,000 GRT and the corresponding GT from the table in paragraph (a) of this section, using the next higher figure when an intermediate tonnage is calculated. When the calculated limitation equals or exceeds 10,000 GRT/GT, the applicant is issued an unlimited tonnage endorsement.

(d) Tonnage limitations imposed under paragraph (c) of this section may be raised or removed in the following manner:

(1) When the applicant provides evidence of 6 months of service on vessels of 1,600 GRT/3,000 GT or more in the highest grade endorsed, all tonnage limitations will be removed;

(2) When the applicant provides evidence of 6 months of service on vessels of 1,600 GRT/3,000 GT or more in any capacity as an officer other than the highest grade for which endorsed, all tonnage limitations for the grade in which the service is performed will be removed and the next higher grade endorsement will be raised to the tonnage of the vessel on which the majority of the service was performed. The total cumulative service before and after issuance of the limited license or MMC officer endorsement may be considered in removing all tonnage limitations; or

(3) When the applicant has 12 months of service as able seaman on vessels of 1,600 GRT/3,000 GT or more while holding a license or endorsement as third mate, all tonnage limitations on the third mate's license or MMC officer endorsement will be removed.

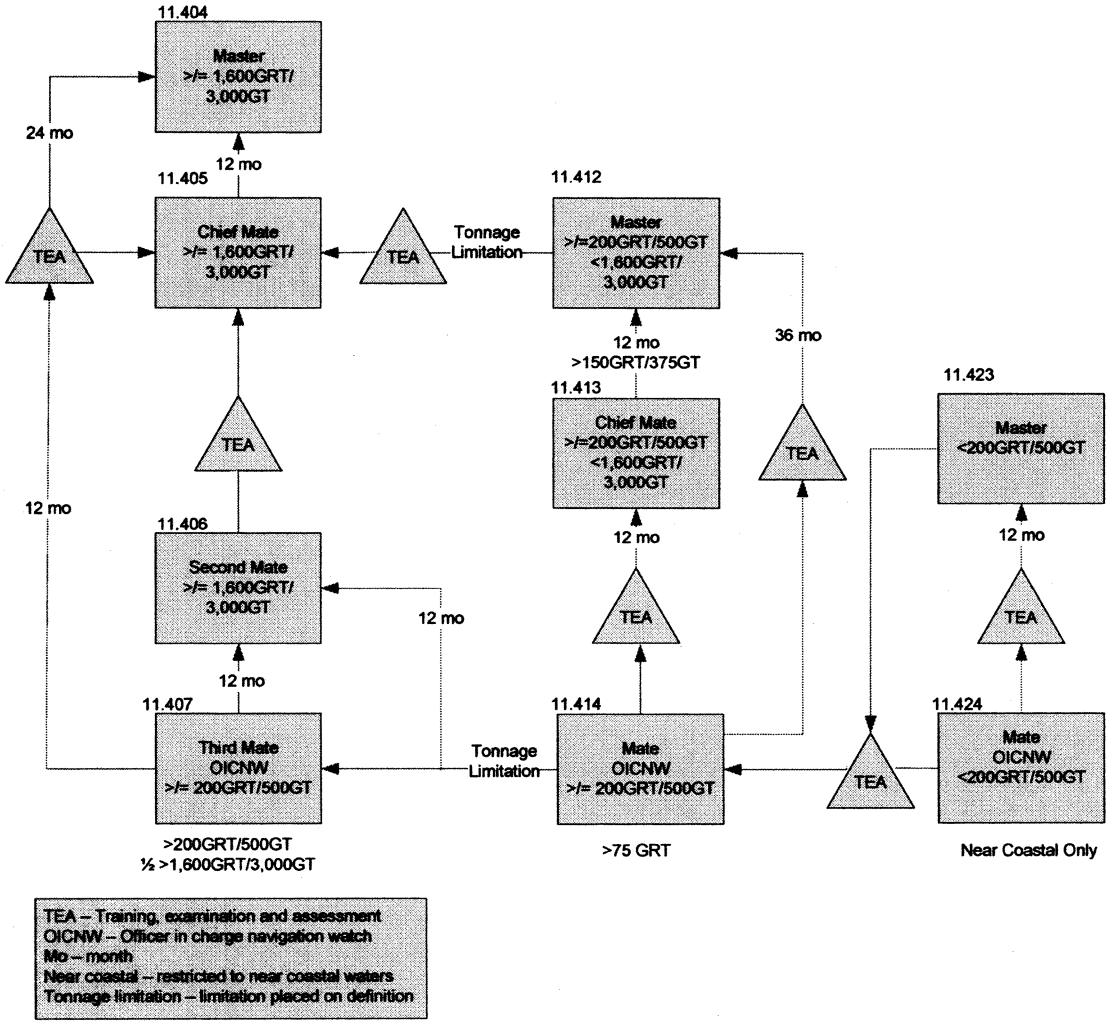
(e) An applicant holding a license or endorsement as master or mate of vessels of less than 1,600 GRT/3,000 GT, not more than 500 GRT/1,200 GT, or less than 25–200 gross tons, is prohibited from using the provisions of paragraph (d) of this section to increase the tonnages of his or her license or endorsement.

40. Revise § 11.403 to read as follows:

§ 11.403 Structure of deck officer endorsements for seagoing service.

The following diagram (Figure 11.403) illustrates the deck officer endorsement structure, including crossover points. The section numbers on the diagram refer to the specific requirements applicable.

Figure 11.403 Structure of deck officer endorsements for seagoing service



41. Revise § 11.404 to read as follows:

§ 11.404 Requirements to qualify for an STCW and officer endorsement as master of ocean or near-coastal, self-propelled vessels of unlimited tonnage.

(a) To qualify for an STCW and officer endorsement as master of ocean or near-coastal, self-propelled vessels of unlimited tonnage an applicant must:

(1) Provide evidence of sea service consisting of either:

(i) Twelve months of service as chief mate on self-propelled, seagoing vessels while holding an endorsement as chief mate unlimited; or

(ii) Thirty-six months of service as second mate or third mate on self-propelled, seagoing vessels.

(2) Complete the approved training as detailed in § 11.405 of this subchapter if he or she does not hold a license or endorsement as chief mate of self-propelled, seagoing vessels of unlimited tonnage; and

(3) Complete the assessments of professional skills in the above areas as required by § 11.401(a) of this part, if not already completed.

(b) Service as a rating will not be accepted to upgrade to an officer's endorsement as either chief mate or master.

42. Revise § 11.405 to read as follows:

§ 11.405 Requirements to qualify for an STCW and officer endorsement as chief mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage.

(a) To qualify for an STCW and officer endorsement as chief mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage, an applicant must:

(1) Provide evidence of 12 months of service as OICNW on self-propelled, seagoing vessels;

(2) Complete the approved training in the following areas that provide the applicant with the knowledge, understanding, and proficiency required by Section A–II/2 of the STCW Code:

(i) Navigation, including:

(A) Voyage Planning; and

(B) Compass Correction.

(ii) Search and Rescue;

(iii) Watchkeeping, including:

(A) The International Regulations for Preventing Collisions at Sea (COLREGS); and

(B) Principles of Safe Watchkeeping.

(iv) Meteorology/oceanography, including:

(A) Weather forecasting; and

(B) Dynamics of weather and current systems.

(v) Shiphandling, including:

(A) Shallow water operations;

(B) Hydrodynamic effects;

(C) Mooring operations;

(D) Heavy weather operations; and
(E) Emergency procedures.
(vi) Marine engineering, including:
(A) Remote controls;
(B) Operating principles of propulsion plant; and
(C) Auxiliary machinery.
(vii) Cargo handling, including:
(A) Loading and transportation of all cargo types; and
(B) Carriage of dangerous goods.
(viii) Stability for all vessel types, including:
(A) Damage stability;
(B) Draft, trim and stress; and
(C) Bending moments; and
(ix) Maritime law, including:
(A) International requirements;
(B) U.S. requirements;
(C) Ship's business; and
(D) Security; and
(3) Complete the assessments of professional skills in paragraph (a)(2) as required by § 11.401(a) of this part; or
(b) An applicant for this endorsement may, while holding a license or endorsement for service as master on self-propelled, seagoing vessels between 200 GRT/500 GT and 1,600 GRT/3,000 GT, complete training approved for the purpose of transitioning to this endorsement and the applicable assessments of professional skills required by subpart I of this part. The training must include the following topics:
(1) Cargo handling, including:
(i) Loading and transportation of all cargo types; and
(ii) Carriage of dangerous goods.
(2) Stability for all vessel types, including:
(i) Damage stability;
(ii) Draft, trim and stress; and
(iii) Bending moments.
(3) Marine engineering—steam propulsion systems;
(4) Ship's business; and
(5) Shiphandling for vessels of unlimited tonnage.
(c) Service as a rating will not be accepted to upgrade to an officer's endorsement as either chief mate or master.

43. Revise § 11.406 to read as follows:

§ 11.406 Requirements to qualify for an STCW endorsement as OICNW and an officer endorsement as second mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage.

To qualify for an STCW endorsement as OICNW and an officer endorsement as second mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage, an applicant must:
(a) Provide evidence of 12 months of service as OICNW on self-propelled, seagoing vessels while holding a license or endorsement as third mate; or
(b) Provide evidence of 12 months of service while holding a license or endorsement as third mate for service on seagoing vessels, or while holding a license or endorsement as mate on self-propelled, seagoing vessels of less than 1,600 GRT/3,000 GT that includes
(1) At least 6 months of service as OICNW on self-propelled, seagoing vessels, in combination with;
(2) Service on self-propelled, seagoing vessels as boatswain, able seaman, or quartermaster while holding a certificate as able seaman, which may be accepted on a two-for-one basis to a maximum allowable substitution of 6 months (12 months of experience equals 6 months of creditable service).

44. Revise § 11.407 to read as follows:

§ 11.407 Requirements to qualify for an STCW endorsement as OICNW and an officer endorsement as third mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage.

To qualify for an STCW endorsement as OICNW and an officer endorsement as third mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage, an applicant must comply with paragraphs (a), (b), or (c) of this section.
(a) To qualify for these endorsements, an applicant must:
(1) Provide evidence of 36 months of service in the deck department on self-propelled, seagoing vessels, at least 6 months of which must have been as able seaman or quartermaster while holding both a rating endorsement as able seaman and an STCW endorsement as RFPNW. Experience gained in the engine department on vessels of appropriate tonnage may be creditable for up to 3 months of the service requirements;
(2) Complete approved training that provides the applicant with the knowledge, understanding, and proficiency required by Section A–II/1 of the STCW Code, in the following areas:
(i) Terrestrial navigation;
(ii) Celestial navigation;
(iii) Electronic navigation;
(iv) Compasses, magnetic and gyro;
(v) Meteorology/oceanography, including:
(A) Weather instruments;
(B) Weather observations;
(C) Basic weather systems; and
(D) Basic current systems.
(vi) Shiphandling, including:
(A) Steering controls systems;
(B) Maneuvering characteristics;
(C) Emergency procedures; and
(D) Search and rescue.
(vii) Watchkeeping including:
(A) Bridge resource management;
(B) COLREGS;
(C) Sea watch;
(D) Port watch;
(E) Anchor watch;
(F) Record keeping;
(G) Communications;
(H) Maritime law; and
(I) Prevention of pollution of the maritime environment.
(viii) Radar observer;
(ix) ARPA, if required;
(x) GMDSS, if required;
(xi) Cargo handling;
(xii) Stability and ship construction;
(xiii) Advanced firefighting;
(xiv) Medical first aid provider; and
(xv) Proficiency in survival craft.
(3) Complete the assessments of professional skills in paragraph (a)(2) the above areas as required by subpart I of this part; and
(4) Qualify as proficient in survival craft and rescue craft except fast-rescue craft; or
(b) An applicant for this endorsement must complete a program of education, training, assessment, and sea service approved by the Coast Guard as leading to an endorsement as third mate and as OICNW; or
(c) An applicant must, while holding a license or endorsement as mate of self-propelled, seagoing vessels of 1,600 GRT/3,000 GT and an endorsement as OICNW, provide evidence of additional sea service on vessels of sufficient tonnage to qualify for an endorsement under this paragraph as specified in § 11.402 of this part.
(d) An applicant for this endorsement who does not meet the requirements of § 11.402 of this part will have a tonnage restriction placed on his or her MMC.

45. Revise § 11.410 to read as follows:

§ 11.410 Requirements for deck officer endorsements for service on self-propelled, seagoing vessels of less than 1,600 GRT/3,000 GT.

(a) Endorsements as master and mate of vessels of less than 1,600 GRT/3,000 GT are issued in the following tonnage categories:
(1) Less than 1,600 GRT/3,000 GT;
(2) Not more than 500 GRT/1200 GT. Existing licenses or officer endorsements in this category may be renewed or reissued; however, no original endorsements or raises of grade to this tonnage category will be issued after [EFFECTIVE DATE OF FINAL RULE]; or
(3) Less than 200 GRT/500 GT (between 25–200 GRT) in tonnage increments as specified in § 11.422 of this part and with an appropriate mode of propulsion.
(b) Experience gained in the engine department on vessels of appropriate tonnage may be creditable for up to 90

days of the service requirements for any mate endorsement in this category.

(c) An officer endorsement in this category obtained with an orally assisted examination will be limited to service on vessels listed in § 15.103(e) and (f) of this subchapter. To remove this limitation and qualify for an appropriate STCW endorsement, the written examination, training, service requirements, and assessments must be successfully completed.

(d) If an applicant holds a license or endorsement for master or mate issued before [EFFECTIVE DATE OF FINAL RULE] for service on vessels of not more than 500 GRT/1,200 GT, and an accompanying STCW endorsement, he or she may apply for an upgrade:

(1) The tonnage limitation on an applicant's endorsement will be increased to authorize service on vessels of less than 1,600 GRT/3,000 GT if the applicant provides evidence of 6 months of service on vessels of:

(i) 75 GRT or more for a mate's license or endorsement; or

(ii) 150 GRT/375 GT or more for a master's license or endorsement.

(2) The service required in paragraph (d)(1) of this section may have been acquired before the applicant qualified for his or her present license or endorsement of not more than 500 GRT/1,200 GT, and it may have been used to qualify for that license or endorsement.

46. Revise § 11.412 to read as follows:

§ 11.412 Requirements for an STCW and officer endorsement as master of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT.

To qualify for an STCW and officer endorsement as master of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT, an applicant must:

(a) Be qualified as a mate and as an OICNW on seagoing vessels of 200 GRT/500 GT or more, and have either:

(1) Twenty-four months of seagoing service as an officer, of which 12 months must have been as chief mate, and at least 6 months of which must have been on vessels of 150 GRT/375 GT or more; or

(2) Thirty-six months of service as OICNW on self-propelled, seagoing vessels, of which at least 6 months must have been on vessels of 150 GRT/375 GT or more.

(b) Complete approved training that provides the applicant with knowledge, understanding, and proficiency required by Section A–II/2 of the STCW Code, as detailed in § 11.413 of this part; and

(c) Complete the assessments of professional skills in the above areas as required by § 11.401(a) of this part.

47. Add § 11.413 to read as follows:

§ 11.413 Requirements for an STCW and officer endorsement as chief mate of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT.

To qualify for an STCW and officer endorsement as chief mate of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT, an applicant must:

(a) Qualify as a mate and as an OICNW on seagoing vessels of 200 GRT/500 GT or more;

(b) Complete approved training in the following areas that provide the applicant with the knowledge, understanding, and proficiency required by Section A–II/2 of the STCW Code:

(1) Navigation, including:

(i) Voyage planning; and

(ii) Compass correction;

(2) Search and rescue;

(3) Watchkeeping, including:

(i) COLREGS; and

(ii) Principles of Safe Watchkeeping;

(4) Meteorology/Oceanography, including:

(i) Weather forecasting; and

(ii) Dynamics of weather and current systems;

(5) Shiphandling, including:

(i) Shallow water operations;

(ii) Hydrodynamic effects;

(iii) Mooring operations;

(iv) Heavy weather operations; and

(v) Emergency procedures;

(6) Marine engineering, including:

(i) Remote controls;

(ii) Operating principles of propulsion plant, except steam; and

(iii) Auxiliary machinery;

(7) Cargo handling, including:

(i) Use of cranes;

(ii) Stowage of deck cargo;

(iii) Liquid cargoes;

(iv) Carriage of dangerous goods; and

(v) Compliance with vessel stability letter;

(8) Stability, including:

(i) Use of simplified stability book; and

(ii) Calculations required by stability book/letter;

(9) Maritime law, including:

(i) International requirements;

(ii) U.S. requirements;

(iii) Ship's business; and

(iv) Security; and

(c) Complete the assessments of professional skills in the above areas as required by § 11.401(a) of this part.

48. Revise § 11.414 to read as follows:

§ 11.414 Requirements for an STCW and officer endorsement as mate of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT.

(a) To qualify for an STCW and officer endorsement as mate of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT, an applicant must meet the same requirements for sea service, training, and assessments as specified in § 11.407 of this part, except for the tonnage of the vessels upon which the applicant acquires seagoing service. To qualify for an endorsement under this section, sea service may be performed on smaller vessels; however, at least 6 months of the required experience must have been on vessels of 75 GRT or more.

(b) An applicant holding a license or MMC endorsement on vessels of 50 GRT or more, as either master or mate, limited to service on vessels listed in § 15.103(e) and (f) of this subchapter, may apply for the endorsement under this section after:

(1) Completing training approved by the Coast Guard for this crossover;

(2) Presenting evidence of having the required seagoing service; and

(3) Completing the assessments of professional skills required by § 11.401(a) of this part.

§ 11.416 [Removed]

49. Remove § 11.416.

§ 11.418 [Removed]

50. Remove § 11.418.

§ 11.420 [Removed]

51. Remove § 11.420.

§ 11.421 [Removed]

52. Remove § 11.421.

53. Amend § 11.422 as follows:

a. Revise the section heading and paragraph (a), paragraph (b) introductory text, and paragraphs (b)(1) and (b)(2) to read as set out below;

b. In paragraph (b)(3), remove the word ''Additional'' and add, in its place, the words ''With additional'' and, after the words ''basic formula'', add the words ''specified in paragraph (a) of this section''; in paragraph (b)(4), remove the word ''Six'' and add, in its place, the words ''With six'';

c. In paragraph (c), remove the word ''OCMI'' and add, in its place, the words ''Coast Guard'';

d. In paragraph (d), remove the text ''not more than 200 gross tons'' and add, in its place, the text ''200 GRT/500 GT''; and

e. Remove paragraph (e).

§ 11.422 Tonnage limitations and qualifying requirements for endorsements as master or mate of vessels of less than 200 GRT/500 GT.

(a) Each endorsement as master or mate of vessels of less than 200 GRT/500 GT is issued with a tonnage limitation based on the applicant's qualifying experience. The tonnage

limitation will be at the 25, 50, 100, or 200 GRT level. The endorsement will be limited to the maximum GRT on which at least 25 percent of the required experience was obtained, or 150 percent of the maximum GRT on which at least 50 percent of the service was obtained, whichever is higher. Limitations are as stated above, using the next higher figure when an intermediate tonnage is calculated. If more than 75 percent of the qualifying experience is obtained on vessels of 5 GRT or less, the license will automatically be limited to vessels of not more than 25 GRT.

(b) The tonnage limitation may be raised:

(1) For an endorsement as mate, with at least 45 days of additional service on deck of a vessel in the highest tonnage increment authorized by the officer endorsement;

(2) For an endorsement as master, with at least 90 days of additional service on deck of a vessel in the highest tonnage increment authorized by the master endorsement;

* * * * *

54. Add § 11.423 to read as follows:

§ 11.423 Requirements for an STCW and officer endorsement as master of self-propelled, seagoing vessels of less than 200 GRT/500 GT limited to near-coastal waters.

(a) Within the limitations specified, an STCW and an officer endorsement as master of self-propelled seagoing vessels of less than 200 GRT/500 GT limited to near-coastal waters, are valid for service on self-propelled, seagoing vessels engaged on international voyages; on passenger vessels of 100 GRT/250 GT or more on domestic, near-coastal voyages; and the vessels specified in 15.103(e) and (f) of this subchapter.

(b) To qualify for an STCW and officer endorsement as master of self-propelled, seagoing vessels of less than 200 GRT/500 GT limited to near-coastal waters, an applicant must have 12 months of service as an OICNW while holding an endorsement issued in accordance with § 11.424 of this part. Service on the Great Lakes, bays, or sounds that are navigable waters of the United States may be substituted for up to 60 days of the required service.

(c) To obtain an endorsement for sail or auxiliary sail vessels, an applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. This 12 months of experience may have been obtained before qualifying for an officer endorsement.

55. Revise § 11.424 to read as follows:

§ 11.424 Requirements for an officer endorsement as mate and STCW endorsement as OICNW of self-propelled, seagoing vessels of less than 200 GRT/500 GT limited to near-coastal waters.

(a) Within the limitations specified, an endorsement as mate and STCW endorsement as OICNW of self-propelled, seagoing vessels of less than 200 GRT/500 GT limited to near-coastal waters is valid for service on self-propelled, seagoing vessels engaged on international voyages; on passenger vessels of 100 GRT/250 GT or more on domestic, near-coastal voyages; and on the vessels specified in 15.103(e) and (f) of this subchapter.

(b) The requirements to qualify for an officer endorsement as mate and STCW endorsement as OICNW of self-propelled, seagoing vessels of less than 200 GRT/500 GT limited to near-coastal waters are:

(1) Three years of service in the deck department on self-propelled, seagoing vessels. Service on the Great Lakes, bays, or sounds that are navigable waters of the United States may substitute for up to 180 days of the required service;

(2) Completion of approved training in the following areas that provide the applicant with knowledge, understanding and proficiency required by Part A Section II/3 of the STCW Code:

(i) Plan and conduct a coastal passage and determine position;

(ii) Maintain a safe navigational watch;

(iii) Respond to emergencies;

(iv) Respond to a distress signal at sea;

(v) Maneuver the vessel and operate small vessel power plants;

(vi) Monitor the loading, stowage, security and unloading of cargoes and their care during the voyage;

(vii) Ensure compliance with pollution-prevention requirements;

(viii) Maintain seaworthiness of the vessel;

(ix) Prevent, control and fight fires onboard;

(x) Operate life-saving appliances;

(xi) Apply medical first aid onboard; and

(xii) Monitor compliance with legal requirements; and

(3) Completion of the assessments of professional skills in the above areas and as required by § 11.401(a) of this part.

(c) To obtain an endorsement for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. This 12 months of experience may have been obtained before qualifying for an officer endorsement.

(d) In addition to any required examination, the applicant must comply with the requirements listed in § 11.401(h) of this part.

56. In § 11.426, revise the section heading, paragraph (a) introductory text, and paragraph (b), and add paragraph (c) to read as follows:

§ 11.426 Requirements for an officer endorsement as master of self-propelled, seagoing vessels of less than 200 GRT/500 GT limited to domestic voyages upon near-coastal waters.

(a) Within the limitations specified, this endorsement is valid for service only on the vessels identified in § 15.103(e) and (f) of this subchapter. The minimum service required to qualify for an officer endorsement as master of self-propelled, seagoing vessels of less than 200 GRT/500 GT limited to domestic voyages upon near-coastal waters is:

* * * * *

(b) To obtain this officer endorsement for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary sail vessels. This 12 months of experience may have been obtained before qualifying for an officer endorsement.

(c) Holders of this endorsement are considered to be in substantial compliance with the STCW Convention while operating within the limitations of this endorsement.

57. Amend § 11.427 as follows:

a. Revise the section heading and paragraph (a) introductory text to read as set forth below;

b. In paragraph (a)(2), remove the text ''not more than 200 gross tons'' and add, in its place, the text ''less than 200 GRT/500 GT'';

c. In paragraphs (c) and (e), remove the words ''In order to'', and add, in their place, the word ''To'';

d. In paragraph (e), remove the text ''over 100 gross tons'' and add, in its place, the text ''100 GRT/250 GT or more''; and

e. Add paragraph (f) to read as follows:

§ 11.427 Requirements for an officer endorsement as mate of self-propelled, seagoing vessels of less than 200 GRT/500 GT limited to domestic voyages upon near-coastal waters.

(a) Within the limitations specified, this endorsement is valid for service on the vessels identified in § 15.103(e) and (f) of this subchapter. The minimum service required to qualify for this endorsement is:

* * * * *

(f) Holders of this endorsement are considered to be in substantial

compliance with the STCW Convention while operating within the limitations of this endorsement.

58. Revise § 11.428 to read as follows:

§ 11.428 Requirements for master of self-propelled, seagoing vessels of less than 100 GRT/250 GT limited to domestic voyages upon near-coastal waters.

(a) Within the limitations specified, this endorsement is valid for service on the vessels identified in § 15.103(e) and (f) of this subchapter. The minimum service required to qualify for this endorsement is 2 years of service in the deck department of a self-propelled vessel on ocean or near-coastal waters. Service on Great Lakes and inland waters may substitute for up to 1 year of the required service.

(b) To obtain an endorsement for sail or auxiliary sail vessels, the applicant must submit evidence of 12 months of service on sail or auxiliary-sail vessels. This required 12 months of service may have been obtained before issuance of the license or MMC.

(c) Holders of this endorsement are considered to be in substantial compliance with the STCW Convention while operating within the limitations of this endorsement.

59. Amend § 11.429 as follows:

a. Revise the section heading and paragraph (a) introductory text, and add paragraphs (d) and (e) to read as set forth below;

b. In paragraph (b), remove the word ''OCMI'' and add, in its place, the words ''Coast Guard''; and

c. In paragraph (c), remove the words ''In order to'' and add, in their place, the word ''To''.

§ 11.429 Requirements for limited master of self-propelled, seagoing vessels of less than 100 GRT/250 GT limited to domestic voyages upon near-coastal waters.

(a) A limited master's endorsement for service on near-coastal waters on vessels of less than 100 GRT/250 GT may be issued to an applicant for employment by organizations such as yacht clubs, marinas, formal camps, and educational institutions. An endorsement issued pursuant to this section is limited to the specific activity and locality of the yacht club, marina, or camp. To obtain this restricted endorsement, an applicant must:

* * * * *

(d) Within the limitations specified, this endorsement is valid for service on the vessels identified in 15.103(e) and (f) of this subchapter.

(e) Holders of this endorsement are considered to be in substantial compliance with the STCW Convention while operating within the limitations of this endorsement.

60. Revise § 11.430 to read as follows:

§ 11.430 Endorsements for the Great Lakes and inland waters.

(a) Subject to §§ 11.464(d) and 11.465(b) of this part, any license or MMC endorsement issued for service on the Great Lakes and inland waters is valid on all of the inland waters of the United States as defined in § 10.107 of this subchapter.

(b) Any license or MMC endorsement issued for service on inland waters is valid for the inland waters of the United States, excluding the Great Lakes.

(c) Any license or MMC endorsement issued for service on inland waters or an inland route is valid for service on the sheltered waters of the Inside Passage between Puget Sound and Cape Spencer, AK.

(d) As these licenses and MMC endorsements authorize service on waters seaward of the International Regulations for Preventing Collisions at Sea (COLREGS) demarcation lines, as defined in 33 CFR part 80, the applicant must complete an examination on the COLREGS or the endorsement will exclude such waters.

(e) In order to obtain a master or mate endorsement with a tonnage limit above 200 GRT, whether an original, raise-in-grade, or increase in the scope of authority, the applicant must successfully complete the following training and examination requirements:

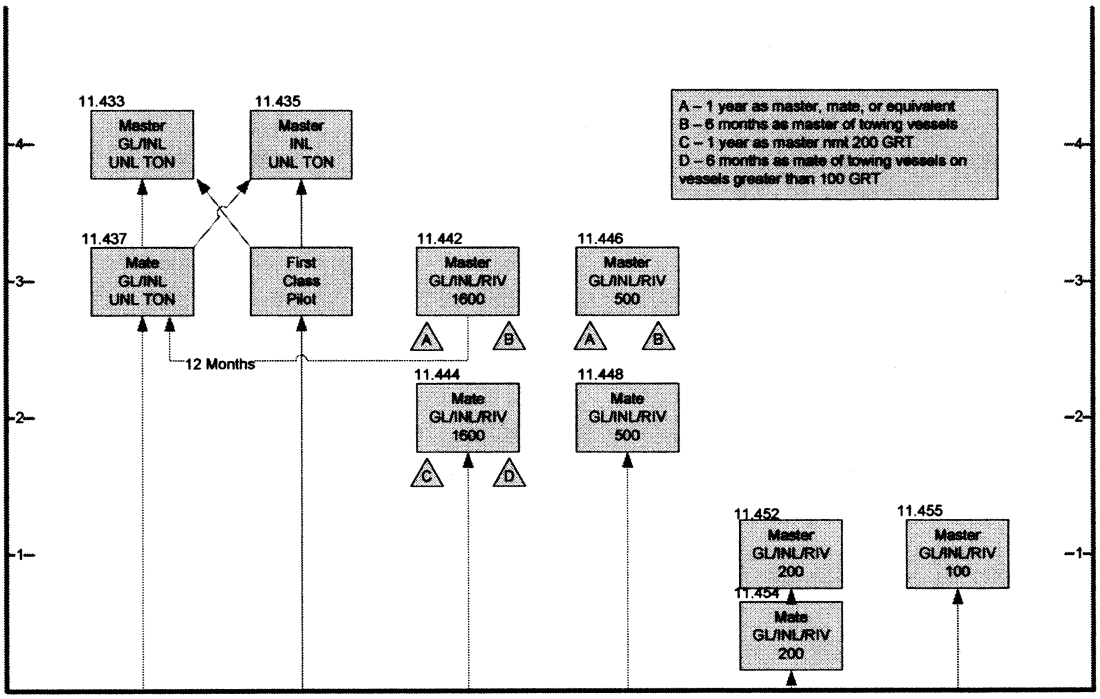
(1) Approved basic and advanced fire fighting course;

(2) Approved radar observer course; and,

(3) Qualification as an able seaman unlimited or able seaman limited. Able seaman special or able seaman (OSV) satisfy the able seaman requirement for licenses or endorsements permitting service on vessels of 1,600 GRT/3,000 GT or less.

(f) The following diagram (Figure 11.430(f)) illustrates the deck officer endorsement structure, including crossover points, for Great Lakes and inland waters service. The section numbers on the diagram refer to the specific requirements applicable.

Figure 11.430(f) Structure of deck officer endorsements for Great Lakes and inland waters service



61. Amend § 11.431 as follows:

a. Revise the section heading to read as set forth below;

b. In paragraph (a), remove the text ''over 200 gross tons'' and add, in its place, the text ''200 GRT/500 GT or more'', and remove the text ''1600 gross tons or over'' and add, in its place, the text ''1,600 GRT/3,000 GT or more''; and

c. In paragraph (b), remove the text ''(b) and (c)'' and add, in its place, the text ''(c) and (d) of this part''.

§ 11.431 Tonnage requirements for Great Lakes and inland endorsements for vessels of 1,600 GRT/3,000 GT.

* * * * *

62. Amend § 11.433 as follows:

a. Revise the section heading and paragraph (b) to read as set out below;

b. In the introductory text, remove the words ''steam or motor vessels of any gross tons'' and add, in their place, the words ''self-propelled vessels of unlimited tonnage''; and

c. In paragraphs (a) and (c), remove the text ''more than 1600 gross tons'', wherever it appears, and add, in its place, the text ''1,600 GRT/3,000 GT or more'', and remove the words ''steam or motor'', wherever they appear, and add, in their place, the words ''self-propelled''.

§ 11.433 Requirements for master of Great Lakes and inland self-propelled vessels of unlimited tonnage.

* * * * *

(b) Two years of service as master of self-propelled vessels of 1,600 GRT/3,000 GT or more on inland waters excluding the Great Lakes; or,

* * * * *

63. Amend § 11.435 as follows:

a. Revise the section heading and the introductory text to read as set forth below; and

b. In paragraph (a), remove the text ''steam or motor vessels of more than 1,600 gross tons'' and add, in its place, the text ''self-propelled vessels of 1,600 GRT/3,000 GT or more''.

§ 11.435 Requirements for master of inland self-propelled vessels of unlimited tonnage.

The minimum service required to qualify an applicant for endorsement as master of self-propelled vessels of unlimited tonnage on inland waters excluding the Great Lakes is:

* * * * *

64. Amend § 11.437 as follows:

a. Revise the section heading, paragraph (a) introductory text, and paragraph (a)(3) to read as set forth below; and

b. In paragraph (a)(1), remove the words ''steam or motor'' and add, in their place, the words ''self-propelled''.

§ 11.437 Requirements for mate of Great Lakes and inland self-propelled vessels of unlimited tonnage.

(a) The minimum service required to qualify an applicant for endorsement as mate of Great Lakes and inland self-propelled vessels of unlimited tonnage is:

* * * * *

(3) While holding a license or MMC endorsement as master of Great Lakes and inland self-propelled vessels of not more than 1,600 GRT/3,000 GT, 1 year of service as master on vessels of 200 GRT/500 GT or more. A tonnage limitation may be placed on this license in accordance with § 11.431 of this part.

* * * * *

65. Amend § 11.442 as follows:

a. Revise the section heading to read as set forth below;

b. In the introductory text, remove the text ''steam or motor vessels of not more than 1600 gross tons is'' and add, in its place, the text ''self-propelled vessels of not more than 1,600 GRT/3,000 GT''; and

c. In paragraphs (a) and (b), remove the text ''over 100 gross tons'', wherever it appears, and add, in its place, the text ''100 GRT/250 GT or more''.

§ 11.442 Requirements for master of Great Lakes and inland steam or motor vessels of not more than 1,600 GRT/3,000 GT.

* * * * *

66. Amend § 11.444 as follows:

a. Revise the section heading to read as set forth below;

b. In the introductory text, remove the text ''steam or motor vessels of not more than 1600 gross tons'' and add, in its place, the text ''self-propelled vessels of not more than 1,600 GRT/3,000 GT'';

c. In paragraph (a), remove the words ''steam or motor, sail, or auxiliary sail'' and add, in their place, the words ''self-propelled'', and remove the text ''over 100 gross tons'' wherever it appears and add, in its place, the text ''100 GRT/250 GT or more'';

d. In paragraph (b), remove the text ''over 50 gross tons'' and add, in its place, the text ''50 GRT or more''; after the words ''holding a license or MMC endorsement as master'', remove the text ''steam or motor, sail, or auxiliary sail vessels of not more than 200 gross tons or operator of uninspected passenger vessels'' and add, in its place, the text ''of self-propelled vessels of not more than 200 GRT/500 GT or OUPV''; and

e. In paragraph (c), remove the text ''over 100 gross tons'' and add, in its place, the text ''100 GRT/250 GT or more''.

§ 11.444 Requirements for mate of Great Lakes and inland steam or motor vessels of not more than 1,600 GRT/3,000 GT.

* * * * *

67. Amend § 11.446 as follows

a. Revise the section heading to read as set forth below;

b. In the introductory text, remove the words ''steam or motor'' and add, in their place, the words ''self-propelled'', and remove the words ''gross tons'' and add, in their place, the text ''GRT/1,200 GT''; and

c. In paragraph (a), remove the text ''over 50 gross tons'' and add, in its place, the text ''50 GRT or more'', and remove the words ''operator of uninspected passenger vessels'' and add, in their place, the word ''OUPV''.

§ 11.446 Requirements for master of Great Lakes and inland steam or motor vessels of not more than 500 GRT/1,200 GT.

* * * * *

68. Revise § 11.448 to read as follows:

§ 11.448 Requirements for mate of Great Lakes and inland self-propelled vessels of not more than 500 GRT/1,200 GT.

The minimum service required to qualify an applicant for an endorsement as mate of Great Lakes and inland self-propelled vessels of not more than 500 GRT/1,200 GT is two years total service in the deck department of self-propelled vessels. One year of the required service must have been on vessels of 50 GRT or more. Three months of the required service must have been as able seaman, boatswain, quartermaster, or equivalent position on vessels of 50 GRT or more while holding an endorsement as able seaman.

69. Amend § 11.450 as follows:

a. Revise the section heading and paragraph (a) to read as set forth below;

b. In paragraph (b), remove the words ''gross tons'' and add, in their place, the text ''GRT/500 GT'';

c. In paragraph (c), remove the word ''OCMI'' and add, in its place, the words ''Coast Guard''; and

d. In paragraph (d), remove the words ''gross tons'' wherever they appear and add, in their place, the word ''GRT''.

§ 11.450 Tonnage limitations and qualifying requirements for endorsements as master or mate of Great Lakes and inland vessels of not more than 200 GRT/500 GT.

(a) Except as noted in paragraph (d) of this section, all endorsements issued for master or mate of vessels of not more than 200 GRT/500 GT are issued in 50 GRT increments based on the applicant's qualifying experience in accordance with the provisions of § 11.422 of this part.

* * * * *

70. Amend § 11.452 by revising the section heading and paragraph (a) to read as set forth below and, in paragraph (b), remove the words ''The required six months of'' and add, in their place, the words ''This required''.

§ 11.452 Requirements for master of Great Lakes and inland self-propelled vessels of not more than 200 GRT/500 GT.

(a) The minimum service required to qualify an applicant for a license as master of Great Lakes and inland self-propelled vessels of not more than 200 GRT/500 GT is 1 year of service on vessels. Six months of the required service must have been as master, mate, or equivalent supervisory position while holding a license as master, mate, master or mate (pilot) of towing vessels, or OUPV. To obtain authority to serve on the Great Lakes, 3 months of the required service must have been on Great Lakes waters; otherwise the license will be limited to the inland waters of the United States, excluding the Great Lakes.

* * * * *

71. Amend § 11.454 as follows:

a. Revise the section heading and paragraph (a) to read as set forth below;

b. In paragraph (d), remove the words ''(excluding the Great Lakes)'' and add, in their place, the words '', excluding the Great Lakes''; and

c. In paragraph (e), remove the text ''of over 100 gross tons'' and add, in its place, the text ''for more than 100 GRT/250 GT''.

§ 11.454 Requirements for mate of Great Lakes and inland self-propelled vessels of not more than 200 GRT/500 GT.

(a) The minimum service required to qualify an applicant for an endorsement as mate of Great Lakes and inland self-propelled vessels of not more than 200 GRT/500 GT is 6 months of service in the deck department of self-propelled vessels. To obtain authority to serve on the Great Lakes, 3 months of the required service must have been on Great Lakes waters; otherwise the endorsement will be limited to the inland waters of the United States, excluding the Great Lakes.

* * * * *

72. Amend § 11.455 as follows

a. Revise the section heading to read as set forth below; and

b. In paragraph (a), remove the words ''steam or motor'' and add, in their place, the words ''self-propelled''; remove the words ''gross tons'' and add, in their place, the text ''GRT/250 GT'', and remove the words ''(excluding the Great Lakes)'' and add, in their place, the words '', excluding the Great Lakes''.

§ 11.455 Requirements for master of Great Lakes and inland self-propelled vessels of not more than 100 GRT/250 GT.

* * * * *

73. Amend § 11.456 as follows:

a. Revise the section heading to read as set forth below;

b. In the introductory text, remove the words ''Limited masters' endorsements'' and add, in their place, the words ''An endorsement as limited master'', and remove the words ''gross tons'' and add, in their place, the text ''GRT/250 GT''; and

c. In paragraph (d), remove the word ''OCMI'' and add, in its place, the words ''Coast Guard''.

§ 11.456 Requirements for limited master of Great Lakes and inland self-propelled vessels of not more than 100 GRT/250 GT.

* * * * *

74. Amend § 11.457 as follows:

a. Revise the section heading to read as set forth below; and

b. In paragraph (a), remove the words ''steam or motor'' and add, in their place, the words ''self-propelled'', remove the words ''gross tons'', wherever they appear, and add, in their place, the text ''GRT/250 GT'', and, after the section number ''§ 11.452(a)'', add the words ''of this part''.

§ 11.457 Requirements for master of inland self-propelled vessels of not more than 100 GRT/250 GT.

* * * * *

75. Amend § 11.459 as follows:

a. Revise the section heading and paragraph (b) to read as set forth below; and

b. In paragraph (a), remove the words ''steam or motor'' wherever they appear and add, in their place, the words ''self-propelled'', and remove the words ''any gross tons'' wherever they appear and add, in their place, the words ''unlimited tonnage''.

§ 11.459 Requirements for master or mate of rivers.

* * * * *

(b) An applicant for an endorsement as master or mate of rivers for self-propelled vessels, with a limitation of 25 to 1,600 GRT/3,000 GT, must meet the same service requirements as those required by this subpart for the corresponding tonnage Great Lakes and inland steam or motor endorsement. However, service on the Great Lakes is not required.

§ 11.462 [Amended]

76. Amend § 11.462 as follows:

a. In paragraph (a)(3), remove the words ''gross tons'' and add, in their place, the text ''GRT/500 GT'';

b. In paragraph (b), after the section number ''§ 11.401'', remove the text ''(g)'' and add, in its place, the text ''(h)'';

c. In paragraph (c)(1), after the number ''500'', remove the words ''gross tons'' and add, in their place, the text ''GRT/1,200 GT'', and remove the text ''of more than 50 gross tons'' and add, in their place, the words ''of 50 GRT or more'';

d. In paragraph (c)(2), after the number ''1,600'', remove the words ''gross tons'' and add, in their place, the text ''GRT/3,000 GT'', and remove the text ''more than 100 gross tons'' and add, in its place, the text ''100 GRT/250 GT or more'';

e. In paragraph (c)(3), after the number ''1,600'', wherever it appears, remove the words ''gross tons'' and add, in their place, the text ''GRT/3,000 GT'', after the number ''5,000'', remove the words ''gross tons'' and add, in their place, the text ''GRT/GT'', after the number ''1,000'', remove the words ''gross tons'' and add, in their place, the word ''GRT'', and remove the text ''more than 100 gross tons'' and add, in its place, the text ''of 100 GRT/250 GT or over'';

f. In paragraph (c)(4), after the number ''5,000'', remove the words ''gross tons'' and add, in their place, the text ''GRT/GT'', and after the number ''1,000'', remove the words ''gross tons'' and add, in their place, the word ''GRT'';

g. In paragraph (c)(4)(i), after the number ''1000'', remove the words ''gross tons'', and add, in their place, the word ''GRT'';

h. In paragraph (c)(4)(iii), after the number ''1600'', remove the words ''gross tons'''' and add, in their place, the text ''GRT/3,000 GT'', and, after the number ''5000'', remove the words ''gross tons'' and add, in their place, the text ''GRT/GT'';

i. In paragraph (c)(4)(iv), after the number ''1600'', remove the words ''gross tons'' and add, in their place, the text ''GRT/3,000 GT'';

j. In paragraph (c)(4)(v), after the number ''5,000'', remove the words ''gross tons'' and add, in their place, the words ''GRT/GT'';

k. In paragraph (d)(1), after the number ''500'', remove the words ''gross tons'' and add, in their place, the text ''GRT/1,200 GT'', and remove the text ''more than 50 gross tons'' and add, in its place, the text ''50 GRT or more'';

l. In paragraph (d)(2), after the number ''1,600'', remove the words ''gross tons'' and add, in their place, the words ''GRT/3,000 GT'', and remove the text ''more than 100 gross tons'' and add, in its place, the text ''100 GRT/250 GT or more'';

m. In paragraph (d)(3), after the number ''1,600'', remove the words ''gross tons'' and add, in their place, the text ''GRT/3,000 GT'', after the number ''5,000'', remove the words ''gross tons'' and add, in their place, the text ''GRT/GT'', and after the number ''1,000'', remove the words ''gross tons'' and add, in their place, the word ''GRT'';

n. In paragraph (d)(4), after the number ''5,000'', remove the words ''gross tons'' and add, in their place, the text ''GRT/GT'', and, after the number ''1000'', remove the words ''gross tons'' and add, in their place, the word ''GRT'';

o. In paragraph (d)(4)(i), after the number ''1000'', remove the words ''gross tons'' and add, in their place, the word ''GRT'';

p. In paragraph (d)(4)(iii), remove the text ''over 1600 gross tons'' and add, in its place, the text ''1,600 GRT/3,000 GT'', and, after the number ''5000'', remove the words ''gross tons'' and add, in their place, the text ''GRT/GT'';

q. In paragraph (d)(4)(iv), after the number ''1,600'', remove the words ''gross tons'' and add, in their place, the text ''GRT/3,000 GT'', and after the number ''5,000'', remove the words ''gross tons'' and add, in their place, the text ''GRT/GT''; and

r. In paragraph (d)(4)(v), remove the words ''gross tons'' and add, in their place, the words ''GRT/GT''.

77. Amend § 11.463 as follows:

a. Add new paragraphs (d) and (e) to read as set out below; and

b. In paragraph (c), remove the words ''gross tons'' and add, in their place, the text ''GRT/500 GT''.

§ 11.463 General requirements for endorsements as master, mate (pilot), and apprentice mate (steersman) of towing vessels.

* * * * *

(d) Mariners who serve on the following seagoing vessels must comply with the requirements of §§ 11.412, 11.413, and 11.414 of this part for the appropriate STCW endorsement:

(1) A towing vessel on an oceans voyage operating beyond near-coastal waters;

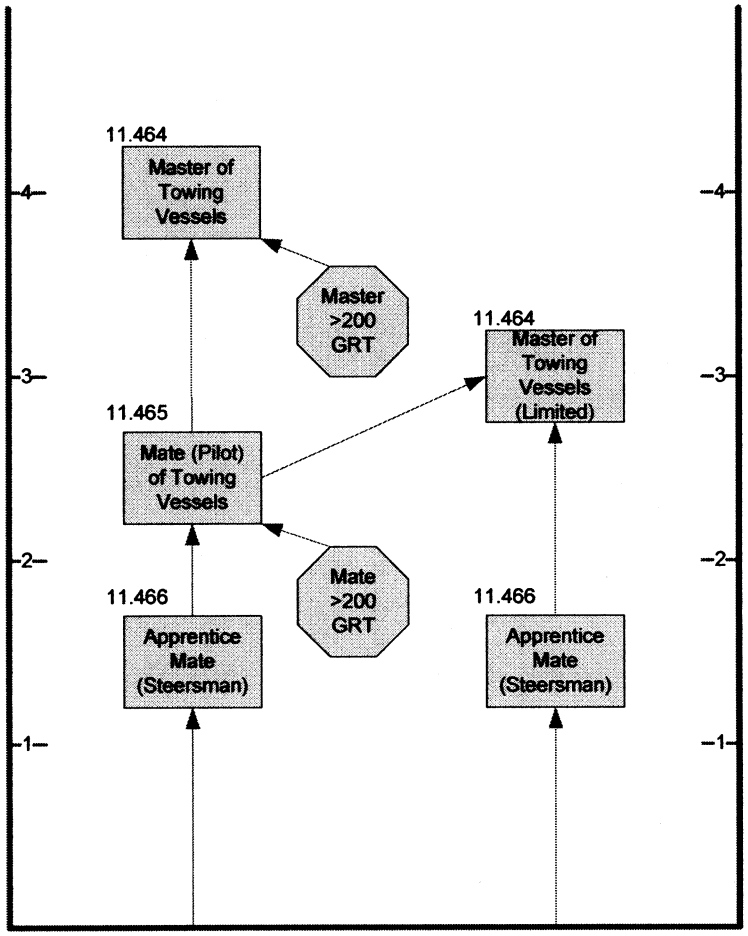
(2) A towing vessel on an international voyage; and

(3) A towing vessel of 200 GRT/500 GT or more on a domestic, near-coastal voyage.

(e) The following diagram (Figure 11.463(e)) illustrates the towing officer endorsement structure, including crossover points. The section numbers on the diagram refer to the specific requirements applicable.

Figure 11.463(e) Structure of towing officer endorsements.

Figure 11.463(e) Structure of towing officer endorsements.



78. Amend § 11.464 as follows:

a. Revise table 11.464(a) to read as set forth below; and

b. In paragraph (f)(2)(i), remove the section number ''§ 11.304(h)'' and add, in its place, the text ''§ 10.304(f) of this part''.

§ 11.464 Requirements for endorsements as master of towing vessels.

* * * * *

(a) * * *

TABLE 11.464(A)—REQUIREMENTS FOR ENDORSEMENT AS MASTER OF TOWING VESSELS [1]

Route endorsed	Total service [2]	TOS [3] on T/V as mate (pilot)	TOS [3] on T/V as mate (pilot) not as harbor assist	TOS [3] on particular route	Subordinate route authorized
1	2	3	4	5	6
(1) OCEANS (O)	48	18 of 48	12 of 18	3 of 18	NC, GL–I.
(2) NEAR–COASTAL (NC)	48	18 of 48	12 of 18	3 of 18	GL–I.
(3) GREAT LAKES—INLAND (GL–I)	48	18 of 48	12 of 18	3 of 18	
(4) WESTERN RIVERS (WR)	48	18 of 48	12 of 18	3 of 18	

[1] The holder of an endorsement as master of towing vessels may have an endorsement—as mate (pilot) of towing vessels for a route superior to the current route on which the holder has no operating experience—placed on the MMC after passing an examination for that additional route. After the holder completes 90 days of experience and completes a Towing Officer's Assessment Record (TOAR) on that route, the Coast Guard will add it to the holder's endorsement as master of towing vessels and remove the endorsement for mate (pilot) of towing vessels.

[2] Service is in months.

[3] TOS is time of service.

* * * * *

§ 11.465 [Amended]

79. Amend § 11.465 as follows:

a. Redesignate Table 11.465–1 as Table 11.465(a);

b. In paragraph (d) introductory text, after the text ''200 GRT'', add the text ''/500 GT'', and, in paragraph (d)(2), after the section number ''11.304'', remove the text ''(h)'' and add, in its place, the text ''(f) of this part''; and

c. In paragraph (f), remove the text ''§ 11.910–2'' and add, in its place, the text ''Table 11.910–2 in § 11.910 of this part''.

80. Amend § 11.467 as follows:

a. Revise the section heading and paragraph (b) to read as set out below;

b. In paragraph (a), remove the words ''gross tons'' and add, in their place, the text ''GRT/250 GT'';

c. Remove paragraph (f) and redesignate paragraphs (g) and (g)(1) through (4) as paragraphs (f) and (f)(1) through (4), respectively;

d. In newly redesignated paragraph (f)(4), remove the word ''OCMI'' and add, in its place, the words ''Coast Guard''; and

e. Add new paragraph (g) to read as set out below:

§ 11.467 Requirements for an endorsement as operator of uninspected passenger vessels of less than 100 GRT/250 GT.

* * * * *

(b) An endorsement as OUPV for near-coastal waters limits the holder to service on domestic, near-coastal waters not more than 100 miles offshore, the Great Lakes, and all inland waters. Endorsements issued for inland waters include all inland waters except the Great Lakes. Endorsements may be issued for a particular local area under paragraph (f) of this section.

* * * * *

(g) An applicant for an OUPV endorsement who intends to serve only in the vicinity of Puerto Rico, and who speaks Spanish but not English, may be issued an endorsement restricted to the navigable waters of the United States in the vicinity of Puerto Rico, as defined in 33 CFR 2.36.

81. Amend § 11.468 as follows:

a. Revise the section heading to read as set forth below; and

b. Remove the words ''any gross tons'' and add, in their place, the words ''unlimited tonnage''.

§ 11.468 Officer endorsements for mobile offshore drilling units (MODUs).

* * * * *

§ 11.470 [Amended]

82. Amend 11.470 as follows:

a. In paragraphs (b)(1)(ii), (d)(1)(ii), and (h)(1)(ii), remove the words ''Commanding Officer,'', wherever they appear, and add, in their place, the word ''The''; and

b. In paragraph (b)(2)(i), remove the words ''for a license or MMC endorsement as OIM unrestricted'' and add, in their place, the words ''for OIM Unrestricted''.

§ 11.472 [Amended]

83. In § 11.472, in paragraph (a)(1)(ii), remove the words ''Commanding Officer,'' and add, in their place, the word ''The'', and, in paragraph (a)(2)(i), remove the words ''a license or MMC endorsement as''.

§ 11.474 [Amended]

84. In § 11.474, in paragraph (a)(1)(ii), remove the words ''Commanding Officer,'' and add, in their place, the word ''The'', and, in paragraph (a)(2)(i), remove the words ''a license or MMC endorsement as''.

85. Amend § 11.480 as follows:

a. In paragraph (a), remove the parentheses; and

b. In paragraphs (d) and (e), remove the word ''OCMI'' and add, in its place, the words ''Coast Guard''.

86. Revise § 11.482(a) to read as follows:

§ 11.482 Assistance towing.

(a) This section contains the requirements to qualify for an endorsement authorizing a mariner to engage in assistance towing. Except as noted in this paragraph, holders of MMC officer and OUPV endorsements must have an assistance towing endorsement to engage in assistance towing. Holders of endorsements as master or mate (pilot) of towing vessels or master or mate endorsements authorizing service on inspected vessels of 200 GRT/500 GT do not need the assistance towing endorsement. The endorsement applies to all MMCs except master and mate (pilot) of towing vessels and master or mate authorizing service on inspected vessels 200 GRT/500 GT or more. Holders of any of these endorsements may engage in assistance towing within the scope of their MMC or license.

* * * * *

87. Revise § 11.493 to read as follows:

§ 11.493 Master (OSV).

To qualify for an endorsement for service as master (OSV), an applicant must complete a Coast Guard-approved program of training, assessment, and sea service that meets the requirements of Regulation II/2 of the STCW Convention (incorporated by reference in § 11.102.)

88. Revise § 11.495 to read as follows:

§ 11.495 Chief Mate (OSV).

To qualify for an endorsement for service as chief mate (OSV), an applicant must complete a Coast Guard-approved program of training, assessment, and sea service that meets the requirements of Regulation II/2 of the STCW Convention (incorporated by reference in § 11.102).

89. Revise § 11.497 to read as follows:

§ 11.497 Mate (OSV).

To qualify for an endorsement as mate (OSV), an applicant must complete a Coast Guard-approved program of training, assessment, and sea service that meets the requirements of Regulations II/1 of the STCW Convention (incorporated by reference in § 11.102).

90. Revise the heading to subpart E to read as shown below:

Subpart E—Professional Requirements for Engineer Officer Endorsements

91. Revise § 11.501 to read as follows:

§ 11.501 Engineer endorsements.

(a) MMC endorsements for engineer officers who do not qualify for an STCW endorsement are issued in the grades of:

(1) Chief engineer;

(2) First assistant engineer;

(3) Second assistant engineer;

(4) Third assistant engineer;

(5) Chief engineer (limited);

(6) Assistant engineer (limited);

(7) Designated duty engineer (DDE);

(8) Chief engineer uninspected fishing industry vessels; and

(9) Assistant engineer uninspected fishing industry vessels.

(b) MMC endorsements will be issued for the following STCW qualifications:

(1) Chief engineer officer (equivalent to an endorsement as chief engineer);

(2) Second engineer officer (equivalent to an endorsement as first assistant engineer); and

(3) OICEW (equivalent to an endorsement as third assistant engineer, second assistant engineer, or assistant engineer [limited]).

(c) Each applicant for any of the following STCW and license endorsements must meet the requirements of the appropriate STCW Convention regulations and standards of competence in part A of the STCW Code (incorporated by reference in § 11.102), as indicated in table 11.501(c):

(1) Chief engineer officer (chief engineer), unlimited propulsion power;

(2) Second engineer officer (first assistant engineer), unlimited propulsion power;

(3) OICEW (second assistant engineer), unlimited propulsion power;

(4) OICEW (third assistant engineer), unlimited propulsion power;

(5) Chief engineer officer (chief engineer) of vessels of less than 10,000 HP/7,500 kW on near-coastal voyages;

(6) Second engineer officer (first assistant engineer), of vessels of less than 10,000 HP/7,500 kW on near-coastal voyages;

(7) Chief engineer officer (chief engineer), of vessels of less than 4,000 HP/3,000 kW;

(8) Second engineer officer (first assistant engineer), of vessels of less than 4,000 HP/3,000 kW;

(9) OICEW (assistant engineer), of vessels of less than 4,000 HP/3,000 kW on near-coastal voyages;

(10) Chief engineer (OSV); and

(11) Engineer (OSV).

TABLE 11.501(C)

	1*	2	3	4	5	6	7	8	9	10[1]	11
STCW REGULATION III/1[2]			X	X					X		X
STCW REGULATION III/2[2]	X	X			X	X				X	
STCW REGULATION III/3[2]							X	X		X	

* Column heading numbers coincide with subparagraphs of paragraph (c) of this section.
[1] Depending on propulsion power sought on the endorsement.
[2] STCW regulations are incorporated by reference in § 11.102.

(d) An engineer officer who does not hold an STCW endorsement may serve on seagoing vessels propelled by machinery of less than 1,000 HP/750 kW, the vessels specified in § 15.103(e) and (f) of this subchapter, and vessels operating on the Great Lakes or inland waters of the United States.

(e) An MMC officer endorsement for service on vessels not subject to the STCW Convention will be endorsed to authorize service on either steam and/or motor propelled vessels.

(f) An MMC officer endorsement for service on vessels subject to the STCW Convention will be endorsed to authorize service on steam, motor, and/or gas turbine-propelled vessels.

(g) A person holding an engineer license or MMC officer endorsement which is restricted to near-coastal waters may serve within the limitations of the license or MMC upon near coastal, Great Lakes, and inland waters.

(h) An officer endorsement issued in the grade of chief engineer (limited) or assistant engineer (limited) allows the holder to serve within any propulsion power limitations on vessels of unlimited tonnage on inland waters, on vessels of less than 1,600 GRT/3,000 GT in Great Lakes service, and on the vessels specified in §§ 15.103(e) and (f) of this subchapter.

(i) An officer endorsement issued after [EFFECTIVE DATE OF THIS FINAL RULE] in any grade of DDE authorizes the holder to serve within stated propulsion power limitations on vessels of less than 500 GRT/1,200 GT on the Great Lakes or inland waters, and on vessels of less than 500 GRT/1,200 GT as specified in § 15.103(e) and (f) of this subchapter.

(j) An engineer holding a chief engineer or assistant engineer (limited-ocean) license, chief engineer (limited-near-coastal) license, or license as DDE and accompanying STCW endorsement issued before [EFFECTIVE DATE OF THIS FINAL RULE] may:

(1) Continue to serve under the authority of those credentials until the first renewal or re-issuance of that license. At that time, the same authority and limitations will be placed on an MMC;

(2) Increase the scope of those credentials by raising or removing a propulsion power limitation or by adding an additional propulsion mode; and/or

(3) Upgrade his or her current credentials by meeting the qualification requirements for an endorsement authorized under these regulations. When the mariner qualifies for the upgraded credential, it will be issued in the form of an MMC.

92. Amend § 11.502 as follows:

a. Revise the section heading to read as follows;

b. In paragraph (a), after the word ''MMC'' and before the word ''endorsements'', add the word ''officer''; and

c. Revise paragraph (b) introductory text and paragraph (c), and add new paragraph (d) to read as follows:

§ 11.502 General requirements for engineer endorsements.

* * * * *

(b) If an applicant desires to add a propulsion mode (steam, motor, or gas turbine) to his or her endorsement, the following alternative methods, while holding a license or MMC officer endorsement in that grade, are acceptable:

* * * * *

(c) An applicant for an endorsement of an additional propulsion mode must, in addition to the required sea service, provide evidence of having completed relevant approved or accepted training, and of having been assessed in the professional skills applicable to the additional propulsion mode.

(d) Merchant Mariner Credential (MMC) officer and STCW endorsements issued in accordance with §§ 11.508, 11.509, 11.510, 11.511, 11.512, 11.513, and 11.514 of this part for motor or gas turbine propulsion modes will be endorsed as limited to serve on vessels without auxiliary boilers, waste-heat boilers, or steam-operated distilling plants. An applicant may qualify for removal of any of these limitations by completing Coast Guard-approved or accepted training.

93. Amend § 11.503 as follows:

a. Revise the section heading to read as follows;

b. Revise paragraph (b) to read as set forth below;

c. In paragraphs (a) and in paragraphs (c)(1) through (c)(4), remove the word ''horsepower'', wherever it appears, and add, in its place, the words ''propulsion power'';

d. In paragraph (c) introductory text, after the number ''4,000'' and, before the words ''or over'', remove the word ''horsepower'' and add, in its place, the text ''HP/3,000 kW'', and, after the words ''removing of'', and before the word ''limitations'', remove the word ''horsepower'' and add, in its place, the words ''propulsion power''; and

e. In paragraph (d), remove the word ''horsepower'' and add, in its place, the words ''propulsion power'', and remove the words ''providing the OCMI who issued the applicant's license or MMC endorsement,'' and add, in their place, the words ''if the Coast Guard''.

§ 11.503 Propulsion power limitations.

* * * * *

(b) If an applicant desires to add a propulsion mode (steam, motor, or gas turbine) to his or her endorsement, the following alternative methods, while holding a license or MMC office

endorsement in that grade, are acceptable:

(1) Four months of service as an observer in the same capacity as their endorsement on vessels of another propulsion mode;

(2) Four months of service as an engineer officer at a lower level on vessels of another propulsion mode;

(3) Six months of service as an oiler, watertender, or junior engineer on vessels of another propulsion mode; or

(4) Completion of a Coast Guard-approved or accepted training course for this endorsement.

* * * * *

§ 11.504 [Amended]

94. In § 11.504, remove the words ''designated duty engineer'' and add, in their place, the word ''DDE''.

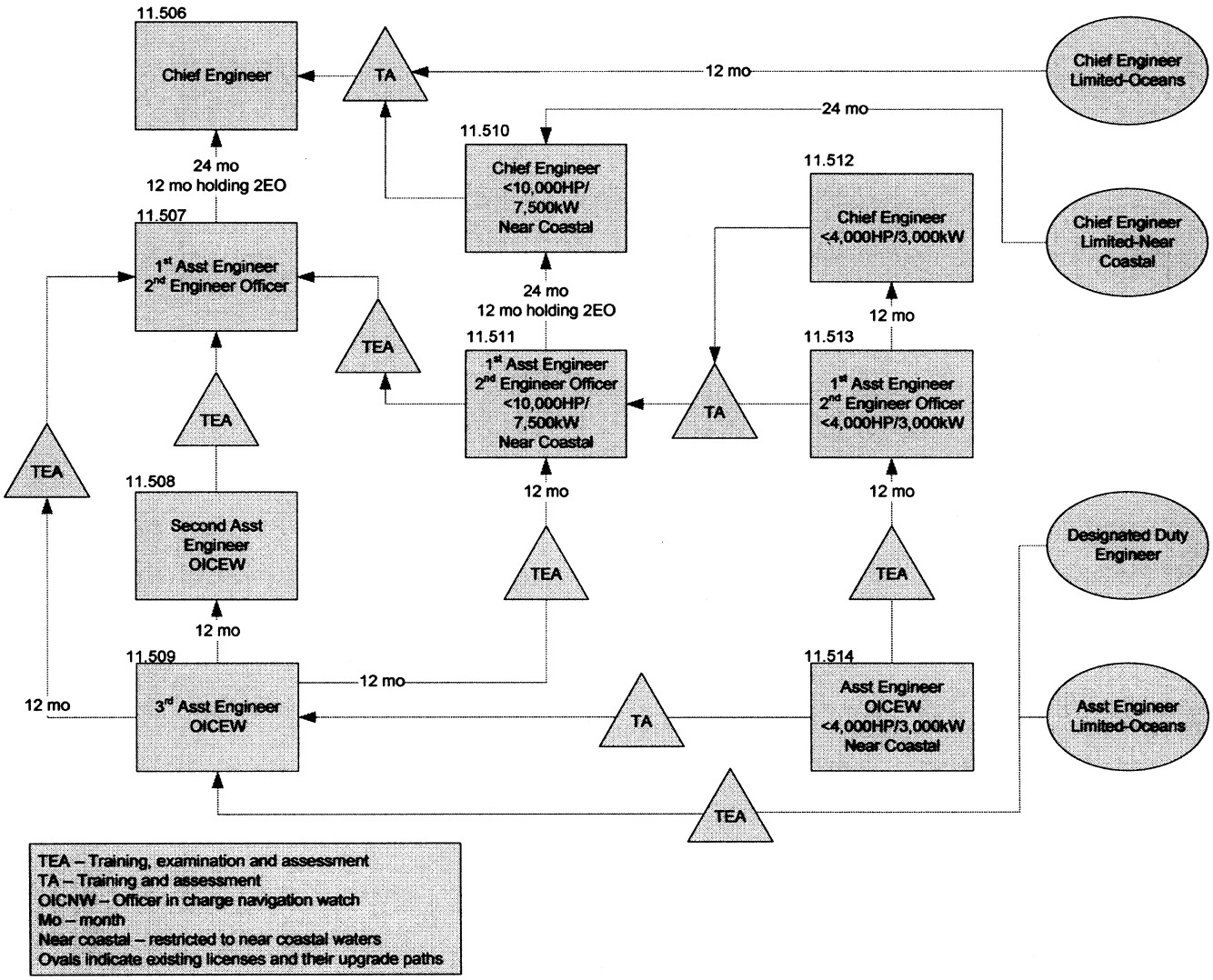
95. Revise § 11.505 to read as follows:

§ 11.505 Engineer officer endorsements.

(a) The following diagram illustrates the engineer officer endorsement structure, including crossover points, for seagoing service. The section numbers on the diagram refer to the specific requirements applicable.

Figure 11.505(a) Structure of engineer officer endorsements for seagoing service.

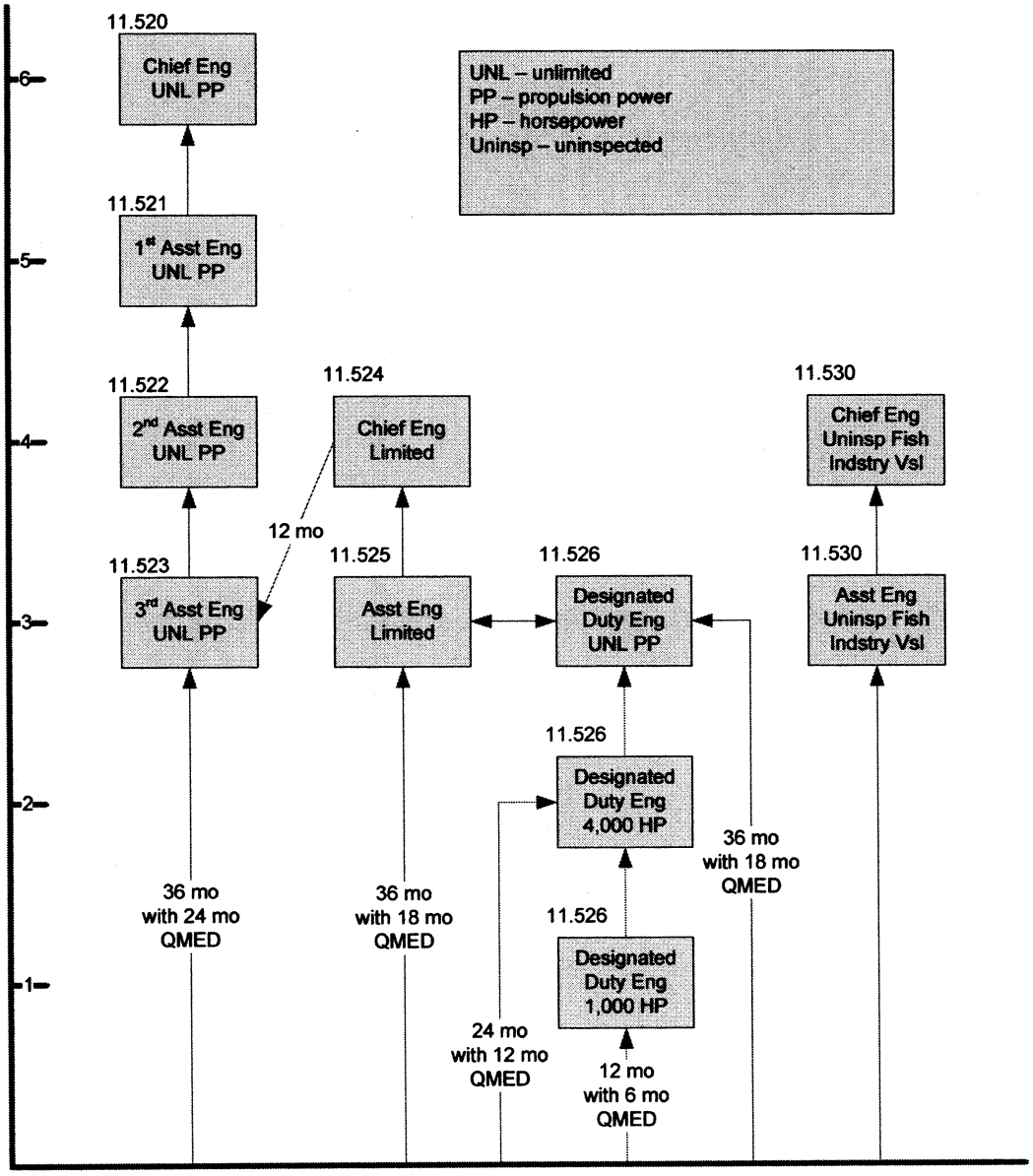
Figure 11.505(a) Structure of engineer officer endorsements for seagoing service



(b) The following diagram illustrates the engineering endorsement structure, including crossover points, for non-seagoing service.

Figure 11.505(b) Structure of engineer officer endorsements for non-seagoing service.

Figure 11.505(b) Structure of engineer officer endorsements for non-seagoing service



96. Add § 11.506 to read as follows:

§ 11.506 Requirements to qualify as chief engineer for seagoing service with an STCW endorsement as chief engineer officer.

(a) To qualify as chief engineer for seagoing service with an STCW endorsement as chief engineer officer, an applicant must provide evidence of 36 months of seagoing service of which not less than 12 months must have been served as a watchstanding engineer officer or in another position of responsibility required by a vessel's Certificate of Inspection (COI) while holding a license or endorsement as first assistant engineer.

(b) An applicant who holds a license or endorsement issued under § 11.510 of this part, or a license or endorsement as chief engineer (limited–oceans) and an accompanying STCW endorsement issued before [EFFECTIVE DATE OF THIS FINAL RULE], may qualify for this endorsement upon completion of approved or accepted training.

(c) Service as a QMED will not be accepted as meeting the sea service requirements for chief engineer.

97. Add § 11.507 to read as follows:

§ 11.507 Requirements to qualify as first assistant engineer for seagoing service with an STCW endorsement as second engineer officer.

(a) To qualify as first assistant engineer for seagoing service with an STCW endorsement as second engineer officer, an applicant must provide evidence of:

(1) Qualification and 12 months of sea service as an OICEW;

(2) Completion of approved or accepted training in the following areas that provide the mariner with the knowledge, understanding, and proficiency required by section A–III/2 of the STCW Code:

(i) Management skills, including the following subjects:

(A) Recent innovations in the field of management;

(B) Employee performance;

(C) Job standards and employee goals;

(D) Employee performance problems;

(E) Employee counseling;

(F) Fears;

(G) Motivating people;

(H) Non-Verbal signals;

(I) Basic human needs;

(J) Worker behavior patterns;

(K) Effective shipboard meetings;

(L) Team building;

(M) Principles in the effective use of human resources;

(N) Budget;

(O) Personnel evaluations; and

(P) Mentoring/career guidance;

(ii) Application of principles in crisis management, including the following subjects:

(A) Setting up and directing fire-fighting squads in machinery spaces;

(B) Setting up and directing dewatering during flooding of the machinery spaces;

(C) Setting up and directing damage control (DC) operations (leading DC teams);

(D) Principles of engine room resource management (ERM), including:

(*1*) Engineering operations and procedures;

(*2*) Team building;

(*3*) Situational awareness and error trapping;

(*4*) Communication;

(*5*) Stress;

(*6*) Fatigue; and

(*7*) Leadership and group decision-making;

(iii) Organizing and preparing for shipyard repairs and inspection, including the following subjects:

(A) Repairs specifications;

(B) Progress plan;

(C) Onboard preparation prior to arrival at shipyard;

(D) Work planning and scheduling;

(E) Pareto's Rule; and

(F) Elements of writing shipyard specifications;

(iv) Preparing for regulatory and class society inspections and surveys, including the following subjects:

(A) Class society inspections;

(B) United States Coast Guard inspections;

(C) Port State control;

(D) Record-keeping;

(E) Relationships with regulatory bodies; and

(F) Alternative compliance;

(v) Vessel lay-up and break-out, including the following subjects:

(A) Lay-up;

(B) Spare parts and consumable inventory; and

(C) Breaking out a vessel and getting underway;

(iv) Assessing skills through successful performance-based demonstration, including the following:

(A) Reasons for validating and assessing skill performance;

(B) Engineers who may validate performance;

(C) Extent of responsibility when conducting assessments, including:

(*1*) Signing off on assessments only when personally witnessed; and

(*2*) Validating performance only to the extent that applicant skill was proficient during assessment;

(D) Use of sample control sheets;

(E) Assessor may modify control sheets to conform to specific propulsion plant operating parameters;

(F) Assessor to understand that absence of equipment and/or systems will restrict applicant to lesser certification; and

(G) Details of control sheets are to provide applicant specifics of processes performed unsatisfactorily;

(vii) Implementing and updating a plan for engine room operation and familiarization for new employees;

(viii) Quantitative approaches to management;

(ix) Quality management planning;

(x) Arbitration process;

(xi) Development and maintenance of internal documents, including:

(A) Standing orders;

(B) Safety rules;

(C) Bunkering procedures;

(D) Engine room library; and

(E) Documentation of engine room lifting gear maintenance;

(xii) International laws and conventions, including the following subjects:

(A) The International Convention for the Safety of Life at Sea (1974) (SOLAS);

(B) The International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78):

(*1*) Oil record book;

(*2*) Oily water separator maintenance;

(*3*) Marine sanitation device maintenance; and

(*4*) Incinerator maintenance;

(*C*) The STCW Convention and the STCW Code;

(D) Implementing a safety management system; and

(E) Implementing an engine management system (including a preventive maintenance system (PMS));

(xiii) Stability and damage control, including the following subjects:

(A) Stability theory;

(B) Emergency measures to de-water flooded spaces; and

(C) Emergency repairs to damaged hull, piping and equipment;

(xiv) Technical analysis—operational condition of systems, including the following subjects:

(A) Engine analysis—performance;

(B) Fuel oil testing/treatment/consumption;

(C) Lube oil testing/treatment/consumption; and

(D) Boiler operation and water treatment;

(xv) Management/oversight of preventive and predictive maintenance, including the following subjects:

(A) Use of preventive maintenance management systems (computerized);

(B) Use of spare parts and stores inventory/ordering systems (computerized);

(C) Vibration analysis; and

(D) Electric thermography;

(xvi) Principles of troubleshooting and their application to the following subjects:

(A) Electrical power and control systems;

(B) Electronic monitoring and controls;

(C) Hydraulic power and control systems; and

(D) Pneumatic power and control systems;

(xvii) Review of major engine room casualties, causes, and remedies to avoid future mishaps, including the following subjects:

(A) Reports for review;

(B) Lessons learned; and

(C) Plans of action to prevent incidents;

(xviii) Unless the applicant has previously qualified for service on vessels equipped with any of these systems, the theory, construction, operation, maintenance, troubleshooting, and repair of:

(A) Auxiliary boilers;

(B) Waste heat boilers; and
(C) Steam-operating distilling plants.
(b) The applicant must have evidence of assessment of his or her professional skills as required by § 11.501 (c) of this part; or
(c) An applicant who holds a license or endorsement issued under § 11.511 of this part may qualify for this endorsement upon completion of approved or accepted training.
(d) Service as a QMED will not be accepted as meeting the sea service requirements for first assistant engineer/second engineer officer.

98. Add § 11.508 to read as follows:

§ 11.508 Requirements to qualify as second assistant engineer for seagoing service with an STCW endorsement as OICEW.

To qualify as second assistant engineer for seagoing service with an STCW endorsement as OICEW, an applicant must provide evidence of:
(a) One year of service as an assistant engineer, while holding a license with an STCW endorsement, or an MMC endorsed as third assistant engineer and OICEW; or
(b) One year of service while holding a license and STCW endorsement, or an MMC endorsed as third assistant engineer and OICEW, which includes a minimum of 6 months of service as third assistant engineer or OICEW; and the remaining service may be served as watchstanding QMED, calculated on a two-for-one basis.

99. Add § 11.509 to read as follows:

§ 11.509 Requirements to qualify as third assistant engineer for seagoing service and an STCW endorsement as OICEW.

To qualify as third assistant engineer for seagoing service and an STCW endorsement as OICEW, an applicant must provide evidence of:
(a) Six months of sea service;
(b) Completion of approved or accepted training of at least 30 months in the following areas that provide the mariner with the knowledge, understanding, and proficiency required by Section A/III–1 of the STCW Code:
(1) General—Basic theory, including the following subjects:
(i) Terms used in machinery spaces;
(ii) Shipboard organization;
(iii) Safe working practices as related to engine room operations;
(iv) Appropriate use of internal communications systems;
(v) Prints and tables;
(vi) Ship's construction and stability;
(vii) Fuel and lubricating oil principals;
(viii) Pressure and temperature measuring devices;
(ix) Casualty prevention and response;
(x) Familiarization with the STCW Convention and STCW Code, SOLAS, and MARPOL 73/78; and
(xi) Pollution prevention and environmental protection.
(2) General—basic theory, construction, operation, maintenance, troubleshooting and repair, including the following subjects:
(i) Pipes and fittings;
(ii) Valves;
(iii) Pumps;
(iv) Hydraulics;
(v) Heat exchangers;
(vi) Fresh and salt water systems;
(vii) Air compressors and systems;
(viii) Basic control devices;
(ix) Lubricating oil systems;
(x) Refrigeration and air conditioning compressors and systems;
(xi) Desalinization systems other than steam operated distilling plants;
(xii) Sanitary systems, sewage treatment, and oily water separators; and
(xiii) Steering systems;
(3) Steam plants—basic theory, construction, operation, maintenance, troubleshooting and repair; including the following subjects:
(i) Properties of steam;
(ii) Introduction to marine turbines;
(iii) Drive connections, gears, propellers, stern tubes, shafting;
(iv) Basic turbine construction, bearings, couplings and accessories;
(v) Propulsion boilers;
(vi) Fuel oil systems;
(vii) Fuel and lube oil analysis;
(viii) Fuel and lube oil treatment and purification systems; and
(ix) Boiler water testing and treatment;
(4) Motor plants—basic theory, construction, operation, maintenance, troubleshooting and repair, including:
(i) Introduction to diesel engines, engine terms, and engine cycles;
(ii) Basic construction of diesels, including:
(A) Large low speed;
(B) Medium speed;
(C) High speed; and
(D) Opposed piston engines;
(iii) Drive connections, gears, propellers, stern tubes, shafting;
(iv) Governors;
(v) Fuel and lube oil analysis;
(vi) Diesel engine systems;
(vii) Fuel and lubrication filtration and purification systems; and
(viii) Gas turbines;
(5) Maintaining a safe watch, including:
(i) Assuming and handing over a watch; and
(ii) Duties while on watch;
(6) Electrical machinery—basic theory, construction, operation, maintenance, troubleshooting and repair, including the following subjects:
(i) Electrical safety at sea—lockout/tag out;
(ii) Batteries;
(iii) Measuring equipment and testing;
(iv) Circuit protection devices;
(v) Transformers;
(vi) Electrical distribution systems;
(vii) Wiring and lighting systems;
(viii) Motors and generators;
(ix) A.C. Generators and operation in parallel;
(x) Starters and motor controllers;
(xi) High voltage systems; and
(xii) Electrical propulsion systems;
(7) Fabrication and repair, including the following subjects:
(i) Machine shop operations;
(ii) Hand tools and measuring instruments;
(iii) Power tools; and
(iv) Burning and welding;
(8) Basic electronics—basic theory, construction, operation, maintenance, troubleshooting and repair; including the following subjects:
(i) Introduction to electronics and components;
(ii) Semiconductor fundamentals;
(iii) Analog/digital principles;
(iv) Special purpose diodes and applications;
(v) Power supplies and filtering;
(vi) Voltage multipliers;
(vii) Amplifiers; and
(viii) Integrated circuits;
(9) Control systems, including:
(i) Pneumatic;
(ii) Hydraulic; and
(iii) Electronic;
(10) Fire fighting: an approved basic and advanced fire-fighting course;
(11) Training to establish proficiency in the use of survival craft and rescue boats other than fast rescue boats;
(12) Medical first aid: an approved medical first aid course; and
(c) Evidence of assessment of professional skills as required by § 11.501(c) of this part; or
(d) An applicant who holds a license and STCW endorsement or an MMC endorsement as assistant engineer (limited-oceans) and as OICEW issued based on regulations that existed before [EFFECTIVE DATE THIS FINAL RULE] may qualify for this endorsement by completing training approved or accepted for that purpose; or
(e) An applicant who holds a license as DDE and an accompanying STCW endorsement issued based on regulations that existed before [EFFECTIVE DATE OF THIS FINAL RULE] may qualify for this endorsement by completing training approved or accepted for that purpose.

100. Revise § 11.510 to read as follows:

§ 11.510 Requirements to qualify as chief engineer with an STCW endorsement limited to service on motor or gas turbine-propelled vessels of less than 10,000 HP/7,500 kW on near-coastal routes.

(a) An applicant must provide evidence of 36 months of seagoing service of which not less than 12 months must have been served as a watchstanding engineer officer or in another position of responsibility required by a vessel's Certificate of Inspection (COI) while holding endorsements as first assistant engineer and second engineer officer limited to service on motor or gas turbine-propelled vessels of less than 10,000 HP/7,500 kW on near-coastal routes. Applicants for an endorsement as chief engineer with an STCW endorsement limited to service on motor or gas turbine-propelled vessels of less than 10,000 HP/7,500 kW on near-coastal routes will be evaluated in accordance with § 11.503(b) of this part.

(b) An applicant who holds a license and accompanying STCW endorsement as chief engineer (limited-oceans) issued before [EFFECTIVE DATE OF THIS FINAL RULE] may qualify for these endorsements by providing evidence of 12 months of sea service as an engineer at the operational or management level.

101. Add § 11.511 to read as follows:

§ 11.511 Requirements to qualify as first assistant engineer with an STCW endorsement as second engineer officer limited to service on motor or gas turbine-propelled vessels of less than 10,000 HP/7,500 kW on near-coastal routes.

To qualify as first assistant engineer with an STCW endorsement as second engineer officer limited to service on motor or gas turbine-propelled vessels of less than 10,000 HP/7,500 kW on near-coastal routes, an applicant will be evaluated in accordance with § 11.503(b) of this part and must provide evidence of:

(a) Qualification as OICEW in accordance with § 11.509 of this part;

(b) Twelve months of sea service as an OICEW, at least 6 months of which must have been on vessels of more than 4,000 HP/3,000 kW;

(c) Having completed approved or accepted training in the following areas that provides the mariner with the knowledge, understanding, and proficiency required by Section A–III/2 of the STCW Code:

(1) Management skills, including the following subjects:

(i) Employee performance;

(ii) Employee performance problems;

(iii) Team building; and

(iv) Personnel evaluations;

(2) Application of principles in crisis management, including the following subjects:

(i) Setting up and directing fire fighting in machinery spaces;

(ii) Setting up and directing dewatering during flooding of the machinery spaces;

(iii) Setting up and directing damage control (DC) operations (leading DC teams);

(iv) Principles of engine-room resource management (ERM), including:

(A) Engineering operations and procedures;

(B) Situational awareness and error trapping;

(C) Communication;

(D) Stress; and

(E) Fatigue;

(3) Organizing and preparing for shipyard repairs and inspection, including the following subjects:

(i) Repairs specifications; and

(ii) Onboard preparation prior to arrival at shipyard;

(4) Preparing for regulatory and class society inspections and surveys, including the following subjects:

(i) Class society inspections;

(ii) United States Coast Guard inspections;

(iii) Port state control;

(iv) Recordkeeping;

(v) Relationships with regulatory bodies; and

(vi) Alternative compliance;

(5) Assessing skills through successful performance-based demonstration, including:

(i) Reasons for validating and assessing skill performance;

(ii) Engineers who may validate performance;

(iii) Extent of responsibility when conducting assessments, including:

(A) Signing off on assessments only when personally witnessed; and

(B) Validating performance only to the extent that applicant skill was proficient during assessment;

(iv) Use of sample control sheets;

(v) Modifying control sheets to conform to specific propulsion-plant operating parameters;

(vi) Understanding that absence of equipment and or systems will restrict the applicant to lesser certification; and

(vii) Details of control sheets providing applicants with specifics of process performed unsatisfactorily;

(6) Implementing and updating a plan for engine-room operation and familiarization for new employees;

(7) Developing and maintaining internal documents, including:

(i) Standing orders;

(ii) Safety rules;

(iii) Bunkering procedures; and

(iv) Documentation of engine-room lifting-gear maintenance;

(8) International laws and conventions, including the following subjects:

(i) The International Convention for the Safety of Life at Sea (1974) (SOLAS);

(ii) The International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78):

(A) Oil record book;

(B) Oily water separator maintenance;

(C) Marine sanitation device maintenance;

(D) Incinerator maintenance.

(iii) The STCW Convention and STCW Code;

(iv) Implementing safety management systems; and

(v) Implementing engine management systems (including a preventive maintenance system (PMS));

(9) Stability and damage control, including the following subjects:

(i) Stability theory;

(ii) Emergency measures to dewater flooded spaces; and

(iii) Emergency repairs to damaged hull, piping, and equipment;

(10) Technical analysis—operational condition of systems, including the following subjects:

(i) Engine analysis—performance;

(ii) Fuel-oil testing/treatment/consumption; and

(iii) Lube-oil testing/treatment/consumption;

(11) Management/oversight of preventive and predictive maintenance, including the following subjects:

(i) Vibration analysis; and

(ii) Electric thermography;

(12) Principles of troubleshooting and their application to the following subjects:

(i) Electrical power and control systems;

(ii) Electronic monitoring and controls;

(iii) Hydraulic power and control systems;

(iv) Pneumatic power and control systems; and

(v) Desalinization systems other than steam-operated distilling plants;

(13) Review of major engine-room casualties, causes, and remedies to avoid future mishaps, including the following subjects:

(i) Reports for review;

(ii) Lessons learned; and

(iii) Plans of action to prevent incidents; and

(d) Assessment of his or her professional skills as required by § 11.501(c) of this part. Applicants for this credential will not be assessed on the operation of boilers, waste-heat

boilers, or steam-operated distilling plants; or

(e) An applicant holding a license or endorsement issued under §§ 11.512 or 11.513 of this part may qualify for these endorsements upon completion of training approved or accepted for that purpose; or

(f) An applicant holding a license or endorsement as chief engineer (limited-near coastal) and an accompanying STCW endorsement issued before [EFFECTIVE DATE OF THIS FINAL RULE] may qualify for this endorsement by providing evidence of 12 months of sea service as an engineer officer at the operational or management level.

102. Revise § 11.512 to read as follows:

§ 11.512 Requirements to qualify as chief engineer with an STCW endorsement limited to service on motor or gas turbine propelled vessels of less than 4,000 HP/3,000 kW.

To qualify as chief engineer with an STCW endorsement limited to service on motor or gas turbine propelled vessels of less than 4,000 HP/3,000 kW, an applicant must provide:

(a) Evidence of 24 months of seagoing service as an engineer officer on vessels of 1,000 HP/750 kW or more, of which not less than 12 months must have been served while holding a license or endorsement as first assistant engineer/second engineer officer; or

(b) Qualification as a first assistant engineer on vessels of 4,000 HP/3,000 kW or more, and 12 months of service in a position of responsibility.

103. Add § 11.513 to read as follows:

§ 11.513 Requirements to qualify as first assistant engineer with an STCW endorsement as second engineer officer of motor or gas turbine propelled vessels of less than 4,000 HP/3,000 kW.

(a) To qualify as first assistant engineer with an STCW endorsement as second engineer officer of motor or gas turbine propelled vessels of less than 4,000 HP/3,000 kW, an applicant must provide evidence of:

(1) Qualification as OICEW;

(2) Twelve months of sea service as an OICEW, at least 6 months of which must have been on vessels of 1,000 HP/750 kW or more or equivalent position;

(3) Completion of approved or accepted training in the following areas that provides the mariner with the knowledge, understanding, and proficiency required by the Section A–III/3 of the STCW Code:

(i) Management skills, including the following subjects:

(A) Employee performance;

(B) Employee performance problems;

(C) Employee counseling;

(D) Motivating people;

(E) Team building; and

(F) Mentoring/career guidance;

(ii) Application of principles in crisis management, including the following subjects:

(A) Setting up and directing firefighting in machinery spaces;

(B) Setting up and directing dewatering during flooding of the machinery spaces;

(C) Setting up and directing damage control operations (leading DC teams);

(D) Principles of engine room resource management (ERM):

(*1*) Engineering operations and procedures;

(*2*) Situational awareness and error trapping;

(*3*) Communication;

(*4*) Stress; and

(*5*) Fatigue;

(iii) Organizing and preparing for shipyard repairs and inspection, including the following subjects:

(A) Repairs specifications; and

(B) Onboard preparation prior to arrival at shipyard;

(iv) Preparing for regulatory and class society inspections and surveys, including the following subjects:

(A) Regulatory and class society inspections;

(B) United States Coast Guard inspections;

(C) Classification society surveys;

(D) Port state control;

(E) Recordkeeping;

(F) Relationships with regulatory bodies; and

(G) Alternative compliance;

(v) Assessing skills through successful performance-based demonstration, including:

(A) Reasons for validating and assessing skill performance;

(B) Engineers who may validate performance;

(C) Extent of responsibility when conducting assessments, including:

(*1*) Signing off on assessments only when personally witnessed; and

(*2*) Validating performance only to the extent that an applicant's skill was proficient during assessment;

(D) Use of sample control sheets;

(E) Modifying control sheets to conform to specific propulsion-plant operating parameters;

(F) Understanding that absence of equipment and or systems will restrict the applicant to lesser certification; and

(G) Details of control sheets providing applicants with specifics of process performed unsatisfactorily;

(vi) Implementing and updating a plan for engine-room operation and familiarization for new employees;

(vii) Developing and maintaining internal documents, including:

(A) Standing orders;

(B) Safety rules;

(C) Bunkering procedures;

(D) Engine-room library; and

(E) Documentation of engine-room lifting-gear maintenance;

(viii) International laws and conventions, including the following subjects:

(A) The International Convention for the Safety of Life at Sea (1974) (SOLAS);

(B) The International Convention for the Prevention of Pollution From Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78):

(*1*) Oil record book;

(*2*) Oily water separator maintenance;

(*3*) Marine sanitation device maintenance; and

(*4*) Incinerator maintenance.

(C) The STCW Convention and STCW Code;

(D) Implementing a safety management system; and

(E) Implementing an engine management system;

(ix) Stability and damage control, including the following subjects:

(A) Stability theory;

(B) Emergency measures to dewater flooded spaces; and

(C) Emergency repairs to damaged hull, piping, and equipment;

(x) Technical analysis—operational condition of systems, including the following subjects:

(A) Engine analysis—performance;

(B) Fuel-oil testing/treatment/consumption;

(C) Lube-oil testing/treatment/consumption; and

(D) Boiler operation and water treatment (required for steam-propulsion mode only);

(xi) Management/oversight of preventive and predictive maintenance, including the following subjects:

(A) Vibration analysis; and

(B) Electric thermography;

(xii) Principles of troubleshooting and their application to the following subjects:

(A) Electrical power and control systems;

(B) Electronic monitoring and controls;

(C) Hydraulic power and control systems;

(D) Pneumatic power and control systems; and

(E) Desalinization systems other than evaporators;

(xiii) Review of major engine-room casualties, causes, and remedies to avoid future mishaps, including the following subjects:

(A) Reports for review;

(B) Lessons learned; and

(C) Plans of action to prevent incidents; and

(4) Completion of assessment of the applicant's professional skills, as required by § 11.501(c) of this part.

(b) Service as a QMED will not be accepted as meeting the sea service requirement for first assistant engineer/second engineer officer.

104. Revise § 11.514 to read as follows:

§ 11.514 Requirements to qualify as assistant engineer with an STCW endorsement as OICEW limited to service on motor or gas turbine-propelled vessels of not more than 4,000 HP/3,000 kW on near-coastal routes.

To qualify as assistant engineer with an STCW endorsement as OICEW limited to service on motor or gas turbine-propelled vessels of not more than 4,000 HP/3,000 kW on near-coastal routes, an applicant must provide evidence of having completed an approved or accepted training program meeting the requirements of Regulation III/I of the STCW Convention (incorporated by reference in § 11.102).

§ 11.516 [Redesignated as § 11.523]

105. Redesignate § 11.516 as § 11.523.

106. In newly redesignated § 11.523—

a. Revise the section heading and paragraph (a) introductory text, and add paragraph (c) to read as set forth below;

b. In paragraph (a)(1), remove the words ''qualified member of the engine department'' and add, in their place, the word ''QMED'';

c. In paragraph (a)(6), remove the words ''Commanding Officer,'';

d. In paragraph (a)(7), after the word ''limited'', remove the words ''-near coastal''; and

e. In paragraph (b), after the number ''100'' and before the words ''or over'', remove the words ''gross tons'' and add, in their place, the text ''GRT/250 GT''.

§ 11.523 Requirements to qualify for an endorsement as third assistant engineer without an STCW endorsement.

(a) To qualify for an endorsement as third assistant engineer without an STCW endorsement, an applicant must submit evidence of:

* * * * *

(c) This endorsement is not valid for service on seagoing vessels except those seagoing vessels to which § 15.103(e) and (f) of this subchapter apply or that are propelled by machinery of less than 1,000 HP/750 kW.

§ 11.518 [Remove]

107. Remove § 11.518

108. Revise § 11.520 to read as follows:

§ 11.520 Service requirements for chief engineer of steam and/or motor vessels.

The minimum service required to qualify an applicant for endorsement as chief engineer of steam and/or motor vessels is:

(a) One year of service as first assistant engineer; or,

(b) One year of service while holding a license or MMC endorsement as first assistant engineer. A minimum of six months of this service must have been as first assistant engineer. Service as an assistant engineer is accepted on a two-for-one basis to a maximum of six months (12 months of service as a second or third assistant engineer equals six months of creditable service).

109. Add § 11.521 to read as follows:

§ 11.521 Requirements to qualify for an endorsement as first assistant engineer without an STCW endorsement.

(a) The minimum service required to qualify an applicant for endorsement as first assistant engineer of steam and/or motor vessels is one year of service as an assistant engineer, while holding a license or MMC endorsement as second assistant engineer.

(b) This endorsement is not valid for service on seagoing vessels except those seagoing vessels to which paragraphs 15.103(e) and (f) of this subchapter apply or that are propelled by machinery of less than 1000 HP/750 kW.

110. Revise § 11.522 to read as follows:

§ 11.522 Requirements to qualify for an endorsement as second assistant engineer without an STCW endorsement.

(a) The minimum service required to qualify an applicant for an endorsement as second assistant engineer without an STCW endorsement is:

(1) One year of service as an assistant engineer, while holding a license or endorsement as third assistant engineer; or,

(2) One year of service while holding a license or endorsement as third assistant engineer, which includes:

(i) A minimum of 6 months of service as third assistant engineer; and,

(ii) Additional service as a qualified member of the engine department, calculated on a two-for-one basis (12 months of service as QMED equals 6 months of creditable service).

(b) This endorsement is not valid for service on seagoing vessels, except those seagoing vessels to which paragraphs 15.103(e) and (f) of this subchapter apply, or that are propelled by machinery of less than 1000 HP/750 kW.

111. Revise § 11.524 to read as follows:

§ 11.524 Service requirements for chief engineer (limited) without an STCW endorsement.

(a) The minimum service required to qualify an applicant for endorsement as chief engineer (limited) of steam, motor, and/or gas turbine vessels is five years total service in the engineroom of vessels. Two years of this service must have been as an engineer officer. Thirty months of the service must have been as a qualified member of the engine department (QMED) or equivalent supervisory position.

(b) This endorsement is not valid for service on seagoing vessels except those seagoing vessels to which § 15.103(e) and (f) of this subchapter apply or that are propelled by machinery of less than 1,000 HP/750 kW.

112. Add § 11.525 to read as follows:

§ 11.525 Service requirements for assistant engineer (limited) without an STCW endorsement.

(a) The minimum service required to qualify an applicant for endorsement as assistant engineer (limited) of steam, motor, and/or gas turbine vessels is three years of service in the engineroom of vessels. Eighteen months of this service must have been as a QMED or equivalent supervisory position.

(b) This endorsement is not valid for service on seagoing vessels except those seagoing vessels to which § 15.103(e) and (f) of this subchapter apply or that are propelled by machinery of less than 1000 HP/750 kW.

(c) A DDE unlimited is qualified for this endorsement without examination or additional sea service.

113. Add § 11.526 to read as follows:

§ 11.526 Service requirements for designated duty engineer of steam or motor vessels.

(a) Designated duty engineer (DDE) endorsements are issued in three levels of propulsion power limitations, dependent upon the total service of the applicant and completion of appropriate examination. DDE licenses are limited to service on seagoing vessels of not more than 500 GRT/1,200 GT listed in § 15.103(e) and (f) of this subchapter, seagoing vessels of not more than 500 GRT/1,200 GT propelled by machinery of less than 1000 HP/750 kW, and to vessels of not more than 500 GRT/1,200 GT operating on the Great Lakes or other inland waters.

(b) The service requirements for endorsements as DDE are:

(1) For DDE vessels of any propulsion power, the applicant must have three years of service in the engineroom. Eighteen months of this service must have been as a QMED or equivalent supervisory position.

(2) For DDE vessels of not more than 4,000 HP/3,000 kW, the applicant must have two years of service in the engineroom. One year of this service must have been as a QMED or equivalent supervisory position.

(3) For DDE vessels of not more than 1,000 HP, the applicant must have one year of service in the engineroom. Six months of this service must have been as a QMED or equivalent supervisory position.

§ 11.530 [Amended]

114. Amend § 11.530 as follows:

a. In paragraph (a)(3), remove the words ''gross tons'' and add, in their place, the text ''GRT/500 GT''; and

b. In paragraph (b), remove the word ''horsepower'' and add, in its place, the words ''propulsion power''.

§ 11.540 [Amended]

115. In § 11.540, remove the words ''of any horsepower'' and add, in their place, the words ''unlimited propulsion power''.

§ 11.542 [Amended]

116. In § 11.542(c), remove the word ''OCMI'', wherever it appears, and add, in its place, the words ''Coast Guard''.

§ 11.544 [Amended]

117. In § 11.544(c), remove the word ''OCMI'', wherever it appears, and add, in its place, the words ''Coast Guard''.

118. Revise § 11.551 to read as follows:

§ 11.551 Endorsements for service on offshore supply vessels (OSVs).

An endorsement for service on an offshore supply vessel (OSV) may be issued as chief engineer or assistant engineer/OICEW. To qualify for an engineer officer endorsement limited to service on an OSV, an applicant must complete a program of training, assessment, and sea service approved or accepted by the Coast Guard as meeting the requirements of Chapter III of the STCW Convention and STCW Code (incorporated by reference in § 11.102). Service is limited to any restrictions placed on the MMC.

§ 11.553 [Removed]

119. Remove § 11.553.

§ 11.555 [Removed]

120. Remove § 11.555.

Subpart F—Credentialing of Radio Officers

121. Amend 11.603 as follows:

a. Revise the section heading to read as set out below;

b. Remove paragraph (b) and redesignate paragraph (c) as paragraph (b); and

c. Add new paragraph (c) to read as follows:

§ 11.603 Requirements for a radio officer endorsement and STCW endorsement for Global Maritime Distress and Safety System (GMDSS) radio operators.

* * * * *

(c) Evidence required by paragraph (b) of this section must include a certificate—

(1) For operator of radio in the GMDSS issued by the Federal Communications Commission (FCC); and

(2) Of completion from a Coast Guard-approved course for operator of radio in the GMDSS, or other approved programs of training and assessment covering the same areas of competence.

Subpart G—Professional Requirements for Pilots

§ 11.701 [Amended]

122. In § 11.701 (d), after the number ''1,600'' and before the words ''or less'', remove the words ''gross tons'' and add, in their place, the text ''GRT/3,000 GT''.

123. Amend § 11.703 as follows:

a. Revise paragraph (c) to read as set forth below; and

b. In paragraph (d), after the number ''1,600'' and before the word ''meets'', remove the words ''gross tons'' and add, in their place, the text ''GRT/3,000 GT''.

§ 11.703 Service requirements.

* * * * *

(c) Completion of an approved or accepted pilot training course may be substituted for a portion of the service requirements of this section. Additionally, round trips made during this training may apply toward the route familiarization requirements of § 11.705 of this part. An individual using substituted service must have at least 9 months of shipboard service.

* * * * *

§ 11.707 [Amended]

124. In § 11.707(b), after the number ''1,600'' and before the word ''seeking'', remove the words ''gross tons'' and add, in their place, the text ''GRT/3,000 GT''.

125. Amend § 11.709 as follows:

a. Remove paragraph (e) and revise paragraph (c) to read as set forth below; and

b. In paragraph (a), remove the words ''gross tons'' and add, in their place, the text ''GRT/3,000 GT''.

§ 11.709 Annual physical examination requirements.

* * * * *

(c) Each annual physical examination must meet the requirements specified in § 10.215 of this subchapter and be recorded on forms provided by the Coast Guard. The record of examination must be submitted to the Coast Guard within 1 month of completing the physical examination.

* * * * *

§ 11.711 [Amended]

126. Amend § 11.711 as follows:

a. Remove the text ''1,600 gross tons'', wherever it appears, and add, in its place, the text ''1,600 GRT/3,000 GT''; and

b. In paragraph (d), remove the word ''OCMI'' wherever it appears and add, in its place, the words ''Coast Guard''.

Subpart H—Registration of Staff Officers

127. Amend § 11.805 as follows:

a. In paragraph (a), remove the word ''OCMI'' and add, in its place, the words ''Coast Guard'';

b. Remove paragraph (b) and redesignate paragraphs (c) through (g) as paragraphs (b) through (f), respectively;

b. In newly redesignated paragraph (d), remove the word ''OCMI'' and add, in its place, the words ''Coast Guard'', and add a new last sentence to read as set forth below;

c. Revise newly redesignated paragraph (e) to read as set forth below; and

d. In newly redesignated paragraph (f), remove the text ''(c)'' and add, in its place, the text ''(b)''.

§ 11.805 General requirements.

* * * * *

(d) * * * Procedures for obtaining a duplicate credential can be found in § 10.229 of this subchapter.

(e) An MMC is valid for a term of 5 years from the date of issuance. Procedures for renewing endorsements are found in § 10.227 of this subchapter.

* * * * *

§ 11.807 [Amended]

128. In § 11.807(d), remove the words ''Officer in Charge, Marine Inspection'' wherever they appear and, add in their place, the words ''Coast Guard''.

Subpart I—Subjects of Examinations and Practical Demonstrations of Competence.

129. Revise § 11.901 to read as follows:

§ 11.901 General provisions.

(a) Where required by § 11.903 of this subpart, each applicant for an endorsement listed in that section must

pass an examination on the appropriate subjects listed in this subpart.

(b) If the endorsement is to be limited in a manner that would render any of the subject matter unnecessary or inappropriate, the examination may be amended accordingly by the Coast Guard. Limitations that may affect the examination content are as follows:

(1) Restricted routes for reduced service licenses or officer endorsements (master or mate of vessels of less than 250 GRT/500 GT, OUPV, or master or mate (pilot) of towing vessels).

(2) Limitations to a class or certain classes of vessels.

(c) Except as provided in § 10.227 of this subchapter, an applicant for an STCW endorsement must demonstrate through practical demonstrations of professional skills that he or she has been assessed by an assessor acceptable to the Coast Guard, and that he or she has attained the level of competence required by the STCW Code. The Coast Guard must be satisfied with the authenticity and acceptability of all evidence that the applicant has successfully completed the required demonstrations. The Coast Guard will place a written or electronic record of the skills required, the results of the practical demonstrations, and the identity of the assessor in whose presence the requirements were fulfilled in the file of each applicant.

(d) Simulators used in assessments of competence required by paragraph (c) of this section must meet the appropriate performance standards set out in Section A–I/12 of the STCW Code (incorporated by reference in § 11.102). However, simulators installed or brought into use before February 1, 2002, need not meet these performance standards if they fulfill the objective of the assessment of competence or demonstration of proficiency.

130. Revise § 11.903 to read as follows:

§ 11.903 Officer endorsements requiring examinations.

(a) The following officer endorsements require examinations for issuance:

(1) Chief mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage (examined at the management level); [1]

(2) Third mate of ocean or near-coastal, self-propelled vessels of unlimited tonnage (examined at the operational level); [1]

(3) Chief mate of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT; [1]

(4) Mate of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT; [1]

(5) Master of near coastal vessels less than 200 GRT/500 GT;

(6) Mate of near coastal vessels less than 100 GRT/250 GT;

(7) Master of Great Lakes and inland vessels of unlimited tonnage;

(8) Mate of Great Lakes and inland vessels of unlimited tonnage;

(9) Master of inland vessels of unlimited tonnage;

(10) Master of river vessels of unlimited tonnage;

(11) Master of Great Lakes and inland/river vessels not more than 500 GRT or 1,600 GRT/3,000 GT;

(12) Mate of Great Lakes and inland/river vessels not more than 500 or 1,600 GRT/3,000 GT;

(13) Mate of Great Lakes and inland/inland/river vessels not more than 200 GRT/500 GT;

(14) Master of Great Lakes and inland/inland/river vessels not more than 100 GRT/250 GT;

(15) First class pilot;

(16) Apprentice mate (steersman) of towing vessels;

(17) Apprentice mate (steersman) of towing vessels, limited;

(18) Operator of uninspected passenger vessels;

(19) Master of uninspected fishing industry vessels;

(20) Mate of uninspected fishing industry vessels;

(21) Chief engineer for service on Great Lakes and inland vessels (limited or unlimited propulsion power);

(22) First assistant engineer (limited or unlimited propulsion power);

(23) Second assistant engineer for service on Great Lakes and inland vessels (limited or unlimited propulsion power);

(24) Third assistant engineer (limited or unlimited propulsion power);

(25) Chief engineer (limited) steam/motor vessels;

(26) Assistant engineer (limited) steam/motor vessels;

(27) Designated duty engineer steam/motor vessels;

(28) Chief engineer (uninspected fishing industry vessels or OSVs); and

(29) Assistant engineer (uninspected fishing industry vessels or OSVs).

(b) The following officer endorsements do not require examinations:

(1) Master of seagoing vessels of unlimited tonnage when upgrading from MMC officer endorsements, or a license and STCW endorsement as chief mate of seagoing vessels of unlimited tonnage, provided the applicant has already been examined at the management level;

(2) Master of seagoing vessels of unlimited tonnage when adding an endorsement as offshore installation manager (OIM);

(3) Master of ocean or near-coastal, self-propelled vessels of less than 1,600 GRT/3,000 GT, when upgrading from a MMC officer/STCW endorsement or a license and STCW endorsement as chief mate of seagoing vessels of less than 1,600 GRT/3,000 GT, provided that the applicant has already been examined at the management level;

(4) Master of ocean or near-coastal self-propelled vessels of less than 200 GRT/500 GT, when upgrading from mate of near-coastal self-propelled vessels of less than 200 GRT/500 GT. Master of ocean self-propelled vessels of less than 200 GRT/500 GT would, however, require an examination in celestial navigation;

(5) Second mate of seagoing vessels when upgrading from third mate of seagoing vessels, provided the applicant has already been examined at the operational level;

(6) Master of Great Lakes and inland vessels, inland vessels, or river vessels of not more than 200 GRT/500 GT when upgrading from mate of not more than 200 GRT/500 GT on the same route;

(7) Chief engineer unlimited, provided the applicant has already been examined at the management level;

(8) Chief engineer limited to service on motor or gas turbine-propelled vessels of less than 10,000 HP/7,500 kW on near-coastal routes, provided the applicant has already been examined at the management level;

(9) Chief engineer limited to service on motor or gas turbine-propelled vessels of less than 4,000 HP/3,000 kW on near-coastal routes, provided the applicant has already been examined at the management level; and

(10) Second assistant engineer when upgrading from OICEW, provided the applicant has already been examined at the operational level.

131. Revise § 11.910 to read as follows:

§ 11.910 Subjects for deck officer endorsements.

Table 11.910–1 gives the codes used in table 11.910–2 for all deck officers. Table 11.910–2 indicates the examination subjects for each endorsement, by code number. Figures in the body of Table 11.910–2, in place of the letter ''x'', refer to notes.

TABLE 11.910–1—CODES FOR DECK OFFICER ENDORSEMENTS

Deck Officer Endorsements
1. Master/chief mate, oceans/near coastal, any gross tons.
2. Master/chief mate, oceans/near coastal, 1,600 GRT/3,000 GT.
3. Second mate/third mate/mate, oceans/near coastal, any gross tons.
4. Master, oceans/near coastal, and mate, near coastal, 200 GRT/500 GT (includes master, near coastal, 100 GRT/250 GT).
5. Operator, uninspected passenger vessels, near coastal.
6. Operator, uninspected passenger vessels, Great Lakes/inland.
7. Apprentice mate, towing vessels, ocean (domestic trade) and near-coastal routes.

TABLE 11.910–1—CODES FOR DECK OFFICER ENDORSEMENTS—Continued

Deck Officer Endorsements
8. Apprentice mate (steersman), towing vessels, Great Lakes and inland routes.
9. Steersman, towing vessels, Western Rivers.
10. Master, Great Lakes/inland, or master, inland, any gross tons.
11. Mate, Great Lakes/inland, any gross tons.
12. Master, Great Lakes/inland, 500 GRT/1,200 GT and 1,600 GRT/3,000 GT.
13. Mate, Great Lakes/inland, 500 GRT/1,200 GT and 1,600 GRT/3,000 GT.
14. Master or mate, Great Lakes/inland, 200 GRT/500 GT (includes master, Great Lakes/inland, 100 GRT/250 GT).

TABLE 11.910–1—CODES FOR DECK OFFICER ENDORSEMENTS—Continued

Deck Officer Endorsements
15. Master, rivers, any gross tons.
16. Master, rivers, 500 GRT/1,200 GT and 1,600 GRT/3,000 GT.
17. Mate, rivers, 500 GRT/1,200 GT and 1,600 GRT/3,000 GT.
18. Master or mate, rivers, 200 GRT/500 GT (includes master, rivers, 100 GRT/250 GT).
19. Master, uninspected fishing industry vessels, oceans/near coastal.
20. Mate, uninspected fishing industry vessels, oceans/near coastal.
21. First class pilot.

TABLE 11.910–2—LICENSE CODES

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Navigation and position determination:																					
Ocean Track Plotting:																					
Middle Latitude Sailing	1	1	1																		
Mercator Sailing	X	X	1																		
Great Circle Sailing	1	1	1																		
Parallel Sailing	1	1	1																		
ETA	X	X	X				1														1
Piloting:																					
Distance Off	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Bearing Problems	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Fix or Running Fix	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Chart Navigation	X	X	X	X	X	X	X	X	2	X	X	X	X	X	2	2	2	2	X	X	X
Dead Reckoning	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Celestial Observations:																					
Special Cases (hi/lo Alt.)	1																				
Latitude by Polaris	1	1	1																		
Latitude by Meridian Transit	1																				
Lat. by Meridian Transit (Sun Only)	X	1	X	1			1												1	1	
Fix or Running Fix (Any Body)	X	1	X																1		
Fix or Running Fix (Sun Only)				1			1													1	
Star Identification	1	1	1																		
Star Selection	X	1	1																	1	
Times of Celestial Phenomena:																					
Time of Meridian Transit	1																				
Time of Meridian Transit (Sun Only)	X	1	X	1															1	1	
Second Estimate Meridian	1																				
Transit/Zone Time Sun Rise/Set/Twilight	X	1	1	1			1													1	1
Speed by RPM	X	X	X							3									X		
Fuel Conservation	X	X	X							3									X		
Electronic Navigation	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Instruments and Accessories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Aids to Navigation	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Charts, Navigation Publications, and Notices to Mariners	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Naut. Astronomy & Nav. Definitions	X	1	X																		
Chart Sketch																					4
Seamanship:																					
Marlinspike Seamanship			X	X	X	X	X	X	X		X		X	X	X	X	X	X	X	X	X
Purchases, Blocks and Tackle			X	X			X	X	X		X		X	X	X	X	X	X	X	X	X
Small Boat Handling Under Oars or Sail			X							X	X										
Watchkeeping:																					
COLREGS	X	X	X	X	X	5	X	5		5	5	5	5	5					X	X	5
Inland Navigational Rules	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Basic Principles, Watchkeeping	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X			
Navigation Safety Regs. (33 CFR 164)	X		X							X	X				X				6	6	6
Radar Equipment:																					
Radar Observer Certificate	X	X	X	1			1			X	X				X				X	X	X
Compass-Magnetic and Gyro:																					
Principles of Gyro Compass	X	X	X							X	X	X	X						X	X	
Principles of Magnetic Compass	X	X	X						X	X	X	X	X	X	X	X	X	X	X	X	X
Magnetic Compass Adjustment	X									X	X										
Gyro Compass Error/Correction	X	X	X	7				X	X	X	X	X	X	7					X	X	X
Magnetic Compass Error/Correction	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Determination of Compass Error:																					
Azimuth (Any Body)	X		1																		
Azimuth (Sun Only)		X	X	1			1			3									1	1	
Amplitude (Any Body)	X		1																		
Amplitude (Sun Only)		X	X	1			1			3									1	1	

TABLE 11.910–2—LICENSE CODES—Continued

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Deviation Table Construction	X	1	X							3											
Terrestrial Observation	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Gyro Controlled Systems	X	X	X																		
Operation & Care of Main Gyro Systems	X	X	X																		
Meteorology and Oceanography:																					
Characteristics of Weather Systems	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Ocean Current Systems	X	X	X																X	X	
Weather Charts and Reports	X	X	X	X		X	X												X		
Tides and Tidal Currents:																					
Extensive Tidal Effects	X	X																			
Terms and Definitions	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Publications	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Calculations	X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X
Ship Maneuvering and Handling:																					
Approaching Pilot Vessel or Station	X	X																			X
Shiphandling in Rivers, Estuaries	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Maneuvering in Shallow Water	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Interaction with Bank/Passing																					
Ship	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Berthing and Unberthing	X	X		X	X	X	X			X	X	X		X	X	X		X	X		X
Anchoring and Mooring	X	X	X	X	X	X	X			X	X	X	X	X					X	X	X
Dragging, Clearing Fouled Anchors	X	X	X	X						X	X	X	X	X					X		
Drydocking, with & without Prior Damage	X	X																			
Heavy Weather Operations	X	X		X	X	X								X					X	X	
Maneuvering for Launching of Lifeboats and Liferafts in Heavy Weather	X	X		X			X			X		X							X	X	
Receiving Survivors From Lfbts/Lfrfts	X	X		X			X	X													
General: Turn Circle, Pivot Point, Advance and Transfer			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Determine Maneuvering Characteristics of Major Vessel Types	X	X	X																		
Wake Reduction	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X
Ice Operations/Ice Navigation	X	X					X	X	X	X	3	X	3								
Towing Operations	X	X	X	X			X	X	X		X		X	X	X	X	X	X			
Ship Stability, Construction, and Damage Control:																					
Principles of Ship Construction	X	X	X	X			X	3	X	X	3	X	3	X	X	X					
Trim and Stability	X	X	X	X			X	X	X	X	3	X	3	X	X	X		X	X	X	
Damage Trim and Stability	X	X		7																	
Stability, Trim, and Stress Calculation	X	X	X	7																	
Vessel Structural Members	X	X	X	7							X	X	3	7							
IMO Ship Stability Recommendations	X																				
Damage Control	X	X			7								7								
Change in Draft Due to Density	X																				
Ship Power Plants:																					
Marine Power Plant Operating Principles	X	X		7						X		X		7	X	X					
Ships' Auxiliary Machinery	X	X							X			X			X	X					
Marine Engineering Terms	X	X		7					X	X	X	X		7	X	X					
Small Engine Operations and Maintenance				X	X	X								X			X				
Cargo Handling and Stowage:																					
Cargo Stowage and Security, Including Cargo Gear	X	X	X	7						X	X	X	X	7	X	X	X				
Loading and Discharging Operations	X	X	X							X	X	X	X		X	X	X				
International Regulations for Cargoes, Especially IMDG	X	X																			
Dangerous/Hazardous Cargo Regulations	X	X	X							X	X	X	X		X	X	X				
Tank Vessel Safety	X	X	X							X	X	X	X		X	X	X				
Cargo Piping and Pumping Systems	X	X	X							X	X	X	X		X	X	X				
Cargo Oil Terms and Definitions	X	X	X							X	X	X	X		X	X	X				
Ballasting, Tank Clean., & Gas Free Ops	X	X	X						X	X	X	X		X	X	X					
Load on Top Procedures	X	X	X						X	X	X	X		X	X	X					
Barge Regulations (Operations)							X	X	X												
Fire Prevention and Firefighting:																					
Appliances:																					
Organization of Fire Drills	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Classes and Chemistry of Fire	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Firefighting Systems	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Firefighting Equip. and Regulations	X	X	X	7			X	X	X	X	X	X	X	7	X	X	X	7	X	X	X
Firefighting Equip. & Regs. for T-Boats				X										X				X			
Basic Firefighting and Prevention	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Emergency Procedures:																					
Ship Beaching Precautions	X	X								X		X									
Actions Prior To/After Grounding	X	X								X		X			X	X					
Refloating a Grounded Ship	X	X								X		X			X	X					
Collision	X	X		X	X		X	X	X	X		X		X	X	X		X			
Temporary Repairs	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Passenger/Crew Safety in Emergency	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Fire or Explosion	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Abandon Ship Procedures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Emergency Steering	X	X	X	X						X		X			X	X			X	X	
Rescuing Surv. From Ship/Airc. in Dist	X	X	X	X			X			X	X	X	X	X	X	X					
Man Overboard Procedures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Emergency Towing	X	X		X			X														
Medical Care:																					
Knowledge and use of:																					

TABLE 11.910–2—LICENSE CODES—Continued

Examination topics	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
Int'l. Medical Guide for Ships	X	X																			
Ship Med. Chest and Med. Aid at Sea	X	X																			
Medical Sec., Inter. Code of Signals	X	X	X																		
1st Aid Guide: Accidents with Dangerous Goods	X	X																			
First Aid	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Maritime Law:																					
International Maritime Law:																					
Int'l. Convention on Load Lines	X	X																			
SOLAS	X	X		7																	
MARPOL 73/78	X	X	X																		
International Health Regulations	X	X																			
Other International Instruments for Ship/Pass./Crew/Cargo Safety	X	X																			
National Maritime Law:																					
Load Lines	X	X		X			X	X		3	3	3	3	7							
Cert. and Documentation of Vessels	X	X		X	X	X	X	X	X	X		X		X	X	X		X	X		
Rules & Regs. for Inspected Vessels	X	X	X	7						X	X	X	X	7	X	X	X	7			
Rules & Regs. for Inspected T-Boats				X										X				X			
Rules and Regs for Uninsp. Vessels				X	X	X	X	X	X					X				X	X	X	
Pollution Prevention Regulations	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Pilotage	X	X																			X
Licensing & Certification of Seamen	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Shipment and Discharge, Manning	X	X		X			X			X		X			X	X					
Title 46, U.S. Code	X	X								X		X			X	X					
Captain of the Port Regulations, Vessel Traffic Service Procedures for the Route Desired																					X
Shipboard Management and Training:																					
Personnel Management	X	X								X		X			X	X					
Shipboard Organization	X	X								X		X			X	X					
Required Crew Training	X	X								X		X			X	X					
Ship Sanitation	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Vessel Alteration/Repair Hot Work	X	X		X						X		X			X	X					
Safety	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Ship's Business:																					
Charters	X	X																			
Liens, Salvage	X	X																			
Insurance	X	X																			
Entry, Clearance	X	X																			
Certificates and Documents Required	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Communications:																					
Flashing Light	X		X																		
Radiotelephone Communications	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Radiotelegraphy Emerg. Dist. Signals	X		X																		
Signals: Storm/Wreck/Dist./Special	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	
International Code of Signals	X	X	X																		
Lifesaving:																					
Survival at Sea	X	X	X	X			X												X	X	
Lifesaving Appliance Regulations	X	X	X	7						X	X	X		7	X	X	X	7			
Lifesaving Appliance Regs. for T-Boats				X										X				X			
Lifesaving Appliance Operation	X	X	X	7	X	X	X	X		X	X	X	X	7	X	X	X	7	X	X	
Lifesaving Appliance Ops. for T-Boats				X										X				X			
Search and Rescue:																					
Search and Rescue Procedures	X	X																			
AMVER	X	X																			
SAIL/AUXILIARY SAIL VESSELS ADDENDUM (8):																					
Any other subject considered necessary to establish the applicant's proficiency	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

[1] For ocean routes only.
[2] River chart navigation only.
[3] Topic covered only on Great Lakes specific module(s) taken for ''Great Lakes and Inland'' routes.
[4] Including recommended courses, distances, prominent aids to navigation, depths of waters in channels and over hazardous shoals, and other important features of the route, such as character of the bottom. The Coast Guard may accept chart sketching of only a portion or portions of the route for long or extended routes.
[5] Take COLREGS if endorsement is not limited to non-COLREGS waters.
[6] For officer endorsements over 1,600 GRT/3,000 GT.
[7] For officer endorsements over 100 GRT/250 GT.

132. Revise § 11.950 to read as follows:

§ 11.950 Examination subjects for engineer officer endorsements.

TABLE 11.950–1—EXAMINATION SUBJECTS FOR ENGINEER OFFICER AND STCW ENDORSEMENTS FOR SERVICE ON SEAGOING VESSELS

	First assistant engineer/second engineer officer			Third assistant engineer OICEW			First assistant engineer/second engineer officer near coastal less than 10,000 HP/7,500 kW		First assistant engineer/second engineer officer near coastal less than 4,000 HP/3,000 kW		Assistant engineer OICEW near coastal less than 4,000 HP/3,000 kW	
	STM	MTR	GT	STM	MTR	GT	MTR	GT	MTR	GT	MTR	GT
General Subjects:												
Prints and Tables	X	X	X	X	X	X	X	X	X	X	X	X
Pipes, Fittings, Valves	X	X	X	X	X	X	X	X	X	X	X	X
Hydraulics	X	X	X	X	X	X	X	X	X	X	X	X
Bilge Systems	X	X	X	X	X	X	X	X	X	X	X	X
Sanitary/Sewerage Systems	X	X	X	X	X	X	X	X	X	X	X	X
Freshwater Systems	X	X	X	X	X	X	X	X	X	X	X	X
Lubricants	X	X	X	X	X	X	X	X	X	X	X	X
Lubrication Systems	X	X	X	X	X	X	X	X	X	X	X	X
Automation and Control Systems	X	X	X	X	X	X	X	X	X	X	X	X
Propellers/Shafting Systems	X	X	X	X	X	X	X	X	X	X	X	X
Machine Shop	X	X	X	X	X	X	X	X	X	X	X	X
Desalinization Systems	X	X	X	X	X	X	X	X	X	X	X	X
Pumps	X	X	X	X	X	X	X	X	X	X	X	X
Compressors	X	X	X	X	X	X	X	X	X	X	X	X
Administration	X	X	X	X	X	X	X	X	X	X	X	X
Roller Bearings	X	X	X	X	X	X	X	X	X	X	X	X
Instruments	X	X	X	X	X	X	X	X	X	X	X	X
Ship Construction and Repair	X	X	X	X	X	X	X	X	X	X	X	X
Steering Systems	X	X	X	X	X	X	X	X	X	X	X	X
Deck Machinery	X	X	X	X	X	X	X	X	X	X	X	X
Ventilation Systems	X	X	X	X	X	X	X	X	X	X	X	X
Thermodynamics	T	T	T	T	T	T						
Watch Duties	X	X	X	X	X	X	X	X	X	X	X	X
Refrigeration and Air Conditioning:												
Theory	X	X	X	X	X	X	X	X	X	X	X	X
Air Conditioning Systems	X	X	X	X	X	X	X	X	X	X	X	X
Refrigeration Systems	X	X	X	X	X	X	X	X	X	X	X	X
Control Systems	X	X	X	X	X	X	X	X	X	X	X	X
Safety	X	X	X	X	X	X	X	X	X	X	X	X
Casualty Control	X	X	X	X	X	X	X	X	X	X	X	X
Electricity:												
Theory	X	X	X	X	X	X	X	X	X	X	X	X
General Maintenance	X	X	X	X	X	X	X	X	X	X	X	X
Generators	X	X	X	X	X	X	X	X	X	X	X	X
Motors	X	X	X	X	X	X	X	X	X	X	X	X
Motor Controllers	X	X	X	X	X	X	X	X	X	X	X	X
Propulsion Systems	X	X	X	X	X	X	X	X	X	X	X	X
Distribution Systems	X	X	X	X	X	X	X	X	X	X	X	X
Electronic Systems	X	X	X	X	X	X	X	X	X	X	X	X
Batteries	X	X	X	X	X	X	X	X	X	X	X	X
Internal Communication Systems	X	X	X	X	X	X	X	X	X	X	X	X
Safety	X	X	X	X	X	X	X	X	X	X	X	X
Casualty Control	X	X	X	X	X	X	X	X	X	X	X	X
Steam Propulsion:												
Steam	X			X								
Main Boilers	X			X								
Feedwater Systems	X			X								
Condensate Systems	X			X								
Recovery Systems	X			X								
Fuel	X			X								
Fuel Systems	X			X								
Boiler Water	X			X								
Control Systems	X			X								
Automation Systems	X			X								
Burner management systems	X			X								
Main Turbine	X			X								
Auxiliary Turbine	X			X								
Governor Systems	X			X								
Lubrication Systems	X			X								
Drive Systems	X			X								
Safety	X			X								

TABLE 11.950–1—EXAMINATION SUBJECTS FOR ENGINEER OFFICER AND STCW ENDORSEMENTS FOR SERVICE ON SEAGOING VESSELS—Continued

	First assistant engineer/second engineer officer			Third assistant engineer OICEW			First assistant engineer/second engineer officer near coastal less than 10,000 HP/7,500 kW		First assistant engineer/second engineer officer near coastal less than 4,000 HP/3,000 kW		Assistant engineer OICEW near coastal less than 4,000 HP/3,000 kW	
	STM	MTR	GT	STM	MTR	GT	MTR	GT	MTR	GT	MTR	GT
Casualty Control	X			X								
Motor Propulsion:												
Main Engines		X			X		X		X		X	
Auxiliary Engines	X	X	X	X	X	X	X	X	X	X	X	P
Starting Systems	P	X	P	P	X	P	X	P	X	P	X	
Lubrication Systems	X	X	X	X	X	X	X	X	X	X	X	X
Fuel	X	X	X	X	X	X	X	X	X	X	X	X
Fuel Systems	X	X	X	X	X	X	X	X	X	X	X	X
Combustion Systems	X	X	X	X	X	X	X	X	X	P	X	
Intake Systems	X	X	X	X	X	X	X	X	X	X	X	
Exhaust Systems	X	X	X	X	X	X	X	X	X	X	X	
Cooling Systems	X	X	X	X	X	X	X	X	X	X	X	
Supercharging Systems	X	X	X	X	X	X	X	X	X		X	
Drive Systems	X	X	X	X	X	X	X		X		X	
Control Systems	X	X	X	X	X	X	X	X	X	X	X	
Automation Systems	X	X	X	X	X	X	X	X	X	X	X	
Governors	X	X	X	X	X	X	X	X	X	X	X	
Turbines	X	X	X	X	X	X	X	X	X		X	
Safety	X	X	X	X	X	X	X	X	X	X	X	X
Casualty Control	X	X	X	X	X	X	X	X	X	X	X	X
Auxiliary Boilers		X	X		X	X						
Gas Turbines:												
Starting Systems			X			X		X		X		X
Lubrication Systems			X			X		X		X		X
Fuel			X			X		X		X		X
Fuel Systems			X			X		X		X		X
Combustion Systems			X			X		X		X		X
Intake Systems			X			X		X		X		X
Exhaust Systems			X			X		X		X		X
Cooling Systems			X			X		X		X		X
Drive Systems			X			X		X		X		X
Control Systems			X			X		X		X		X
Automation Systems			X			X		X		X		X
Governors			X			X		X		X		X
Turbines			X			X		X		X		X
Safety			X			X		X		X		X
Casualty Control			X			X		X		X		X
Safety:												
Fire	X	X	X	X	X	X	X	X	X	X	X	X
Fire Prevention	X	X	X	X	X	X	X	X	X	X	X	X
Firefighting	X	X	X	X	X	X	X	X	X	X	X	X
Flooding	X	X	X	X	X	X	X	X	X	X	X	X
Dewatering	X	X	X	X	X	X	X	X	X	X	X	X
Stability and Trim	X	X	X	X	X	X	X	X	X	X	X	X
Damage Control	X	X	X	X	X	X	X	X	X	X	X	X
Emergency Equipment and Lifesaving Appliances	X	X	X	X	X	X	X	X	X	X	X	X
General Safety	X	X	X	X	X	X	X	X	X	X	X	X
First Aid	X	X	X	X	X	X	X	X	X	X	X	X
Dangerous Materials	X	X	X	X	X	X	X	X	X	X	X	X
Pollution	X	X	X	X	X	X	X	X	X	X	X	X
Inspections and Surveys	X	X	X	X	X	X	X	X	X	X	X	X
U.S. Rules and Regulations	X	X	X	X	X	X	X	X	X	X	X	X
International Rules and Regulations	X	X	X	X	X	X	X	X	X	X	X	X

TABLE 11.950–2—SUBJECTS FOR ENGINEER OFFICER ENDORSEMENTS FOR SERVICE ON GREAT LAKES AND INLAND WATERS

	Unlimited chief engineer		Unlimited 1st asst engineer		Unlimited 2nd asst engineer		Unlimited 3rd asst engineer		Chief engineer limited		A/E Ltd & DDE unlim		Unin ind C/E	Fish Vsl A/E	DDE Ltd HP		MODU ch Eng	MODU asst eng
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	MTR	MTR	STM	MTR		
General Subjects:																		
Prints and Tables	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T
Pipes, Fittings, Valves	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P–T	P
Hydraulics	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P–T	P–T
Bilge Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P–T	P
Sanitary/Sewerage Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P
Freshwater Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P–T	P	P	P	P–T	P–T
Lubricants	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P
Lubrication Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P
Automation Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P–T	P
Control Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P–T	P–T
Propellers/Shafting Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P		
Machine Shop	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P	P
Distilling Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P	P
Pumps	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P
Compressors	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P
Administration	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P	P	P	P	P	P	P–T	P
Governors	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P	P	P	P	P–T	P–T
Cooling Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P
Bearings	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P
Instruments	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P
Ship Construction and Repair	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P
Theory	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T
Steering Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P		
Deck Machinery	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P	P
Ventilation Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P	P	P	P	P	P
Thermodynamics	T	T	T	T	T	T	T	T										
Watch Duties	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P–T	P–T
Refrigeration and Air Conditioning:																		
Theory	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T
Air Conditioning Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P	P
Refrigeration Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P	P
Control Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P	P
Safety	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P
Casualty Control	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P
Electricity:																		
Theory	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T
General Maintenance	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Generators	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Motors	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Motor Controllers	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Propulsion Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T	P	P	P	P
Distribution Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P
Electronic Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P	P	P	P–T	P–T
Batteries	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P
Communications	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P–T	P	P	P	P
Safety	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Casualty Control	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Steam Generators:																		
Steam	P–T	P	P–T	P	P–T	P	P–T	P	P–T		P–T		P	P	P		P–T	
Main Boilers	P–T		P–T		P–T		P–T		P–T		P–T				P–T			
Auxiliary Boilers		P–T		P–T		P–T		P–T		P–T		P–T	P	P		P	P–T	P–T
Feedwater Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T		P–T		P	P	P–T		P–T	P
Condensate Systems	P–T	P–T	P–T	P	P–T	P	P–T	P	P–T		P–T				P–T		P–T	P
Recovery Systems	P–T	P–T	P–T	P	P–T	P	P–T	P	P–T		P–T		P	P	P–T		P–T	P
Fuel	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P–T	P–T
Fuel Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P–T	P–T
Boiler Water	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P–T	P	P	P	P–T		P–T	P
Control Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T		P	P	P–T	P–T		

TABLE 11.950–2—SUBJECTS FOR ENGINEER OFFICER ENDORSEMENTS FOR SERVICE ON GREAT LAKES AND INLAND WATERS—Continued

	Unlimited chief engineer		Unlimited 1st asst engineer		Unlimited 2nd asst engineer		Unlimited 3rd asst engineer		Chief engineer limited		A/E Ltd & DDE unlim		Unin ind C/E	Fish Vsl A/E	DDE Ltd HP		MODU ch Eng	MODU asst eng
	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	STM	MTR	MTR	MTR	STM	MTR		
Automation Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T		P	P	P–T		P–T	
Safety	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P–T	P	P–T	P
Casualty Control	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P	P–T	P	P–T	P
Steam Engines:																		
Main Turbine	P–T		P–T		P–T		P–T		P–T		P–T				P–T			
Auxiliary Turbine	P–T	P	P–T	P	P–T	P	P–T	P	P–T		P–T				P–T			
Reciprocating Machines	P–T		P–T		P–T		P–T		P–T		P–T				P–T			
Governor Systems	P–T	P	P–T	P	P–T	P	P–T	P	P–T		P–T				P–T			
Control Systems	P–T	P	P–T	P	P–T	P	P–T	P	P–T		P–T				P–T			
Automation Systems	P–T		P–T		P–T		P–T		P–T		P–T				P–T			
Lubrication Systems	P–T	P	P–T	P	P–T	P	P–T	P	P–T		P–T				P–T			
Drive Systems	P–T		P–T		P–T		P–T		P–T		P–T				P–T			
Safety	P–T	P	P–T	P	P–T	P	P–T	P	P–T		P–T				P–T			
Casualty Control	P–T	P	P–T	P	P–T	P	P–T	P	P–T		P–T				P–T			
Motor:																		
Main Engines		P–T		P–T		P–T		P–T		P–T		P–T	P–T	P–T		P–T		
Auxiliary Engines	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P–T	P–T	P
Starting Systems	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P–T	P–T		P–T	P–T	P
Lubrication Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P
Fuel	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P
Fuel Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P
Combustion Systems	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P–T	P	P–T	P–T	P–T		P–T	P	P
Intake Systems	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P–T	P–T		P–T	P	P
Exhaust Systems	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P–T	P–T		P–T	P	P
Cooling Systems	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P–T	P–T		P–T	P	P
Supercharging Systems	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P–T	P–T		P–T		
Drive Systems	P	P–T	P	P–T	P	P–T	P	P–T		P–T		P–T	P–T	P–T		P–T	P	P
Control Systems	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P–T	P–T		P–T	P	P–T
Automation Systems	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P–T	P–T		P–T	P–T	P–T
Governors	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P–T	P–T		P–T	P	P
Turbines	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P	P–T	P–T	P–T		P–	P	P
Safety	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T
Casualty Control	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T
Safety:																		
Fire	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T
Fire Prevention	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T
Fire Fighting	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T
Flooding	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Dewatering	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Stability and Trim	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Damage Control	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Emergency Equipment and Life-saving Appliances:																		
General Safety	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
First Aid	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Dangerous Materials	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Pollution	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
Inspections and Surveys	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
US Rules and Regulations	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T
International Rules and Regulations.	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P–T	P	P	P–T	P–T

P=Practical Knowledge.
T=Theoretical Knowledge.

§§ 11.1001–11.1005 (Subpart J) [Removed and Reserved]

133. Remove and reserve subpart J, consisting of *§§ 11.1001 through 11.1005.*

§§ 11.1101–11.1105 (Subpart K) [Removed and Reserved]

134. Remove and reserve subpart K, consisting of *§§ 11.1101 through 11.1105.*

135. Revise part 12 to read as follows:

PART 12—REQUIREMENTS FOR RATING ENDORSEMENTS

Subpart A—General

Subpart B—General Requirements for Rating Endorsements

Subpart C—Approved and Accepted Training

Subpart D—Deck Ratings

Subpart E—Engineering Ratings

Subpart F—Specialty Ratings

Subpart G—Entry Level and Miscellaneous Ratings

Subpart H—Non-Resident Alien Unlicensed Members of the Steward's Department on U.S.-Flag Large Passenger Vessels

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701, and 70105; Department of Homeland Security Delegation No. 0170.1.

Subpart A—General

§ 12.101 Purpose.

The purpose of this part is to provide—

(a) A comprehensive and adequate means of determining and verifying the professional qualifications an applicant must possess to be eligible for certification to serve on merchant vessels of the United States; and

(b) A means of determining that an applicant is qualified to receive the endorsement required by the STCW Convention.

§ 12.103 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection 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.* Also, it is available for inspection at the Coast Guard, Office of Operating and Environmental Standards (CG–5221), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(b) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, England:

(1) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (the STCW Convention), incorporation by reference approved for §§ 12.620, and 12.640.

(2) The Seafarers' Training, Certification and Watchkeeping Code as amended (the STCW Code), incorporation by reference approved for §§ 12.420, 12.530, 12.602, and 12.640.

§ 12.105 Paperwork approval.

(a) This section lists the control numbers assigned by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (Pub. L. 96–511) for the reporting and record keeping requirements in this part.

(b) The following control numbers have been assigned to the sections indicated:

(1) OMB 1625–0079–46 CFR 12.217 and 12.301.

(2) [Reserved]

Subpart B—General Requirements for Rating Endorsements

§ 12.201 General provisions respecting rating endorsements and STCW endorsements.

(a) An MMC issued to a deck or engineer officer will be endorsed for all entry level ratings and any other ratings for which they qualify.

(b) The authorized holder of any valid rating endorsement may serve in any capacity in the staff department of a vessel, except in those capacities requiring a staff officer; except that whenever the service includes the handling of food, no person may be so employed unless his or her credential bears the food handler's endorsement ''(F.H.)''.

(c) When an applicant meets the requirements for certification set forth in this part, the Coast Guard will issue the appropriate endorsement. The Coast Guard will also issue an STCW endorsement to qualified applicants for any of the following ratings or qualifications:

(1) Rating forming part of a navigational watch (RFPNW);

(2) Rating forming part of a watch in a manned engine room or designated to perform duties in a periodically unmanned engine room (RFPEW);

(3) Proficiency in survival craft and rescue boats, other than fast rescue boats;

(4) Proficiency in survival craft and rescue boats other than lifeboats and fast rescue boats;

(5) Proficiency in fast rescue boats;

(6) Global maritime distress and safety system (GMDSS) operator;

(7) GMDSS at-sea maintainer;

(8) Medical first aid provider; or

(9) Person-in-charge of medical care.

(d) Basic safety training or instruction. Applicants serving on seagoing vessels must meet the requirements of § 15.1105 of this subchapter.

(e) Except as otherwise noted in this part, applicants for a rating and/or associated STCW endorsement must be at least 16 years of age.

§ 12.203 Examination procedures and denial of rating and STCW endorsements.

(a) Upon receipt of application for a rating endorsement, the Coast Guard will give any required examination as soon as practicable after determining that the applicant is otherwise qualified for the endorsement.

(b) An applicant for a rating endorsement who has been duly examined and refused the endorsement by the Coast Guard may seek reexamination at any time after the date of the initial examination. The Coast Guard sets the time of reexamination based on the applicant's performance on the initial examination. However, the maximum waiting period after the initial failure will be 30 days, and the maximum waiting period after a second or subsequent failure will be 90 days.

(c) Upon receipt of an application for an STCW endorsement, the Coast Guard will evaluate the applicant's qualifications. The Coast Guard will issue the appropriate endorsement after determining that the applicant satisfactorily meets all requirements for any requested STCW rating or qualification.

Subpart C—Approved and Accepted Training

§ 12.301 Coast Guard-accepted training other than approved courses.

Coast Guard-accepted training for other than approved courses must meet the requirements found in 46 CFR part 10 subpart C.

Subpart D—Deck Ratings

§ 12.410 Categories of able seaman (A/B) endorsements.

The following categories of able seaman endorsements are established:

(a) Able seaman—any waters, unlimited.

(b) Able seaman—limited.

(c) Able seaman—special.

(d) Able seaman—special (OSV).

§ 12.412 General requirements for able seaman (A/B) endorsements.

To qualify for an endorsement as able seaman an applicant must:

(a) Be at least 18 years of age;

(b) Pass the prescribed physical and medical examination requirements specified in § 10.215 of this subchapter;

(c) Present evidence of having passed a chemical test for dangerous drugs or of qualifying for an exemption from testing described in § 16.220 of this subchapter;

(d) Meet the sea service or training requirements set forth in this part;

(e) Pass an examination demonstrating ability as an able seaman;

(f) Hold or be qualified to hold an endorsement as lifeboatman or survivalman; and

(g) Speak and understand the English language as would be required in performing the general duties of able seaman and during an emergency aboard ship.

§ 12.414 Service or training requirements for able seaman (A/B) endorsements.

(a) The minimum service required to qualify an applicant for the various categories of endorsement as able seaman is:

(1) *Able seaman—any waters, unlimited.* Three years of service on deck on vessels operating on the oceans or the Great Lakes.

(2) *Able seaman—limited.* Eighteen months of service on deck on vessels of 100 GRT/250 GT or over which operate in a service not exclusively confined to the rivers and smaller inland lakes of the United States.

(3) *Able seaman—special.* Twelve months of service on deck on vessels operating on the oceans or the navigable waters of the United States including the Great Lakes.

(4) *Able seaman—special (OSV).* Six months of service on deck on vessels operating on the oceans or the navigable waters of the United States including the Great Lakes.

(b) Training programs approved by the Coast Guard may be substituted for the required periods of service on deck as follows:

(1) A graduate of a school ship may be rated as able seaman upon satisfactory completion of the course of instruction. For this purpose, school ship is interpreted to mean an institution which offers a complete approved course of instruction, including a period of at sea training, in the skills appropriate to the rating of able seaman.

(2) Training programs, other than those classified as a school ship, may be substituted for up to one-third of the required service on deck. The service/training ratio for each program is determined by the Coast Guard, which may allow a maximum of 3 days on deck service credit for each day of instruction.

§ 12.416 Examination and demonstration of ability for able seaman (A/B) endorsements.

(a) Before an applicant is issued an endorsement as an able seaman, he or she must prove to the satisfaction of the Coast Guard by oral or other means of examination, and by actual demonstration, his or her knowledge of seamanship and the ability to carry out effectively all the duties that may be required of an able seaman, including those of a lifeboatman or survivalman.

(b) The examination, whether administered orally or by other means, must be conducted only in the English language and must consist of questions regarding:

(1) The applicant's knowledge of nautical terms; use of the compass for navigation; running lights, passing signals, and fog signals for vessels on the high seas, inland waters, or Great Lakes depending upon the waters on which the applicant has had service; and distress signals; and

(2) The applicant's knowledge of commands in handling the wheel by obeying orders passed to him or her as wheelsman, and knowledge of the use of engine-room telegraph.

(c) The applicant must demonstrate knowledge of the principal knots, bends, splices, and hitches in common use by actually making them.

(d) The applicant must demonstrate, to the satisfaction of the Coast Guard, knowledge of pollution laws and regulations, procedures for discharge containment and cleanup, and methods for disposal of sludge and waste material from cargo and fueling operations.

§ 12.418 General provisions respecting endorsements for service as able seamen.

(a) The holder of an MMC or MMD endorsed for the rating of able seamen may serve in any rating in the deck department without obtaining an additional endorsement, provided:

(1) That the holder possesses an endorsement showing that he or she is qualified for the survival equipment installed on the vessel; and

(2) That the holder possesses the appropriate STCW endorsement when serving as an RFPNW on a seagoing ship of 200 GRT/500 GT or more.

(b) After [EFFECTIVE DATE OF THIS FINAL RULE] any MMC endorsed as able seaman (A/B) will also be endorsed

as lifeboatman or survivalman, as appropriate.

(c) The A/B endorsement will clearly describe the type of rating which it represents (*See* § 12.410 of this subpart).

§ 12.420 General requirements for ratings forming part of a navigational watch (RFPNW).

To qualify for an STCW endorsement as an RFPNW on a seagoing vessel of 200 GRT/500 GT or more, an applicant must:

(a) Meet the medical and physical requirements found in § 10.215 of this subchapter;

(b) Provide evidence of having passed a chemical test for dangerous drugs or of qualifying for an exemption from testing described in § 16.220 of this subchapter;

(c) Provide evidence of service as follows:

(1)(i) Six months of approved, seagoing service that includes training and experience associated with navigational watchkeeping functions and involving the performance of duties carried out under the supervision of an OICNW or a qualified deck rating; and

(ii) At least one-half of the required experience must be obtained on vessels of at least 200 GRT/500 GT; or

(2) Proof of successful completion of a course approved or accepted as special training required by the STCW Convention and a period of approved seagoing service. The length of approved seagoing service will be specified as part of the course's approval; and

(d) The applicant must receive training and satisfactorily complete assessments necessary to meet the standards of competence prescribed in table A–II/4 of the STCW Code (incorporated by reference in § 12.103). The assessment criteria is published by the Coast Guard, and the training must include:

(1) Steering the ship and complying with helm orders;

(2) Keeping a proper look-out by sight and hearing;

(3) Contributing to monitoring and controlling a safe watch; and

(4) Operating emergency equipment and applying emergency procedures.

Subpart E—Engineer Ratings

§ 12.510 General requirements for a qualified member of the engine department (QMED).

(a) A qualified member of the engine department (QMED) is any person below officer and above the rating of coal passer or wiper who holds an MMC or MMD endorsed as QMED by the Coast Guard.

(b) For purposes of administering this part, the rating of assistant electrician is considered a rating equal to coal passer or wiper.

(c) To be eligible for an endorsement as QMED, an applicant must be able to speak and understand the English language relevant to the duties of a QMED or in an emergency aboard ship.

(d) An applicant for QMED seeking an STCW endorsement as RFPEW must also meet the standards of competence as required in § 12.530 of this part.

§ 12.512 Physical and medical requirements.

The physical and medical requirements for an endorsement as QMED are found in § 10.215 of this subchapter.

§ 12.514 Service or training requirements.

(a) An applicant for an endorsement as QMED must furnish the Coast Guard proof of qualification based on 6 months of service in a rating at least equal to that of wiper or coal passer.

(b) Training programs approved by the Coast Guard, may be substituted for the required sea service for QMED such as:

(1) A graduate of an approved training program aboard a school ship may qualify for a rating endorsement as QMED without further service upon satisfactory completion of the appropriate training program.

(2) Approved courses other than those classified as a school ship may be substituted for up to one-half of the required sea service.

§ 12.516 Examination requirements.

(a) Each applicant for endorsement as a QMED in the rating of oiler, watertender, fireman, deck engineer, refrigeration engineer, junior engineer, electrician, or machinist must be examined orally or by other means and only in the English language on the subjects listed in paragraph (b) of this section. The applicant's general knowledge of the subjects must be sufficient to satisfy the examiner that the applicant is qualified to perform the duties of the rating for which he or she makes application.

(b) List of subjects required:

TABLE 12.516(B)

Subjects	Machinist	Refrigerating engineer	Fireman/ watertender	Oiler	Electrician	Junior engineer	Deck engineer
1. Application, maintenance, and use of hand tools and measuring instruments	X	X	X	X	X	X	X
2. Uses of babbitt, copper, brass, steel, and other metals	X	X	X	X	X	X	X
3. Methods of measuring pipe, pipe fittings, sheet metal, machine bolts and nuts, packing, etc	X	X	X	X	X	X	X
4. Operation and maintenance of mechanical remote control equipment	X		X	X	X	X	X
5. Precautions to be taken for the prevention of fire and the proper use of fire-fighting equipment	X	X	X	X	X	X	X

TABLE 12.516(B)—Continued

Subjects	Machinist	Refrigerating engineer	Fireman/ watertender	Oiler	Electrician	Junior engineer	Deck engineer
6. Principles of mechanical refrigeration; and functions, operation, and maintenance of various machines and parts of the systems		X		X		X	
7. Knowledge of piping systems as used in ammonia, freon, and CO_2, including testing for leaks, operation of bypasses, and making up of joints		X				X	
8. Safety precautions to be observed in the operation of various refrigerating systems, including storage of refrigerants, and the use of gas masks and firefighting equipment	X	X	X	X	X	X	X
9. Combustion of fuels, proper temperature, pressures, and atomization			X	X		X	
10. Operation of the fuel oil system on oil burning boilers, including the transfer and storage of fuel oil			X	X		X	X
11. Hazards involved and the precautions taken against accumulation of oil in furnaces, bilges, floorplates, and tank tops; flarebacks, leaks in fuel oil heaters, clogged strainers and burner tips	X	X	X	X	X	X	
12. Precautions necessary when filling empty boilers, starting up the fuel oil burning system, and raising steam from a cold boiler			X	X		X	
13. The function, operation, and maintenance of the various engineroom auxiliaries	X	X	X	X	X	X	
14. Proper operation of the various types of lubricating systems	X	X	X	X	X	X	X
15. Safety precautions to be observed in connection with the operation of engineroom auxiliaries, electrical machinery, and switchboard equipment	X	X	X	X	X	X	X

TABLE 12.516(B)—Continued

Subjects	Machinist	Refrigerating engineer	Fireman/ watertender	Oiler	Electrician	Junior engineer	Deck engineer
16. The function, operation, and maintenance of the bilge, ballast, fire, freshwater, sanitary, and lubricating systems ...	X	X	X	X		X	X
17. Proper care of spare machine parts and idle equipment ...	X	X	X	X	X	X	X
18. The procedure in preparing a turbine, reciprocating, or Diesel engine for standby; also the procedure in securing			X	X		X	
19. Operation and maintenance of the equipment necessary for the supply of water to boilers, the dangers of high and low water and remedial action			X	X		X	
20. Operation, location, and maintenance of the various boiler fittings and accessories	X		X	X		X	
21. The practical application and solution of basic electrical calculations (Ohm's law, power formula, etc.)					X	X	X
22. Electrical wiring circuits of the various two-wire and three-wire D.C. systems and the various single-phase and polyphase A.C. systems					X	X	X
23. Application and characteristics of parallel and series circuits					X	X	X
24. Application and maintenance of electrical meters and instruments					X	X	X
25. The maintenance and installation of lighting and power wiring involving testing for, locating and correcting grounds, short circuits and open circuits, and making splices					X	X	X
26. The operation and maintenance of the various types of generators and motors, both A.C. and D.C. ...					X	X	X
27. Operation, installation, and maintenance of the various types of electrical controls and safety devices					X	X	X

TABLE 12.516(B)—Continued

Subjects	Machinist	Refrigerating engineer	Fireman/ watertender	Oiler	Electrician	Junior engineer	Deck engineer
28. Testing and maintenance of special electrical equipment, such as telegraphs, telephones, alarm systems, fire-detecting systems, and rudder angle indicators ..					X	X	
29. Rules and Regulations and requirements for installation, repair, and maintenance of electrical wiring and equipment installed aboard ships					X	X	X
29a. Pollution laws and regulations, procedures for discharge containment and cleanup, and methods for disposal of sludge and waste from cargo and fueling operations	X	X	X	X	X	X	
30. Such further examination of a non-mathematical character as the Officer in Charge, Marine Inspection, may consider necessary to establish the applicant's proficiency	X	X	X	X	X	X	X

(c) Each applicant for an endorsement as a QMED in the rating of pumpman must be examined to demonstrate sufficient knowledge of the subjects peculiar to that rating. The examination must be given only in the English language.

(d) An applicant for endorsement as QMED in the rating of deck engine mechanic or engineman, who has proved eligibility for such endorsement under either § 12.520 or § 12.522 of this part, will not be required to take a written or oral examination for such ratings.

§ 12.518 General provisions respecting an endorsement as a qualified member of the engineering department (QMED).

Each QMED rating must be endorsed separately, unless the applicant qualifies for all QMED ratings, in which case the endorsement will read ''QMED—any rating.'' The ratings are:

(a) Refrigerating engineer.
(b) Oiler.
(c) Deck engineer.
(d) Fireman/Watertender.
(e) Junior engineer.
(f) Electrician.
(g) Machinist.
(h) Pumpman.
(i) Deck engine mechanic.
(j) Engineman.

§ 12.520 Deck engine mechanic.

(a) An applicant for an endorsement as deck engine mechanic must hold an MMC or MMD endorsed as junior engineer and furnish one of the following:

(1) Satisfactory documentary evidence of sea service of 6 months in the rating of junior engineer on steam vessels of 4,000 HP/3,000 kW or more; or,

(2) Documentary evidence from an operator of an automated vessel that the applicant has satisfactorily completed at least 4 weeks indoctrination and training in the engine department of an automated steam vessel of 4,000 HP/3,000 kW or more; or

(3) Evidence of satisfactory completion of an approved training course as deck engine mechanic.

(b) When the applicant meets the requirements specified in this section, the Coast Guard will add this rating endorsement to the applicant's MMC.

(c) Any holder of an MMC or MMD endorsed for any rating in the engine department or QMED—any rating is qualified as a deck engine mechanic, therefore, that endorsement will not be entered on his or her credential.

§ 12.522 Engineman.

(a) An applicant for an endorsement as engineman must hold an MMC or MMD endorsed as fireman/watertender and oiler, or junior engineer. The applicant will be eligible for such endorsement upon furnishing one of the following:

(1) Satisfactory documentary evidence of 6 months of sea service in any one or combination of the following capacities on steam vessels of 4,000 HP/3,000 kW or over: junior engineer; fireman/watertender; or oiler.

(2) Documentary evidence from an operator of a partially automated steam vessel that the applicant has satisfactorily completed at least 2 weeks of indoctrination and training in the engine department of a partially automated steam vessel of 4,000 HP/3,000 kW or over; or

(3) Proof of satisfactory completion of an approved training course for engineman.

(b) When an applicant for the rating of engineman meets the requirements specified in this section, the Coast

Guard will add this rating endorsement to his or her MMC.

(c) Any holder of an MMC or MMD endorsed for any rating in the engine department, QMED—any rating or deck engine mechanic is qualified as an engineman and that endorsement will not be entered on his or her credential.

§ 12.530 General requirements for a rating forming part of an engineering watch (RFPEW).

(a) A rating forming part of an engineering watch (RFPEW) is any person employed in the engine department, below the position of licensed officer, who is responsible for standing a watch in a manned engine room or who is designated to perform duties in a periodically unmanned engine room on seagoing vessels with main propulsion machinery of 1,000 HP/750 kW or more. It does not include a rating under training and a rating whose duties are of an unskilled nature, such as a wiper or other unskilled entry-level rating.

(b) To qualify for an STCW endorsement as an RFPEW, an applicant must meet the following requirements:

(c) All applicants for an RFPEW endorsement must meet the medical and physical requirements of § 10.215 of this subchapter.

(d) Applicants must have completed:

(1) Six months of approved, seagoing service that includes training and experience associated with engine room watchkeeping functions and involves the performance of duties carried out under the supervision of an engineer officer or a rating holding an RFPEW endorsement; or

(2) A course approved, or accepted, as special training required by the STCW Convention, and a period of approved seagoing service. The length of approved seagoing service will be specified as part of the course's approval.

(e) Assessments. The applicant must satisfactorily complete assessments prescribed in table A–III/4 of the STCW Code (incorporated by reference § 12.103). The assessment criteria is published by the Coast Guard. The assessments include:

(1) Carrying out a watch routine;

(2) Understanding orders and being understood in matters relevant to watchkeeping duties;

(3) Maintaining the correct water levels and steam pressures (required for certification to serve on steam vessels); and

(4) Operating emergency equipment and applying emergency procedures.

Subpart F—Specialty Ratings

§ 12.610 Qualification requirements for a lifeboatman endorsement.

To qualify for a lifeboatman endorsement, and for an STCW endorsement showing proficiency in survival craft including rescue boats other than fast rescue boats, the applicant must:

(a) Be at least 18 years of age;

(b) Be able to speak and understand the English language as would be relevant to the duties of a lifeboatman and for an emergency aboard ship; and

(c) Meet the following:

(1) Pass the lifeboatman written exam; including questions on:

(i) Lifeboats and liferafts, the names of their essential parts, and a description and use of the required equipment;

(ii) The clearing away, swinging out, and lowering of lifeboats and liferafts, and handling of lifeboats under oars and sails, including questions relative to the proper handling of a boat in a heavy sea; and

(iii) The operation and functions of commonly used types of davits;

(2) Participate in 24 abandon ship drills, eight of which must include the boat being placed in the water and the mariner being exercised in all means of propulsion;

(3) In the presence of a designated examiner, demonstrate knowledge, understanding, and proficiency in the following competencies:

(i) Taking charge of a survival craft and rescue boat during and after launch;

(ii) Operating a survival craft engine;

(iii) Demonstrating the ability to row by actually pulling an oar in the boat;

(iv) Managing a survival craft and survivors after abandoning ship; and

(v) Using locating and communication devices;

(4) Provide evidence of at least 6 months of sea service; and

(5) Complete the first aid and personal survival technique elements of BST, found in § 15.1105(c)(1) of this subchapter; or

(d) In lieu of the requirements in paragraph (c) of this part, an applicant may successfully complete an approved training program that includes a prescribed period of sea service.

§ 12.620 Certificates of proficiency in fast rescue boats.

To be eligible for an MMC endorsed for proficiency in fast rescue boats, an applicant must:

(a) Be qualified as a lifeboatman with proficiency in survival craft and rescue boats, other than fast rescue boats, under this subpart;

(b) Furnish satisfactory proof that he or she has met the requirements for training and competence of STCW Regulation, VI/2, paragraph 2, and the appropriate requirements of Section A–VI/2 of the STCW Code (incorporated by reference in § 12.103);

(c) Participate in six drills that include a fast rescue boat being placed in the water and the applicant performing man-overboard recovery drills; and

(d) Be successfully assessed in the demonstrations of the following competencies before a designated examiner:

(i) Taking charge of a fast rescue boat during and after launch; and

(ii) Operating a fast rescue boat engine.

§ 12.630 Qualification requirements for survivalman.

To qualify as survivalman, and for an STCW endorsement showing proficiency in survival craft except for lifeboats and fast rescue boats, the applicant must:

(a) Be at least 18 years of age;

(b) Be able to speak and understand the English language as would be relevant to the duties of a survivalman and for an emergency aboard ship; and

(c) Meet the following:

(1) Pass the written exam for survivalman including questions on:

(i) Liferafts, rescue boats and other survival craft except lifeboats, the names of their essential parts, and a description and use of the required equipment;

(ii) The clearing away, launching, and handling of rescue craft except lifeboats; and

(iii) The operation and functions of commonly used launching devices;

(2) Participate in twelve rescue boat, liferaft, or other drills involving lifesaving apparatus, four that include a rescue boat being placed in the water and the mariner being exercised in rescue boat drills;

(3) In the presence of a designated examiner, demonstrate knowledge, understanding, and proficiency in the following competences:

(i) Taking charge of a rescue boat, liferaft, or other lifesaving apparatus during and after launch;

(ii) Operating a rescue boat engine;

(iii) Managing a rescue boat and survivors; and

(iv) Using locating and communication devices.

(4) Obtain at least 6 months of sea service; and

(5) Complete the first aid and personal survival technique elements of BST as required in § 15.1105(c)(1) of this subchapter.

(d) In lieu of the requirements in paragraph (c) of this section, an

applicant may successfully complete an approved training program, including a prescribed period of sea service.

§ 12.640 Required documentary evidence for persons designated to provide medical care onboard ship.

(a) The Coast Guard will issue an STCW endorsement for medical first aid provider or person-in-charge of medical care to an applicant who provides evidence that establishes that he or she meets the standards of competence set out in Section A–VI/4 of the STCW Code (incorporated by reference in § 12.103).

(b) An applicant holding any of the following credentials is qualified for an endorsement as person-in-charge of medical care:

(1) A valid professional license listed in § 11.807 (a)(5) or (6) of this subchapter, without restriction or limitation placed upon it by the issuing State, or

(2) A rating listed in § 11.807 (a)(7) or (8) of this subchapter.

§ 12.650 Global maritime distress and safety system (GMDSS) at-sea maintainer.

An applicant may qualify for an STCW endorsement as GMDSS at-sea maintainer if he or she presents evidence of:

(a) Passing a course specializing in the maintenance and repair of radio electronics completed within five years of the date of application, with additional documentation demonstrating that the course is equivalent to the guidance in section B–IV/2 of the STCW Code; or,

(b) Passing an approved GMDSS at-sea maintainer course; and

(c) Possessing a valid Federal Communications Commission (FCC) certificate as GMDSS at-sea maintainer.

Subpart G—Entry Level and Miscellaneous Ratings

§ 12.702 Credentials required for entry level and miscellaneous ratings.

Every person employed in a rating other than able seaman (A/B) or QMED aboard U.S.-flag vessels requiring such persons must produce an MMC or MMD with the appropriate endorsement to the master or person in charge (PIC), if appropriate, before signing shipping articles.

§ 12.704 General requirements.

Rating endorsements will be issued without professional examination to applicants in capacities other than able seaman, lifeboatman, tankerman, or QMED—for example, ordinary seaman—wiper—steward's department (F.H.). Holders of MMCs or MMDs endorsed as ordinary seaman may serve in any unqualified rating in the deck or steward's department except as a food handler. Holders of MMCs or MMDs endorsed as wiper may serve in any unqualified rating in the engine or steward's department except as a food handler. Only MMCs or MMDs endorsed as steward's department (F.H.) will authorize the holder's service in any capacity in the steward's department, including food handler. (*See* § 12.201(b) of this part for unqualified ratings in the staff department.)

§ 12.706 Physical and medical requirements.

The physical and medical requirements for this subpart are found in § 10.215 of this subchapter.

§ 12.710 Members of the Cadet Corps of the U.S. Merchant Marine Academy.

No ratings other than cadet (deck) or cadet (engine), as appropriate, and lifeboatman will be shown on an MMC issued to a member of the U.S. Merchant Marine Cadet Corps. The MMC will also indicate that it is valid only while the holder is a cadet in the U.S. Maritime Administration training program. The MMC must be surrendered upon the holder leaving the cadet corps, being endorsed in any other rating, or upon being issued an officer's endorsement.

§ 12.720 Student observers.

Students in technical schools who are enrolled in courses in marine management and ship operations, and who present a letter or other documentary evidence that they are enrolled, will be issued an MMC endorsed as a student observer—any department and may be signed on ships as such. Students holding these endorsements will not take the place of any of the crew, or replace any of the regular required crew.

§ 12.730 Apprentice engineers.

(a) Persons enrolled in an apprentice engineer training program approved by the Coast Guard, and who present a letter or other documentary evidence that they are enrolled, may be issued an MMC endorsed as apprentice engineer and may be signed on ships as such. The endorsement as apprentice engineer may be in addition to other endorsements; however, this endorsement does not authorize the holder to replace any of the regular required crew.

(b) Persons holding the endorsement as apprentice engineer are deemed to be seamen.

§ 12.740 Apprentice mate.

(a) A person enrolled in an apprentice mate training program approved by the Coast Guard who presents a letter or other documentary evidence that he or she is enrolled may be issued an MMC endorsed as apprentice mate and may be signed on a vessel as apprentice mate. The endorsement as apprentice mate may be in addition to other endorsements; however, this endorsement does not authorize the holder to replace any of the regular required crew.

(b) Persons holding the endorsement as apprentice mate are deemed to be seamen.

Subpart H—Non-Resident Alien Unlicensed Members of the Steward's Department on U.S.-Flag Large Passenger Vessels

§ 12.801 Purpose.

The rules in this subpart implement 46 U.S.C. 8103(k) by establishing requirements for the issuance of merchant mariner's documents, valid only for service in the steward's department of U.S.-flag large passenger vessels, to non-resident aliens.

§ 12.803 General requirements.

(a) Unless otherwise expressly specified in this subpart, non-resident alien applicants for Coast Guard-issued merchant mariner's documents are subject to all applicable requirements contained in this subchapter.

(b) No application from a non-resident alien for a merchant mariner's document issued pursuant to this subpart will be accepted unless the applicant's employer satisfies all of the requirements of § 12.805 of this part.

§ 12.805 Employer requirements.

(a) The employer must submit the following to the Coast Guard, as a part of the applicant's merchant mariner's document (MMD) application, on behalf of the applicant:

(1) A signed report that contains all material disciplinary actions related to the applicant, such as, but not limited to, violence or assault, theft, drug and alcohol policy violations, and sexual harassment, along with an explanation of the criteria used by the employer to determine the materiality of those actions;

(2) A signed report regarding an employer-conducted background check. The report must contain:

(i) A statement that the applicant has successfully undergone an employer-conducted background check;

(ii) A description of the employer-conducted background check, including

all databases and records searched. The background check must, at a minimum, show that the employer has reviewed all information reasonably and legally available to the owner or managing operator, including the review of available court and police records in the applicant's country of citizenship, and any other country in which the applicant has received employment referrals, or resided, for the past 20 years prior to the date of application; and

(iii) All information derived from the employer-conducted background check.

(3) The employer-conducted background check must be conducted to the satisfaction of the Coast Guard for an MMD to be issued to the applicant.

(b) If an MMD is issued to the applicant, the report and information required in paragraph (a)(2) of this section must be securely kept by the employer on the U.S.-flag large passenger vessel, or U.S. flag large passenger vessels, on which the applicant is employed. The report and information must remain on the last U.S. flag large passenger vessel on which the applicant was employed until such time as the MMD is returned to the Coast Guard in accordance with paragraph (d) of this section.

(c) If an MMD or a transportation worker identification credential (TWIC) is issued to the applicant, each MMD and TWIC must be securely kept by the employer on the U.S. flag large passenger vessel on which the applicant is employed. The employer must maintain a detailed record of the seaman's total service on all authorized U.S. flag large passenger vessels, and must make that information available to the Coast Guard upon request, to demonstrate that the limitations of § 12.811(c) of this part have not been exceeded.

(d) In the event that the seaman's MMD and/or TWIC expires, the seaman's visa status terminates, the seaman serves onboard the U.S. flag large passenger vessel(s) for 36 months in the aggregate as a nonimmigrant crewman, the employer terminates employment of the seaman, or, if the seaman otherwise ceases working with the employer, the employer must return the MMD to the Coast Guard and/or the TWIC to the Transportation Security Administration (TSA) within 10 days of the event.

(e) In addition to the initial material disciplinary actions report and the initial employer-conducted background check specified in paragraph (a) of this section, the employer must:

(1) Submit an annual material disciplinary actions report to update whether there have been any material disciplinary actions related to the applicant since the last material disciplinary actions report was submitted to the Coast Guard.

(i) The annual material disciplinary actions report must be submitted to the satisfaction of the Coast Guard in accordance with the same criteria set forth in paragraph (a)(1) of this section, except that the period of time examined for the material disciplinary actions report need only extend back to the date of the last material disciplinary actions report; and

(ii) The annual material disciplinary actions report must be submitted to the Coast Guard on or before the anniversary of the issuance date of the MMD.

(2) Conduct a background check each year that the merchant mariner's document is valid to search for any changes that might have occurred since the last employer-conducted background check was performed.

(i) The annual background check must be conducted to the satisfaction of the Coast Guard in accordance with the same criteria set forth in paragraph (a)(2) of this section, except that the period of time examined during the annual background check need only extend back to the date of the last background check; and

(ii) All information derived from the annual background check must be submitted to the Coast Guard on or before the anniversary of the issuance date of the MMD.

(f) The employer is subject to the civil penalty provisions specified in 46 U.S.C. 8103(f) for any violation of this section.

§ 12.807 Basis for denial.

In addition to the requirements for a merchant mariner's document established elsewhere in this subchapter, and the basis for denial established in §§ 10.209, 10.211, and 10.213 of this subchapter, an applicant for a merchant mariner's document issued pursuant to this subpart must:

(a) Have been employed, for a period of at least 1 year, on a foreign flag passenger vessel, or foreign flag passenger vessels, that are under the same common ownership or control as the U.S. flag large passenger vessel, or U.S. flag large passenger vessels, on which the applicant will be employed upon issuance of an MMD under this subpart.

(b) Have no record of material disciplinary actions during the employment required under paragraph (a) of this section, as verified in writing by the owner or managing operator of the U.S. flag large passenger vessel, or U.S. flag large passenger vessels, on which the applicant will be employed.

(c) Have successfully completed an employer-conducted background check to the satisfaction of both the employer and the Coast Guard.

(d) Meet the citizenship and identity requirements of § 12.809 of this part.

§ 12.809 Citizenship and identity.

(a) In lieu of the requirements of § 10.221 of this subchapter, a non-resident alien may apply for a Coast Guard-issued merchant mariner's document, endorsed and valid only for service in the steward's department of a U.S. flag large passenger vessel as defined in this subpart, if he or she is employable in the United States under the Immigration and Nationality Act (8 U.S.C. 1101, *et seq.*), including an alien crewman described in section 101 (a)(15)(D)(i) of that Act.

(b) To meet the citizenship and identity requirements of this subpart, an applicant must present an unexpired passport issued by the government of the country of which the applicant is a citizen or subject; and either a valid U.S. C–1/D Crewman Visa or other valid U.S. visa or authority deemed acceptable by the Coast Guard.

(c) Any non-resident alien applying for a merchant mariner's document under this subpart may not be a citizen of, or a temporary or permanent resident of, a country designated by the Department of State as a ''State Sponsor of Terrorism'' pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371).

§ 12.811 Restrictions.

(a) A merchant mariner's document issued to a non-resident alien under this subpart authorizes service only in the steward's department of the U.S.-flag large passenger vessel(s), that is/are under the same common ownership and control as the foreign flag passenger vessel(s), on which the non-resident alien served to meet the requirements of § 12.807(a) of this part:

(1) The merchant mariner's document will be endorsed for service in the steward's department in accordance with § 12.704 of this part;

(2) The merchant mariner's document may also be endorsed for service as a food handler if the applicant meets the requirements of § 12.706 of this part; and

(3) No other rating or endorsement is authorized, except lifeboatman, in which case all applicable requirements of this subchapter and the STCW

Convention and STCW Code must be met.

(b) The following restrictions must be printed on the MMD, or be listed in an accompanying Coast Guard letter, or both:

(1) The name and official number of all U.S. flag vessels on which the non-resident alien may serve. Service is not authorized on any other U.S. flag vessel;

(2) Upon issuance, the MMD must remain in the custody of the employer at all times;

(3) Upon termination of employment, the MMD must be returned to the Coast Guard within 10 days in accordance with § 12.805 of this part;

(4) A non-resident alien issued an MMD under this subpart may not perform watchstanding, engine room duty watch, or vessel navigation functions; and

(5) A non-resident alien issued an MMD under this subpart may perform emergency-related duties, provided:

(i) The emergency-related duties do not require any other rating or endorsement, except lifeboatman as specified in paragraph (a)(3) of this section;

(ii) The non-resident alien has completed familiarization and basic safety training (BST), as required in § 15.1105 of this subchapter;

(iii) That if the non-resident alien serves as a lifeboatman, he or she must have the necessary lifeboatman's endorsement; and

(iv) The non-resident alien has completed the training for crewmembers on passenger ships performing duties involving safety or care for passengers, as required in § 15.1103 of this subchapter.

(c) A non-resident alien may only serve for an aggregate period of 36 months actual service on all authorized U.S. flag large passenger vessels combined under the provisions of this subpart:

(1) Once this 36-month limitation is reached, the MMD becomes invalid and must be returned to the Coast Guard under § 12.805(d) of this part, and the non-resident alien is no longer authorized to serve in a position requiring a merchant mariner's document on any U.S. flag large passenger vessel; and

(2) An individual who successfully adjusts his or her immigration status to become either an alien lawfully admitted for permanent residence to the United States, or a citizen of the United States, may apply for an MMD, subject to the requirements of § 10.221 of this subchapter, without any restrictions or limitations imposed by this subpart.

§ 12.813 Alternative means of compliance.

(a) The owner or managing operator of a U.S. flag large passenger vessel, or U.S. flag large passenger vessels, seeking to employ non-resident aliens issued MMDs under this subpart may submit a plan to the Coast Guard, which, if approved, will serve as an alternative means of complying with the requirements of this subpart.

(b) The plan must address all the elements contained in this subpart, as well as the related elements contained in § 15.530 of this subchapter, to the satisfaction of the Coast Guard.

PART 15—MANNING REQUIREMENTS

136. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 70105; and Department of Homeland Security Delegation No. 0170.1.

Subpart A—Purpose and Applicability

§ 15.101 [Amended]

137. In § 15.101 introductory text, remove the words ''the regulations in'' and '', parts E & F,''.

138. Revise § 15.103 to read as follows:

§ 15.103 General.

(a) The regulations in this part apply to all vessels that are subject to the manning requirements contained in the navigation and shipping laws of the United States, including uninspected vessels (46 U.S.C. 7101–9308).

(b) The navigation and shipping laws state that a vessel may not be operated unless certain manning requirements are met. In addition to establishing a minimum number of officers and rated crew to be carried onboard certain vessels, they establish minimum qualifications concerning licenses and MMC endorsements, citizenship, and conditions of employment. It is the responsibility of the owner, charterer, managing operator, master, or person in charge or in command of the vessel to ensure that appropriate personnel are carried to meet the requirements of the applicable navigation and shipping laws and regulations.

(c) Inspected vessels are issued a Certificate of Inspection (COI) which indicates the minimum complement of officers and crew (including lifeboatmen) considered necessary for safe operation. The COI complements the statutory requirements but does not supersede them.

(d) Uninspected vessels operating on an international voyage may be issued a safe manning certificate indicating the minimum complement of qualified mariners necessary for safe operation.

(e) The regulations in subpart J of this part apply to seagoing vessels subject to the STCW Convention, except those vessels noted below:

(1) Fishing vessels as defined in 46 U.S.C. 2101(11)(a);

(2) Fishing vessels used as fish-tender vessels as defined in 46 U.S.C. 2101(11)(c);

(3) Barges as defined in 46 U.S.C. 2101(2), including non-self-propelled mobile offshore-drilling units; and

(4) Vessels operating exclusively on the Great Lakes and other inland waters.

(f) Owners and operators, and personnel serving on the following small vessels engaged exclusively on domestic, near-coastal voyages are in compliance with subpart J and are, therefore, not subject to further obligation for the purposes of the STCW Convention:

(1) Small passenger vessels subject to subchapter T or K of title 46, CFR;

(2) Vessels of less than 200 GRT/500 GT, other than passenger vessels subject to subchapter H of title 46 CFR;

(3) Uninspected passenger vessels (UPVs) as defined in 46 U.S.C. 2101(42)(B).

(g) Personnel serving on vessels identified in paragraphs (f)(1) and (2) of this section may be issued, without additional proof of qualification, an appropriate STCW endorsement on their license or MMC when the Coast Guard determines that such an endorsement is necessary to enable the vessel to engage on a single international voyage of a non-routine nature. The STCW endorsement will be expressly limited to service on the vessel or the class of vessels and will not establish qualification for any other purpose. All personnel on the specified vessels must comply with the requirements of § 15.1105 of this part when the vessel is engaged on an international voyage.

139. Revise § 15.105(b) to read as follows:

§ 15.105 Incorporation by reference.

* * * * *

(b) International Maritime Organization (IMO), 4 Albert Embankment, London, SE1 7SR, England:

(1) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention), incorporation approved for §§ 15.403, 15.1103, 15.1105, and 15.1109.

(2) The Seafarer's Training, Certification and Watchkeeping Code, as amended (STCW Code), incorporation

by reference approved for §§ 15.1105, and 15.1109.

Subpart B [Removed and Reserved]

140. Revise part 15, subpart C, to read as follows:

Subpart C—Manning Requirements; All Vessels

Sec.

Subpart C—Manning Requirements; All Vessels

§ 15.401 Employment and service within restrictions of credentials.

(a) A person may not employ or engage an individual, and an individual may not serve, in a position in which an individual is required by law or regulation to hold a license, certificate of registry, merchant mariner's document, TWIC and/or MMC, unless the individual holds all credentials required, as appropriate, authorizing service in the capacity in which the individual is engaged or employed, and the individual serves within any restrictions placed on the credential. An individual holding an active license, certificate of registry, MMD, or MMC issued by the Coast Guard must also hold a valid TWIC issued by the Transportation Security Administration under 49 CFR part 1572.

(b) Each individual referred to in paragraph (c) of this section must hold an MMD or MMC that serves as identification, with an appropriate endorsement for the position in which the seaman serves, and must be presented to the master of the vessel at the time of employment or before signing Articles of Agreement.

(c) Each individual employed on any merchant vessel of the United States of 100 GRT/250 GT or more must possess a valid MMD or MMC issued by the Coast Guard, except as noted below:

(1) Mariners on vessels navigating exclusively on rivers and lakes, except the Great Lakes, as defined in § 10.107 of this subchapter; or

(2) Mariners below the rank of licensed officer employed on any non-self-propelled vessel, except seagoing barges and certain tank barges.

(d) Every person employed on a vessel with dual tonnages (both domestic and international) must hold a credential authorizing service appropriate to the tonnage scheme under which the vessel is operating.

§ 15.403 When credentials are required.

(a) Every seaman, as referred to in paragraph (a) of this section, must produce a valid MMC or MMD with all applicable rating endorsements for the position sought, and a valid TWIC, to the master of the vessel at the time of his or her employment before signing Articles of Agreement. Seamen who do not possess one of these credentials may be employed at a foreign port or place.

(b)(1) Every person below the grades of officer and staff officer employed on any U.S. flag merchant vessel of 100 GRT/250 GT and upward, except those navigating rivers exclusively and the smaller inland lakes, must possess a valid MMC or MMD with all appropriate endorsements for the positions served.

(2) No endorsements are required of any person below the rank of officer employed on any barges except seagoing barges and certain tank barges.

(3) No endorsements are required of any person below the rank of officer employed on any sail vessel of less than 500 net tons while not carrying passengers for hire and while not operating outside the line dividing inland waters from the high seas. 33 U.S.C. 151.

(c) Each person serving as an able seaman or an RFPNW on a seagoing ship of 200 GRT/500 GT or more must hold an STCW endorsement certifying him or her as qualified to perform the navigational function at the support level, in accordance with the STCW Convention (incorporated by reference in § 15.105).

(d) Each person serving as a QMED or an RFPEW, on a seagoing ship driven by main propulsion machinery of 1,000 HP/750 kW of propulsion power or more, must hold an STCW endorsement certifying him or her as qualified to perform the marine-engineering function at the support level, in accordance with STCW (incorporated by reference in § 15.105).

(e) Notwithstanding any other rule in this part, no person subject to this part serving on any of the following vessels needs an STCW endorsement:

(1) Fishing vessels as defined in 46 U.S.C. 2101(11)(a);

(2) Fishing vessels used as fish-tender vessels as defined in 46 U.S.C. 2101(11)(c);

(3) Barges as defined in 46 U.S.C. 2101(2), including non-self-propelled mobile offshore-drilling units; or

(4) Vessels operating exclusively on the Great Lakes.

(5) Vessels not subject to further obligation under the STCW Convention due to their special operating conditions as small vessels engaged in domestic, near-coastal voyages, including:

(i) Small passenger vessels subject to subchapter T or K of title 46 CFR;

(ii) Vessels of less than 200 GRT/500 GT (other than passenger vessels subject to subchapter H of title 46 CFR); or

(iii) Uninspected passenger vessels as defined in 46 U.S.C. 2101(42)(B).

§ 15.404 Requirements for serving onboard a vessel.

(a) *RFPNW.* Each person serving as a rating forming part of a navigational watch on a seagoing vessel of 200 GRT/500 GT or more, subject to the STCW Convention, must hold an STCW endorsement attesting to his or her qualifications to perform the navigational function at the support level.

(b) *Able Seaman.* Each person serving as a rating as able seaman on a U.S. flag vessel must hold an MMC endorsed as able seaman, except that no credential as able seaman is required of any person employed on any tug or towboat on the bays and sounds connected directly with the seas, or on any barges except seagoing barges or tank barges.

(c) *RFPEW.* Each person serving as a rating forming part of a watch in a manned engine room or designated to perform duties in a periodically unmanned engine room, on a seagoing vessel driven by main propulsion machinery of 1,000 HP/750 kW of propulsion power or more, must hold an STCW endorsement attesting to his or her qualifications to perform the marine-engineering function at the support level.

(d) *QMED.* (1) The holder of an MMD or MMC endorsed with one or more QMED ratings may serve in any unqualified rating in the engine department without obtaining an additional endorsement.

(2) A QMED may serve as a qualified rating in the engineering department only in the specific ratings endorsed on his or her MMD or MMC.

(e) *Lifeboatman.* Every person assigned duties as a lifeboatman must hold a credential attesting to such proficiency. Persons serving on vessels subject to the STCW Convention must also hold an STCW endorsement attesting to proficiency in survival craft and rescue boats other than fast rescue boats.

(f) *Survivalman.* Every person employed onboard a vessel that is not required to carry lifeboats and is required to employ lifeboatmen must hold an endorsement as either

lifeboatman or survivalman. Persons serving on vessels subject to the STCW Convention must also hold an STCW endorsement attesting to proficiency in survival craft and rescue boats other than lifeboats and fast rescue boats.

(g) *Lifeboatman Equivalent.* (1) An endorsement issued before [EFFECTIVE DATE OF THE FINAL RULE] as able seaman is the equivalent of a credential endorsed as lifeboatman or survivalman, as appropriate.

(2) An endorsement as lifeboatman is the equivalent of a credential endorsed as survivalman.

(h) *Fast Rescue Boats.* Every person engaged or employed in a position requiring proficiency in fast rescue boats must hold an endorsement attesting to such proficiency.

(i) *Entry Level.* Every person employed in a rating other than able seaman or QMED on a U.S. vessel on which MMCs are required must hold an MMD or MMC endorsed as wiper, ordinary seaman, or foodhandler.

(j) *Person in charge of medical care.* Every person designated to take charge of medical care must hold an MMD or MMC endorsed as person in charge of medical care.

(k) *Medical first aid provider.* Every person designated to provide medical first aid onboard a ship must hold an MMD or MMC endorsed as medical first aid provider or a deck or engineer officer endorsement.

(l) *GMDSS radio operator or maintainer.* Every person responsible for the operation or shipboard maintenance of GMDSS radio equipment must hold an MMD or MMC endorsed as GMDSS radio operator or GMDSS radio maintainer, as appropriate.

§ 15.405 Familiarity with vessel characteristics.

Every crewmember must become familiar with the relevant characteristics of the vessel on which he or she is engaged prior to assuming his or her duties. These include, but are not limited to: general arrangement of the vessel; maneuvering characteristics; proper operation of the installed navigation equipment; proper operation of firefighting and lifesaving equipment; stability and loading characteristics; emergency duties; and main propulsion and auxiliary machinery, including steering gear systems and controls.

§ 15.410 Credentialed individuals for assistance towing vessels.

Every assistance towing vessel must be under the direction and control of an individual holding a license or MMC authorizing him or her to engage in assistance towing under the provisions of § 11.482 of this subchapter.

Subpart D—Manning Requirements; Inspected Vessels

§ 15.505 [Amended]

141. In § 15.505, remove the words ''changes in manning as indicated on the'' and add, in their place, the words ''changes to the manning required on the''.

142. Revise § 15.515 to read as follows:

§ 15.515 Compliance with Certificate of Inspection (COI).

(a) Except as provided by § 15.725 of this part, no vessel may be navigated unless it has in its service and onboard the crew complement required by the COI.

(b) Any time passengers are embarked on a passenger vessel, the vessel must have the crew complement required by the COI, whether the vessel is underway, at anchor, made fast to shore, or aground.

(c) No vessel subject to inspection under 46 U.S.C. 3301 will be navigated unless it is under the direction and control of an individual who holds an appropriate license or officer endorsement on his or her MMC.

143. Revise § 15.520 to read as follows:

§ 15.520 Mobile offshore drilling units (MODUs).

(a) The requirements in this section for MODUs supplement other requirements in this part.

(b) The OCMI determines the minimum number of officers and crew (including lifeboatmen) required for the safe operation of inspected MODUs. In addition to other factors listed in this part, the specialized nature of the MODU is considered in determining the specific manning levels.

(c) A license or officer endorsement on an MMC as offshore installation manager (OIM), barge supervisor (BS), or ballast control operator (BCO) authorizes service only on MODUs. A license or endorsement as OIM is restricted to the MODU type and mode of operation specified on the credential.

(d) A self-propelled MODU, other than a drillship, when underway must be under the command of an individual who holds a license or MMC endorsed as master and OIM. When not underway, such a vessel must be under the command of an individual holding the appropriate OIM credential.

(e) A drillship must be under the command of an individual who holds a license or MMC officer endorsement as master. When a drillship is on location, the individual in command must hold a license as master endorsed as OIM or an MMC with master and OIM officer endorsements.

(f) A non-self-propelled MODU must be under the command of an individual who holds a license or MMC officer endorsement as OIM.

(g) An individual serving as mate on a self-propelled surface unit, other than a drillship, when underway must hold an appropriate MMC endorsed as mate and BS or BCO. When not underway, such a vessel may substitute an individual holding the appropriate BS or BCO endorsement for the mate, if permitted by the cognizant OCMI.

(h) An individual holding a license or MMC officer endorsement as barge supervisor is required on a non-self-propelled surface unit other than a drillship.

(i) An individual holding a license or MMC officer endorsement as barge supervisor may serve as BCO.

(j) The OCMI issuing the COI for the MODU may authorize the substitution of chief or assistant engineer (MODU) for chief or assistant engineer, respectively, on self-propelled or propulsion-assisted surface units, except drillships. The OCMI may also authorize the substitution of assistant engineer (MODU) for assistant engineer on drillships.

(k) Requirements in this part concerning radar observers do not apply to non-self-propelled MODUs.

(l) A surface mobile offshore drilling unit underway or on location, when afloat and equipped with a ballast control room, must have that ballast control room manned by an individual holding a license or MMC officer endorsement authorizing service as ballast control operator.

144. Revise the heading to § 15.525 to read as follows:

§ 15.525 Additional manning requirements for tank vessels.

* * * * *

Subpart E—Manning Requirements; Uninspected Vessels

145. Revise § 15.605 to read as follows:

§ 15.605 Credentialed operators for uninspected passenger vessels.

Each uninspected passenger vessel (UPV) must be under the direction and control of an individual credentialed by the Coast Guard, as follows:

(a) Every UPV of 100 GRT/250 GT or more, as defined by 46 U.S.C. 2101(42)(A), must be under the command of an individual holding a license or MMC endorsed as master.

When navigated, it must be under the direction and control of a credentialed master, pilot, or mate.

(b) Every self-propelled UPV as defined by 46 U.S.C. 2101(42)(B) must be under the direction and control of an individual holding a license or MMC endorsed as or equivalent to OUPV.

(c) Personnel serving on UPVs engaged on international voyages must meet the requirements of subpart J of this part.

146. Revise § 15.610 to read as follows:

§ 15.610 Master and mate (pilot) of towing vessels.

(a) Except as provided in this paragraph, every towing vessel of at least 8 meters (26 feet) in length, measured from end to end over the deck (excluding sheer), must be under the direction and control of a person holding a license or MMC officer endorsement as master or mate (pilot) of towing vessels, or as master or mate of vessels greater than 200 GRT/500 GT, holding either an endorsement on his or her license or MMC for towing vessels or a completed Towing Officer's Assessment Record (TOAR) signed by a designated examiner and indicating that the officer is proficient in the operation of towing vessels. This requirement does not apply to any vessel engaged in assistance towing, nor does it apply to any towing vessel of less than 200 GRT/500 GT if the vessel is going to or coming from equipment or a site that is exploiting offshore minerals or oil.

(b) Any towing vessel operating in the pilotage waters of the Lower Mississippi River must be under the control of an officer meeting the requirements of paragraph (a) of this section who holds either a first-class pilot's endorsement for that route or MMC officer endorsement for the Western Rivers, or who meets the requirements of paragraph (a) and also meets the requirements of either paragraph (b)(1) or paragraph (b)(2) of this section, as applicable:

(1) To operate a towing vessel with tank barges, or a tow of barges carrying hazardous materials regulated under subchapter N or O of this chapter, an officer in charge of the towing vessel must have completed 12 round trips over this route as an observer, with at least three of those trips during hours of darkness, and at least one of the 12 round trips completed within the last 5 years.

(2) To operate a towing vessel without barges, or a tow of uninspected barges, an officer in charge of the towing vessel must have completed at least four round trips over this route as an observer, with at least one of those trips during hours of darkness, and at least one of the four round trips within the last 5 years.

Subpart F—Limitations and Qualifying Factors

§ 15.701 [Amended]

147. Amend § 15.701 as follows:

a. In paragraph (a)(4), remove the words ''gross tons'' and add, in their place, the text ''GRT/500 GT''; and

b. In paragraph (b), remove the word ''chapter'' and add, in its place, the word ''subchapter''.

148. Revise § 15.705 to read as follows:

§ 15.705 Watches.

(a) Title 46 U.S.C. 8104 applies to the establishment of watches aboard certain U.S. vessels. The establishment of adequate watches is the responsibility of the vessel's master. The Coast Guard interprets the term ''watch'' to be the direct performance of duties pertaining to a vessel's operations, whether deck or engine, where such operations would routinely be controlled and performed in a scheduled and fixed rotation. The performance of maintenance or work necessary to the vessel's safe operation on a daily basis does not in itself constitute the establishment of a watch. The minimum safe manning levels specified in a vessel's Certificate of Inspection (COI) take into consideration routine maintenance requirements and ability of the crew to perform all operational evolutions, including emergencies, as well as those functions which may be assigned to persons in watches.

(b) Subject to exceptions, 46 U.S.C. 8104 requires that when a master of a seagoing vessel of more than 100 GRT/250 GT establishes watches for the officers, sailors, coal passers, firemen, oilers and watertenders, ''the personnel shall be divided, when at sea, into at least three watches and shall be kept on duty successively to perform ordinary work incidental to the operation and management of the vessel''. The Coast Guard interprets ''sailors'' to mean those members of the deck department other than officers, whose duties involve the mechanics of conducting the ship on its voyage, such as helmsman (wheelsman), lookout, etc., and which are necessary to the maintenance of a continuous watch. ''Sailors'' is not interpreted to include able seamen and ordinary seamen not performing these duties.

(c) Subject to exceptions, 46 U.S.C. 8104(g) permits the officers and crew members (except the coal passers, firemen, oilers, and watertenders) to be divided into two watches when at sea and engaged on a voyage of less than 600 miles, on the following categories of vessels:

(1) Towing vessel;

(2) Offshore supply vessel; or

(3) Barge.

(d) Subject to exceptions, 46 U.S.C. 8104(h) permits a master or mate (pilot) operating a towing vessel that is at least 8 meters (26 feet) in length measured from end to end over the deck (excluding sheer) to work not more than 12 hours in a consecutive 24-hour period except in an emergency. The Coast Guard interprets this, in conjunction with other provisions of the law, to permit masters or mates (pilots) serving as operators of towing vessels that are not subject to the provisions of the Officers' Competency Certificates Convention, 1936, to be divided into two watches regardless of the length of the voyage.

(e) Fish processing vessels are subject to various provisions of 46 U.S.C. 8104 concerning watches, including:

(1) For fish processing vessels that entered into service before January 1, 1988, the following watch requirements apply to the officers and deck crew:

(i) If over 5,000 GRT/GT—three watches.

(ii) If more than 1,600 GRT/3,000 GT and not more than 5,000 GRT/GT—two watches.

(iii) If not more than 1,600 GRT/3,000 GT—no watch division specified;

(2) For fish processing vessels that entered into service after December 31, 1987, the following watch requirements apply to the officers and deck crew:

(i) If over 5,000 GRT/GT—three watches;

(ii) If not more than 5,000 GRT/GT and having more than 16 individuals onboard, primarily employed in the preparation of fish or fish products—two watches; and

(iii) If not more than 5000 GRT/GT and having not more than 16 individuals onboard, primarily employed in the preparation of fish or fish products—no watch division specified.

(f) Properly manned uninspected passenger vessels of at least 100 GRT/250 GT—

(1) Which are underway for no more than 12 hours in any 24-hour period, and which are adequately moored, anchored, or otherwise secured in a harbor of safe refuge for the remainder of that 24-hour period, may operate with one navigational watch;

(2) Which are underway more than 12 hours in any 24-hour period must provide a minimum of a two-watch system;

(3) In no case may the crew of any watch work more than 12 hours in any 24-hour period, except in an emergency.

149. Amend § 15.720 as follows:

a. Revise the section heading and paragraph (d) to read as set out below; and

b. In paragraph (b)(1), remove the words ''a foreign'' and add, in their place, the words ''an international''.

§ 15.720 Use of non-U.S. credentialed personnel.

* * * * *

(d) The master must assure that any replacement of crewmembers by non-U.S. citizens made in accordance with this section will be with an individual who holds a credential that requires experience, training, and other qualifications equivalent to the U.S. credential required for the position, and that the person possesses or will possess the training required to communicate to the extent required by § 15.730 of this part.

§ 15.725 [Amended]

150. In § 15.725 text, remove the words ''Officer in Charge, Marine Inspection (OCMI)'' and add, in their place, the word ''OCMI''.

§ 15.730 [Amended]

151. Amend § 15.730 as follows:

a. In paragraph (a) introductory text, remove the words ''gross tons'' and add, in their place, the text ''GRT/250 GT'';

b. In paragraphs (a)(1) and (2), remove the parentheses wherever they appear; and

c. In paragraph (a)(6), remove the words ''not more than 1600 gross tons or which enters'' and add, in their place, the words ''not more than 1,600 GRT/3,000 GT or which entered''.

Subpart G—Computations

152. Amend § 15.805 as follows:

a. Revise paragraph (a) introductory text and paragraphs (a)(5) and (a)(5)(ii), and add new paragraph (a)(7) to read as set out below;

b. In paragraph (a)(1), remove the words ''gross tons and over.'' and add, in their place, the text ''GRT/500 GT or more;'';

c. In paragraphs (a)(2) through (4), remove the text ''.'' wherever it appears and add, in its place, the text '';''; and

d. In paragraph (a)(6), remove the words ''gross tons.'' and add, in their place, the words ''GRT/250 GT; and''.

§ 15.805 Master.

(a) An individual holding either an appropriate, valid license as master or an MMC endorsed as master must be in command of each of the following vessels:

* * * * *

(5) Every towing vessel of at least 8 meters (26 feet) or more in length must be under the command of a master of towing vessels, or a mariner holding a license or MMC endorsed as master of inspected, self-propelled vessels greater than 200 GRT/500 GT holding either—

* * * * *

(ii) A license or MMC endorsed for master of towing vessels.

* * * * *

(7) Every uninspected passenger vessel on an international voyage.

* * * * *

§ 15.810 [Amended]

153. Amend § 15.810 as follows:

a. In paragraphs (b)(1), (b)(2) introductory text, and (b)(3), remove the text ''1000 gross tons'' wherever it appears and add, in its place, the text ''1,000 GRT/2,000 GT'';

b. In paragraph (b)(3), remove the text ''100 or more gross tons'' and add, in its place, the text ''100 GRT/250 GT or more'';

c. In paragraphs (b)(4) and (5), remove the text ''100 gross tons'' wherever it appears and add, in its place, the text ''100 GRT/250 GT'',;

d. In paragraph (b)(3), (c), and (d)(2), remove the text ''200 gross tons'' and add, in its place, the text ''200 GRT/500 GT''; and

e. In paragraph (d)(2)(i), remove the words ''Towing Officer's Assessment Record (TOAR)'' and add, in their place, the word ''TOAR''.

154. Revise § 15.812 to read as follows:

§ 15.812 Pilot.

(a) Except as specified in paragraph (f) of this section, the following vessels, not sailing on register, when underway on the navigable waters of the United States, must be under the direction and control of an individual qualified to serve as pilot under paragraph (b) or (c) of this section, as appropriate:

(1) Coastwise seagoing vessels propelled by machinery and subject to inspection under 46 U.S.C. Chapter 33, and coastwise seagoing tank barges subject to inspection under 46 U.S.C. Chapter 37;

(2) Vessels that are not authorized by their Certificate of Inspection (COI) to proceed beyond the boundary line established in part 7 of this Chapter, and are in excess of 1,600 GRT/3,000 GT, propelled by machinery, and subject to inspection under 46 U.S.C. chapter 33; and

(3) Vessels operating on the Great Lakes, that are propelled by machinery and subject to inspection under 46 U.S.C. chapter 33, or are tank barges subject to inspection under 46 U.S.C. chapter 37.

(b) The following individuals may serve as pilots on a vessel subject to paragraph (a) of this section, when underway on the navigable waters of the United States that are designated areas:

(1) An individual holding a valid first class pilot's license or MMC officer endorsement as first class pilot, operating within the restrictions of his or her credential, may serve as pilot on any vessel to which this section applies.

(2) An individual holding a valid license or MMC officer endorsement as master or mate, employed aboard a vessel within the restrictions of his or her credential, may serve as pilot on a vessel of not more than 1,600 GRT/3,000 GT propelled by machinery, described in paragraphs (a)(1) and (a)(3) of this section, provided he or she:

(i) Is at least 21 years old;

(ii) Is able to show current waters of the waters to be navigated, as required in § 11.713 of this subchapter; and

(iii) Has completed a minimum of four round trips over the route to be traversed while in the wheelhouse as watchstander or observer. At least one of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

(3) An individual holding a valid license or MMC officer endorsement as master, mate, or operator employed aboard a vessel within the restrictions of his or her credential, may serve as pilot on a tank barge or tank barges totaling not more than 10,000 GRT/GT, described in paragraphs (a)(1) and (a)(3) of this section, provided he or she:

(i) Is at least 21 years old;

(ii) Is able to show current knowledge of the waters to be navigated, as required in § 11.713 of this subchapter;

(iii) Has a current physical examination in accordance with the provisions of § 11.709 of this subchapter;

(iv) Has at least 6 months of service in the deck department on towing vessels engaged in towing operations; and

(v) Has completed a minimum of 12 round trips over the route to be traversed, as an observer or under instruction in the wheelhouse. At least three of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

(c) An individual holding a valid license or MMC officer endorsement as master, mate, or operator, employed aboard a vessel within the restrictions of his or her credential, may serve as a pilot for a vessel subject to paragraphs

(a)(1) and (a)(2) of this section, when underway on the navigable waters of the United States that are not designated areas of pilotage waters, provided he or she:

(1) Is at least 21 years old;

(2) Is able to show current knowledge of the waters to be navigated, as required in § 11.713 of this subchapter; and

(3) Has a current physical examination in accordance with the provisions of § 11.709 of this subchapter.

(d) In any instance when the qualifications of a person satisfying the requirements for pilotage through the provisions of this subpart are questioned by the Coast Guard, the individual must, within a reasonable time, provide the Coast Guard with documentation proving compliance with the applicable portion(s) of paragraphs (b) and (c) of this section.

(e) Federal pilotage requirements contained in paragraphs (a) through (d) of this section are summarized in the following two quick reference tables:

(1) Table 15.812(e)(1) provides a guide to the pilotage requirements for inspected, self-propelled vessels.

TABLE 15.812(E)(1)—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR U.S. INSPECTED SELF-PROPELLED VESSELS, NOT SAILING ON REGISTER

	Designated areas of pilotage waters (routes for which First-Class Pilot's licenses or MMC officer endorsements are issued)	Non-designated areas of pilotage waters (between the 3-mile line and the start of traditional pilotage routes)
Inspected self-propelled vessels greater than 1,600 GRT/3,000 GT, authorized by their Certificate of Inspection (COI) to proceed beyond the boundary line, operating on the Great Lakes.	First-Class Pilot	Master or Mate may serve as pilot if he or she: 1. Is at least 21 years old; 2. Has an annual physical exam; and 3. Maintains current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels not more than 1,600 GRT/3,000 GT, if authorized by their COI to proceed beyond the boundary line, or operating on the Great Lakes.	First-Class Pilot, or Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Maintains current knowledge of the waters to be navigated[1] 3. Has four round trips over the route[2]	Master or Mate may serve as pilot if he or she: 1. Is at least 21 years old; and 2. Maintains current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels greater than 1,600 GRT/3,000 GT, not authorized by their COI to proceed beyond the boundary line (inland route vessels); other than vessels operating on the Great Lakes.	First-Class Pilot	Master or Mate may serve as pilot if he or she: 1. Is at least 21 years old; 2. Has an annual physical exam; and 3. Maintains current knowledge of the waters to be navigated.[1]
Inspected self-propelled vessels not more than 1,600 GRT/3,000 GT, not authorized by their COI to proceed beyond the boundary line (inland route vessels); other than vessels operating on the Great Lakes.	No pilotage requirement	No pilotage requirement.

[1] One round trip within the past 60 months.
[2] If the route is to be traversed during darkness, 1 of the 4 round trips must be made during darkness.

(2) Table 15.812(e)(2) provides a guide to the pilotage requirements for tank barges.

TABLE 15.812(E)(2)—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR U.S. INSPECTED TANK BARGES, NOT SAILING ON REGISTER

	Designated areas of pilotage waters (routes for which First-Class Pilot's licenses or MMC officer endorsements are issued)	Non-designated areas of pilotage waters (between the 3-mile line and the start of traditional pilotage routes)
Tank barges greater than 10,000 GRT/GT, authorized by their COI to proceed beyond the boundary line, or operating on the Great Lakes.	First-Class Pilot	Master, Mate, or Master, Mate (Pilot) of towing vessels may serve as pilot if he or she: 1. Is at least 21 years old; 2. Has an annual physical exam;[1] 3. Maintains current knowledge of the waters to be navigated;[2] and 4. Has at least 6 months' service in the deck department on towing vessels engaged in towing.
Tank barges 10,000 GRT/GT or less, authorized by their COI to proceed beyond the boundary line, or operating on the Great Lakes.	First-Class Pilot, or Master, Mate, or Master, Mate (Pilot) of towing vessels may serve as pilot if he or she: 1. Is at least 21 years old; 2. Has an annual physical exam;[1] 3. Maintains current knowledge of the waters to be navigated;[2]	Master, Mate, or Master, Mate (Pilot) of towing vessels may serve as pilot if he or she: 1. Is at least 21 years old; 2. Has an annual physical exam;[1] 3. Maintains current knowledge of the waters to be navigated;[2] and

TABLE 15.812(E)(2)—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR U.S. INSPECTED TANK BARGES, NOT SAILING ON REGISTER—Continued

	Designated areas of pilotage waters (routes for which First-Class Pilot's licenses or MMC officer endorsements are issued)	Non-designated areas of pilotage waters (between the 3-mile line and the start of traditional pilotage routes)
	4. Has at least 6 months' service in the deck department on towing vessels engaged in towing operations; and 5. Has 12 round trips over the route.[3]	
Tank barges authorized by their COI for inland routes only (lakes, bays, and sounds/rivers); other than vessels operating on the Great Lakes.	No pilotage requirement	No pilotage requirement.

[1] Annual physical exam does not apply to an individual who will serve as a pilot of a tank barge of less than 1,600 GRT/3,000 GT.
[2] One round trip within the past 60 months.
[3] If the route is to be traversed during darkness, 3 of the 12 round trips must be made during darkness.

(f) In Prince William Sound, Alaska, coastwise seagoing vessels over 1,600 GRT/3,000 GT and propelled by machinery and subject to inspection under 46 U.S.C. Chapter 37 must:

(1) When operating from 60°49′ north latitude to the Port of Valdez be under the direction and control of an individual holding a valid license or MMC endorsed as pilot who:

(i) Is operating under the authority of a license or MMC;

(ii) Holds a license issued by the State of Alaska; and

(iii) Is not a member of the crew of the vessel; and

(2) Navigate with either two credentialed deck officers on the bridge, or an individual holding a valid license or MMC endorsed as pilot, when operating south of 60°49′ north latitude and in the approaches through Hinchinbrook Entrance and in the area bounded:

(i) On the West by a line one mile west of the western boundary of the traffic separation scheme;

(ii) On the East by 146°00′ West longitude;

(iii) On the North by 60°49′ North latitude; and

(iv) On the South by that area of Hinchinbrook Entrance within the territorial sea bounded by 60°07′ North latitude and 146°31.5′ West longitude.

155. Revise § 15.815 to read as follows:

§ 15.815 Radar observer.

(a) Every person in the required complement of deck officers, including the master, on inspected vessels of 300 GRT/700 GT or over that are radar equipped, must hold a valid endorsement as radar observer.

(b) Every person who is employed or serves as pilot in accordance with Federal law onboard radar-equipped vessels of 300 GRT/700 GT or over must hold a valid endorsement as radar observer.

(c) Every person having to hold a license or MMC officer endorsement under 46 U.S.C. 8904(a) for employment or service as master or mate onboard an uninspected towing vessel of 8 meters (26 feet) or more in length must, if the vessel is equipped with radar, hold a valid endorsement as radar observer.

(d) Every person who is required to hold a radar endorsement must have his or her certificate of training readily available to demonstrate that the endorsement is still valid.

(e) For this section, readily available means that the documentation must be provided to the Coast Guard, or other appropriate federal agency, within 48 hours. The documentation may be provided by the individual, or his or her company representative, electronically, by facsimile, or physical copy.

156. Add § 15.816 to read as follows:

§ 15.816 Automatic radar plotting aids (ARPAs).

Every person in the required complement of deck officers, including the master, on seagoing vessels equipped with automatic radar plotting aids (ARPAs), except those vessels listed in § 15.103(e) and (f) of this part, must provide evidence of competence in the use of ARPA.

157. Add § 15.817 to read as follows:

§ 15.817 Global Maritime Distress and Safety System (GMDSS) radio operator.

Every person in the required complement of deck officers, including the master, on seagoing vessels equipped with a GMDSS, except those vessels listed in § 15.103(e) and (f) of this part, must provide evidence of a valid STCW endorsement as GMDSS radio operator.

158. Add § 15.818 to read as follows:

§ 15.818 Global Maritime Distress and Safety System (GMDSS) at-sea maintainer.

Every person employed or engaged to maintain GMDSS equipment at sea, when the service of a person so designated is used to meet the maintenance requirements of SOLAS Regulation IV/15, must provide documentary evidence that he or she is competent to maintain GMDSS equipment at sea.

159. Revise § 15.820 to read as follows:

§ 15.820 Chief engineer.

(a) There must be an individual holding an MMC or license endorsed as chief engineer, or other credential authorizing service as chief engineer, employed onboard the following mechanically propelled inspected vessels:

(1) Seagoing or Great Lakes vessels of 200 GRT/500 GT and over;

(2) Offshore supply vessels of more than 200 GRT/500 GT; and

(3) Inland (other than Great Lakes) vessels of 300 GRT/700 GT or more, if the OCMI determines that an individual with a license or the appropriate MMC officer endorsement responsible for the vessel's mechanical propulsion is necessary.

(b) An individual engaged or employed to perform the duties of chief engineer on a mechanically propelled, uninspected, seagoing, documented vessel of 200 GRT/500 GT or more must hold an appropriately endorsed license or MMC authorizing service as a chief engineer.

160. Revise § 15.825 to read as follows:

§ 15.825 Engineer.

(a) An individual in charge of an engineering watch on a mechanically propelled, seagoing, documented vessel of 200 GRT/500 GT or over, other than an individual described in § 15.820 of this part, must hold an appropriately endorsed license or MMC authorizing service as an assistant engineer.

(b) The OCMI determines the minimum number of credentialed

engineers required for the safe operation of inspected vessels.

161. Revise § 15.840 to read as follows:

§ 15.840 Able seaman.

(a) With certain exceptions, 46 U.S.C. 8702 applies to all vessels of at least 100 GRT/250 GT. At least 65 percent of the deck crew of these vessels, excluding individuals serving as officers, must be able seamen. For vessels permitted to maintain a two-watch system, the percentage of able seamen may be reduced to 50.

(b) Able seamen are rated as: unlimited, limited, special, offshore supply vessel (OSV), sail, and fishing industry, under the provisions of part 12 of this subchapter. 46 U.S.C. 7312 specifies the categories of able seaman (*i.e.,* unlimited, limited, etc.) necessary to meet the requirements of 46 U.S.C. 8702.

(c) It is the responsibility of the master or person in charge (PIC) to ensure that the able seamen in the service of the vessel meet the requirements of 46 U.S.C. 7312 and 8702.

162. Revise § 15.845 to read as follows:

§ 15.845 Lifeboatman including survivalman.

The number of lifeboatmen required for a vessel is specified in part 199 of this chapter; however, on vessels not equipped with lifeboats, a lifeboatman may be replaced by a survivalman.

§ 15.855 [Amended]

163. Amend § 15.855 as follows:

a. In paragraph (b), remove the words ''gross tons'' and add, in their place, the text ''GRT/250 GT'';

b. In paragraph (c) introductory text, remove the words ''gross tons'' and add, in their place, the text ''GRT/700 GT'';

c. In paragraphs (c)(1) through (4), remove the text ''.'' wherever it appears at the end of each paragraph and add, in its place, the text ''; '';

d. In paragraph (c)(5), remove the text ''.'' and add, in its place, the text ''; and''; and

e. In paragraph (c)(6), after section number ''§ 15.705'', add the words ''of this part''.

164. Revise § 15.860 to read as follows:

§ 15.860 Tankerman.

(a) The OCMI enters on the Certificate of Inspection (COI) issued to each manned tank vessel subject to the regulations in this chapter the number of crewmembers required to hold valid MMDs or MMCs with the proper tankerman endorsement. Table 15.860(h)(1) of this section provides the minimal requirements for tankermen aboard manned tank vessels; Table 15.860(h)(2) of this section provides the tankerman endorsements required for personnel aboard tankships.

(b) For each tankship of more than 5,000 GRT/GT certified for voyages beyond the boundary line as described in Part 7 of this chapter:

(1) The number of tankerman-PICs or restricted tankerman-PICs carried must be at least two;

(2) The number of tankerman-assistants carried must be at least three; and

(3) The number of tankerman-engineers carried must be at least two.

(c) For each tankship of 5,000 GRT/GT or less certified for voyages beyond the boundary line:

(1) The number of tankerman-PICs or restricted tankerman-PICs carried must be at least two; and

(2) The number of tankerman-engineers carried must be at least two, unless only one engineer is required, in which case the number of tankerman-engineers carried may be just one.

(d) For each tankship not certified for voyages beyond the boundary line, as described in Part 7 of this chapter, if the total crew complement is:

(1) One or two, the number of tankerman-PICs or restricted tankerman-PICs carried may be just one; or

(2) More than two, the number of tankerman-PICs or restricted tankerman-PICs carried must be at least two.

(e) For each tank barge manned under § 31.15–5 of this chapter, if the total crew complement is:

(1) One or two, the number of tankerman-PICs, restricted tankerman-PICs, tankerman-PICs (barge), or restricted tankerman-PICs (barge) carried may be just one; or

(2) More than two, the number of tankerman-PICs, restricted tankerman-PICs, tankerman-PICs (barge), or restricted tankerman-PICs (barge) carried must be at least two.

(f) The following personnel aboard each tankship certified for voyages beyond the boundary line, as described in part 7 of this chapter, must hold valid MMDs or MMCs, endorsed as follows:

(1) The master and chief mate must each hold a tankerman-PIC or restricted tankerman-PIC endorsement.

(2) The chief, first assistant, and cargo engineers must each hold a tankerman-engineer or tankerman-PIC endorsement.

(3) Every credentialed officer acting as the PIC of a transfer of liquid cargo in bulk must hold a tankerman-PIC or restricted tankerman-PIC endorsement.

(4) Every officer or crewmember who is assigned by the PIC duties and responsibilities related to the cargo or cargo-handling equipment during a transfer of liquid cargo in bulk, but is not directly supervised by the PIC, must hold a tankerman-assistant endorsement.

(g) The endorsements required by this section must be for the classification of the liquid cargo in bulk or of the cargo residue being carried.

(h) Because the STCW Convention does not recognize restricted Tankerman-PIC endorsements, persons may act under these only aboard vessels conducting business inside the boundary line, as described in Part 7 of this chapter.

TABLE 15.860(H)(1)—MINIMAL REQUIREMENTS FOR TANKERMEN ABOARD MANNED TANK VESSELS

Tank vessels	Tankerman-PIC	Tankerman assistant	Tankerman engineer	Tankerman PIC or tankerman-PIC (barge)
Tankship Certified for Voyages Beyond Boundary Line:				
Over 5,000 GRT/GT	2	3	2	
5,000 GRT/GT or less	2	.....	*2	
Tankship Not Certified for Voyages Beyond Boundary Line	**2			
Tank Barge	.....	.....	.....	***2

* If only one engineer is required, then only one Tankerman Engineer is required.

** If the total crew complement is one or two persons, then only one Tankerman-PIC is required.

*** If the total crew complement is one or two persons, then only one Tankerman-PIC or Tankerman-PIC (Barge) is required.

TABLE 15.860(H)(2)—TANKERMEN ENDORSEMENTS REQUIRED FOR PERSONNEL ABOARD TANKSHIPS

[Endorsement for the Classification of the Bulk Liquid Cargo or Residues Carried]

Tankship certified for voyages beyond boundary line	Tankerman-PIC		Tankerman engineer	Tankerman assistant
Master	X			
Chief Mate	X			
Chief Engineer	X	or	X	
First Assistant Engineer	X	or	X	
Cargo Engineer	X	or	X	
Credentialed Officer Acting as PIC of Transfer of Liquid Cargo in Bulk	X			
Credentialed Officer or Crewmember Not Directly Supervised by PIC				X

Subpart H—Equivalents

165. Revise § 15.901 to read as follows:

§ 15.901 Inspected vessels of less than 100 GRT/250 GT.

(a) An individual holding a license or MMC endorsed as mate or pilot of inspected, self-propelled vessels of 200 GRT/500 GT or more is authorized to serve as master on inspected vessels of less than 100 GRT/250 GT within any restrictions on the individual's license or MMC.

(b) An individual holding a license or MMC endorsed as master or mate of inspected, self-propelled vessels is authorized to serve as master or mate, respectively, of non-self-propelled vessels other than sail vessels, within any restrictions on the individual's license or MMC.

(c) An individual holding a license or MMC endorsed as master or mate of inspected sail vessels is authorized to serve as master or mate, respectively, of other non-self-propelled vessels, within any restrictions on the individual's license or MMC.

(d) An individual holding a license or MMC endorsed as master or mate of inspected, auxiliary sail vessels, is authorized to serve as master or mate, respectively, of self-propelled and non-self-propelled vessels, within any restrictions on the individual's license or MMC.

166. Revise § 15.905 to read as follows:

§ 15.905 Uninspected passenger vessels.

(a) An individual holding a license or MMC endorsed as master or pilot of an inspected, self-propelled vessel is authorized to serve as operator of an uninspected passenger vessel less than 100 GRT/250 GT within any restrictions, other than tonnage limitations, on the individual's license or MMC.

(b) An individual holding a license or MMC endorsed as a master or pilot of an inspected, self-propelled vessel is authorized to serve as master, as required by § 15.805(a)(6) of this part, of an uninspected passenger vessel of 100 GRT/250 GT or more within any restrictions, including tonnage and route, on the individual's license or MMC.

(c) An individual holding a license or MMC endorsed as mate of inspected, self-propelled vessels (other than Great Lakes, inland, or river vessels of less than 200 GRT/500 GT) is authorized to serve as operator of uninspected passenger vessels of less than 100 GRT/250 GT within any restrictions, other than tonnage limitations, on the individual's license or MMC.

167. Revise § 15.915 to read as follows:

§ 15.915 Engineer officer endorsements.

(a) The following license and MMC officer endorsements authorize the holder to serve as noted, within any restrictions on the license or MMC:

(1) An engineer officer's license or endorsement issued in the grade of chief engineer (limited) or assistant engineer (limited) on vessels as specified in § 11.501(d) of this subchapter.

(2) An engineer's license or endorsement issued in any grade of DDE authorizes the holder to serve as chief engineer or assistant engineer on vessels of not more than 500 GRT/1,200 GT on the Great Lakes and inland waters, on seagoing vessels of not more than 500 GRT/1,200 GT specified in 15.103(2) of this part, and on seagoing vessels of not more than 500 GRT/1,200 GT propelled by machinery of less than 1,000 HP/750 kW within any limitations of the license or endorsement.

(b) On Great Lakes or inland waters, an engineer holding a license or MMC endorsement for steam or motor propulsion may serve also on a gas turbine-propelled vessel.

Subpart J—Vessels Subject to Requirements of STCW

168. Revise § 15.1101 to read as follows:

§ 15.1101 General.

(a) Except as noted in paragraphs (1) and (2) of this paragraph, the regulations in this subpart apply to seagoing vessels.

(1) The following vessels are exempt from application of the STCW Convention:

(i) Fishing vessels as defined in 46 U.S.C. 2101(11)(a);

(ii) Fishing vessels used as fish-tender vessels as defined in 46 U.S.C. 2101(11)(c);

(iii) Barges as defined in 46 U.S.C. 2101(2), including non-self-propelled MODUs; and

(iv) Vessels operating exclusively on the Great Lakes.

(2) The following small vessels engaged exclusively on domestic, near-coastal voyages, are not subject to further obligation for the purposes of the STCW Convention:

(i) Small passenger vessels subject to subchapter T or K of title 46, CFR;

(ii) Vessels of less than 200 GRT/500 GT (other than passenger vessels subject to subchapter H of title 46 CFR); and

(iii) Uninspected passenger vessels as defined in 46 U.S.C. 2101(42)(B).

(b) Masters, mates, and engineers serving on vessels identified in paragraph (a)(2) of this section may be issued, without additional proof of qualification, an appropriate STCW endorsement when the Coast Guard determines that such a document is necessary to enable the vessel to engage on a single international voyage of a non-routine nature. The STCW endorsement will be expressly limited to service on the vessel or the class of vessels and will not establish qualification for any other purpose. All personnel on the specified vessels must comply with the requirements of § 15.1105 of this part when the vessel is engaged on an international voyage.

(c) A vessel with a valid Safety Management Certificate and a copy of a Document of Compliance issued for that vessel under 46 U.S.C. 3205 is presumed to comply with the STCW Convention.

169. Revise § 15.1103 to read as follows:

§ 15.1103 Employment and service within the restrictions of an STCW endorsement or of a certificate of training.

(a) Onboard a seagoing vessel operating beyond the boundary line, as described in Part 7 of this chapter, no person may employ or engage any person to serve, and no person may serve, in a position requiring a person to hold an STCW endorsement, including master, chief mate, chief engineer, second engineer, officer of the navigational or engineering watch, or GMDSS radio operator, unless the person serving holds an appropriate, valid STCW endorsement issued in accordance with part 11 of this subchapter.

(b) Onboard a seagoing vessel of 200 GRT/500 GT or more, no person may employ or engage any person to serve, and no person may serve, as an RFPNW, except for training, unless the person serving holds an appropriate, valid STCW endorsement issued in accordance with part 12 of this subchapter.

(c) Onboard a seagoing vessel driven by main propulsion machinery of 1,000 HP/750 kW propulsion power or more, no person may employ or engage any person to serve, and no person may serve, in a rating forming part of a watch in a manned engine room, nor may any person be designated to perform duties in a periodically unmanned engine room, except for training or for the performance of duties of an unskilled nature, unless the person serving holds an appropriate, valid STCW endorsement issued in accordance with part 12 of this subchapter.

(d) Onboard a Ro-Ro passenger ship, or on a passenger ship other than a Ro-Ro passenger ship as defined by the Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), on an international voyage, any person serving as master, chief mate, mate, chief engineer, engineer officer, and any person holding a license, MMD or MMC and performing duties towards safety, cargo handling, or care for passengers, must meet the appropriate requirements of Regulation V/2 or V/3 of the STCW Convention (incorporated by reference in § 15.105). These individuals must hold documentary evidence to show they meet these requirements.

170. Revise § 15.1105 to read as follows:

§ 15.1105 Familiarization and basic safety training (BST).

(a) Onboard a seagoing vessel, no person may assign any person to perform shipboard duties, and no person may perform those duties, unless the person performing them has received—

(1) Approved familiarization training in personal survival techniques as set out in the standard of competence under Regulation VI/1 of the STCW Convention (incorporated by reference in § 15.105); or

(2) Sufficient familiarization training or instruction to be able to:

(i) Communicate with other persons onboard about elementary safety matters and understand informational symbols, signs, and alarm signals concerning safety;

(ii) Know what to do if a person falls overboard; if fire or smoke is detected; or if the fire alarm or abandon-ship alarm sounds;

(iii) Identify stations for muster and embarkation and emergency-escape routes;

(iv) Locate and put on personal flotation devices;

(v) Raise the alarm and knows the use of portable fire extinguishers;

(vi) Take immediate action upon encountering an accident or other medical emergency before seeking further medical assistance onboard; and

(vii) Close and open the fire doors, weather-tight doors, and water-tight doors fitted in the vessel other than those for hull openings.

(b) In accordance with Regulation I/14 of the STCW Convention (incorporated by reference in § 15.105), no person on board a seagoing vessel may assign a shipboard duty or responsibility to any person who is serving in a position that must be filled as part of the required crew complement, and no person may perform any such duty or responsibility, unless he or she is:

(1) Familiar with his or her duty and with all vessel's arrangements; and

(2) Familiar with installations, equipment, procedures, and characteristics relevant to his or her routine or emergency duties or responsibilities.

(c) Onboard a seagoing vessel, no person may assign a shipboard duty or responsibility to any person who is serving in a position that must be filled as part of the required crew complement or who is assigned a responsibility on the muster list or station bill, and no person may perform any such duty or responsibility, unless the person performing it produces satisfactory evidence that she or he has achieved or maintained the minimum standards of competence for the following four areas of basic safety within the previous 5 years:

(1) Personal survival techniques as set out in table A–VI/1–1 of the STCW Code (incorporated by reference in § 15.105).

(2) Fire prevention and firefighting as set out in table A–VI/1–2 of the STCW Code (incorporated by reference in § 15.105).

(3) Elementary first aid as set out in table A–VI/1–3 of the STCW Code (incorporated by reference in § 15.105).

(4) Personal safety and social responsibilities as set out in table A–VI/1–4 of the STCW Code (incorporated by reference in § 15.105).

(d) Fish-processing vessels in compliance with the provisions of 46 CFR part 28 on instructions, drills, and safety orientation are deemed to be in compliance with the requirements of this section on familiarization and basic safety training.

171. Amend § 15.1107 as follows:

a. Revise the introductory text and paragraph (c) to read as set out below;

b. In paragraph (a), remove the words ''a recent evaluation'' and add, in their place, the words ''an evaluation not older than 5 years''; and, at the end of paragraph (a), remove the text ''.'' and add, in its place, the text '';''; and

c. At the end of paragraph (b), remove the text ''.'' and add, in its place, the text '';''.

§ 15.1107 Maintenance of merchant mariners' records by owner or operator.

For every credentialed mariner employed on a U.S.-documented seagoing vessel, the owner or operator must ensure that the following information is maintained and readily accessible to those in management positions, including the master of the vessel, who are responsible for the safety of the vessel, compliance with laws and regulations, and for the prevention of marine pollution:

* * * * *

(c) Competency in assigned shipboard duties as proven by:

(1) Copies of the mariner's current credentials;

(2) Records of the most recent BST; and

(3) Records of ship-specific familiarization that have been achieved and maintained.

172. Revise § 15.1109 to read as follows:

§ 15.1109 Watches.

Each master of a vessel that operates beyond the boundary line, as described in part 7 of this chapter, must ensure observance of the principles concerning watchkeeping set out in Regulation VIII/2 of the STCW Convention and section A–VIII/2 of the STCW Code (both incorporated by reference in § 15.105).

173. Revise § 15.1111 paragraph (a) to read as follows:

§ 15.1111 Work hours and rest periods.

(a) Every person assigned duty as officer in charge of a navigational or engineering watch, or duty as a rating forming part of a navigational or engineering watch, on board any vessel that operates beyond the boundary line, as described in part 7 of this chapter, must receive a minimum of 10 hours of rest in any 24-hour period.

* * * * *

174. Revise § 15.1113 to read as follows:

§ 15.1113 Vessel Security Officer (VSO)

After July 1, 2009, onboard a seagoing vessel of 200 GRT/500 GT or more, all persons performing duties as VSO must hold a valid endorsement as Vessel Security Officer.

Dated: September 30, 2009.

RADM Brian M. Salerno,

Assistant Commandant for Marine Safety, Security & Stewardship, CG–5

[FR Doc. E9–26821 Filed 11–16–09; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR 17

Endangered and Threatened Wildlife and Plants; Removal of the Brown Pelican (Pelecanus occidentalis) From the Federal List of Endangered and Threatened Wildlife; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0025 ; 92220–1113–0000–C6]

RIN 1018–AV28

Endangered and Threatened Wildlife and Plants; Removal of the Brown Pelican (Pelecanus occidentalis) From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), are removing the brown pelican (*Pelecanus occidentalis*) from the Federal List of Endangered and Threatened Wildlife due to recovery. This action is based on a review of the best available scientific and commercial data, which indicate that the species is no longer in danger of extinction, or likely to become so within the foreseeable future. The brown pelican will remain protected under the provisions of the Migratory Bird Treaty Act.

DATES: The effective date of this rule is December 17, 2009.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov and http://www.fws.gov/southwest/es/Library/.* Supporting documentation used in preparing this final rule will be available for public inspection, by appointment, during normal business hours, at the Service's Clear Lake Ecological Services Field Office, 17629 El Camino Real #211, Houston, Texas 77058–3051.

FOR FURTHER INFORMATION CONTACT: Steve Parris, Field Supervisor, U.S. Fish and Wildlife Service, Clear Lake Ecological Services Field Office, 17629 El Camino Real #211, Houston, Texas 77058–3051; telephone 281/286–8282; facsimile 281/488–5882. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Brown pelican (*Pelecanus occidentalis*) populations currently listed under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) occur in primarily coastal marine and estuarine (where fresh and salt water intermingle) environments along the coast of the Gulf of Mexico from Mississippi to Texas and the coast of Mexico; along the Caribbean coast from Mexico south to Venezuela; along the Pacific Coast from British Columbia, Canada, south through Mexico into Central and South America; and in the West Indies, and are occasionally sighted throughout the United States (Shields 2002, pp. 2–4). Brown pelicans remain in residence throughout the breeding range, but some segments of many populations migrate annually after breeding (Shields 2002, p. 6). Overall, the brown pelican continues to occur throughout its historical range (Shields 2002, pp. 4–5). This rule includes biological and life history information for the brown pelican relevant to the delisting. Additional information about the brown pelican's biology and life history can be found in the Birds of North America, No. 609 (Shields 2002, pp. 1–36).

This rule applies to the entire listed species, which includes all brown pelican (*Pelecanus occidentalis*) subspecies. The species *Pelecanus occidentalis* is generally recognized as consisting of six subspecies: (1) *P. o. occidentalis* (Linnaeus, 1766: West Indies and the Caribbean Coast of South America, occasionally wanders to coasts of Mexico and Florida), (2) *P. o. carolinensis* (Gmelin, 1798: Atlantic and Gulf coasts of the United States and Mexico; Caribbean Coast of Mexico south to Venezuela, South America; Pacific Coast from southern Mexico to northern Peru, South America), (3) *P. o. californicus* (Ridgeway, 1884: California south to Colima, Mexico, including Gulf of California), (4) *P. o. urinator* (Wetmore, 1945: Galapagos Islands), (5) *P. o. murphyi* (Wetmore, 1945: Ecuador and Pacific Coast of Colombia), and (6) *P. o. thagus* (Molina, 1782: Peru and Chile). Recognition of brown pelican subspecies is based largely on relative size and color of plumage and soft parts (for example, the bill, legs, and feet). The distributional limits of the brown pelican subspecies are poorly known, so the geographic descriptions of their ranges are approximate and may not be adequate to assign subspecies designations. Additionally, some authors elevate the Peruvian subspecies to a separate species, Peruvian pelican (*P. thagus*) (*see* Remsen *et al.* 2009). However, the taxonomy of the brown pelican subspecies has not been critically reviewed for many years, and the classification followed by the American Ornithologists' Union (American Ornithologists' Union 1957, pp. 29–30) and by Palmer (1962, pp. 274–276) is based on Wetmore's (1945, pp. 577–586) review, which was based on few specimens from a limited portion of the range. Remsen et al. (2009) does not present a comprehensive taxonomic treatment of all brown pelicans, but rather, relies on already noted morphological differences to propose that *P. o. thagus* be recognized as a full species. Additional taxonomic review of all brown pelicans would be needed to further elucidate the relationships and distributions of the six described subspecies. The original listing of the brown pelican included the species throughout its range and covered all six of the subspecies described above. This rule continues that taxonomic treatment, including the Peruvian brown pelican (*P. o. thagus*).

Previous Federal Actions

On February 20, 2008, we published a 12-month petition finding and proposed rule to remove the brown pelican from the Federal List of Endangered and Threatened Wildlife (73 FR 9408). We solicited data and comments from the public on the proposed rule. The comment period opened on February 20, 2008, and closed on April 21, 2008. Note that this proposed rule addresses the status of brown pelicans throughout their range except where previously delisted along the Atlantic Coast of the United States, in Florida, and in Alabama (50 FR 4938; February 4, 1985). For more information on previous Federal actions concerning the brown pelican, please refer to the proposed rule published in the **Federal Register** on February 20, 2008 (73 FR 9408).

Distribution and Population Estimates

Information on population estimates below is arranged geographically for convenience and to present a logical organization of the information. These broad geographic areas do not necessarily represent populations or other biologically based groupings. The six subspecies described above are not used to organize the following information because distributional limits of the subspecies are poorly known, especially in Central and South America. Additionally, the broad overlap in wintering and breeding ranges among the subspecies introduces considerable uncertainty in assigning subspecies designations in portions of the species range (Shields 2002, p. 5). Because the brown pelican is a wide-ranging, mobile species, is migratory throughout much of its range, and may shift its breeding or wintering areas or distribution in response to local

conditions, it is difficult to define local populations of the species. Much of the population estimate information below is given at the scale of individual countries, which may not correspond with actual biological populations, particularly for smaller countries that may represent only a fraction of the species' range. Direct comparison of all the estimates provided below is difficult because methods used to derive population estimates are not always reported, some population estimates are given as broad ranges, and some do not specify whether the estimates are for breeding birds or include nonbreeding birds as well. However, the information does indicate the broad distribution of the species and reflects the large global population estimate of more than 620,000 birds, which does not include previously delisted birds along the Atlantic coast of the United States, in Florida, or in Alabama (Service 2007a, pp. 44–45).

Gulf of Mexico Coast

Mississippi.—Turcotte and Watts (1999, pp. 84–86) consider the brown pelican a permanent resident of the Mississippi coast, even though there are no records of nesting brown pelicans in Mississippi. Brown pelicans are currently not known to breed in Mississippi, but the annual Christmas Bird Counts have documented wintering brown pelicans in Mississippi since 1985 (National Audubon Society 2009, pp. 1–3). The most recent counts over the winter of 2008–2009 sighted 372 brown pelicans (National Audubon Society 2009, p. 3).

Louisiana.—Before 1920, brown pelicans were estimated to have numbered between 50,000 and 85,000 in Louisiana (King *et al.* 1977a, pp. 417, 419). By 1963, the brown pelican had completely disappeared from Louisiana (Williams and Martin 1968, p. 130). A reintroduction program was conducted between 1968 and 1980. During this period, 1,276 nestling brown pelicans were transplanted from colonies in Florida to coastal Louisiana (McNease *et al.* 1984, p. 169). After the initiation of the reintroduction, the population reached a total number of 16,405 successful nests and 34,641 young produced in 2001 (Holm *et al.* 2003, p. 432).

In 2003, the number of nesting colonies increased, but numbers of successful nests decreased to 13,044 due to four severe storms that eroded portions of some nest islands and destroyed some late nests in various colonies (Hess and Linscombe 2003, Table 2). According to surveys conducted by the Louisiana Department of Wildlife and Fisheries (LDWF), the population appeared to recover from these impacts and a peak of 16,501 successful nests producing 39,021 fledglings was recorded in 2004 (LDWF 2006, p. 1; Hess and Linscombe 2006, p. 13). However, tropical storms in 2004 resulted in the loss of three nesting islands east of the Mississippi River and, after storm events in late 2005, LDWF surveys detected 25,289 fledglings (Hess and Linscombe 2006, p. 13). Surveys in 2006 detected 8,036 successful nests in 15 colonies, producing 17,566 fledglings with an average of 2.1 fledglings per successful nest (Hess and Linscombe 2007, pp. 1, 4). In 2007, there were 14 colonies that produced 24,085 fledglings with an average of 2.2 fledglings per nest (LDWF 2008, pp. 3, 6).

Hess and Linscombe (2007, p. 4) concluded that the brown pelican population in Louisiana is maintaining sustained growth despite lower fledgling production in 2005 and 2006 (a decrease of 31 percent from 2005 to 2006). Fledgling production has increased 37.1 percent from 2006 to 2007 (LDWF 2008, p. 5). Numbers of successful nests are not directly comparable to numbers of individuals in historic estimates because they do not account for immature or nonbreeding individuals or provide an index of population size in years when breeding success is low due to factors such as weather and food availability. However, numbers of successful nests and fledglings produced annually since 1993 (Hess and Linscombe 2007, p. 4; LDWF 2008, p. 4) do indicate continued nesting and successful fledging of young sufficient to sustain a viable population in Louisiana. See ''Storm effects, weather, and erosion impacts to habitat'' under Factor A for further discussion of effects of storms.

Texas.—Brown pelicans historically numbered around 5,000 in Texas but began to decline in the 1920s and 1930s, presumably due to shooting and destruction of nests (King *et al.* 1977a, p. 419). According to King *et al.* (1977a, p. 422), there were no reports of brown pelicans nesting in Texas in 1964 or 1966. There were two known nesting attempts in 1965, but the success of these nests is not known. Annual aerial and ground surveys of traditional nesting colonies conducted in Texas during the period 1967 to 1974 indicated that only two to seven pairs attempted to breed in each of these years. Only 40 young were documented fledging during this entire 8-year period (King *et al.* 1977a, p. 422).

The Texas Colonial Waterbird Census has tracked population trends in Texas for the brown pelican since 1973 (Service 2006, p. 5). Although the Texas population of brown pelicans did not experience the total reproductive failure recorded in Louisiana, the first year (1973) of information from the Texas census identified only one nesting colony with six breeding pairs in the State. Since that time, there was a gradual increase through 1993 when there were 530 breeding pairs in two nesting colonies; in 1994, there was a substantial increase to 1,751 breeding pairs in three nesting colonies (Service 2006, pp. 3–5). Since then, the overall increasing trend has continued with some year-to-year variation (Service 2006, pp. 2–3). The most recent complete count of breeding birds in Texas occurred in 2008 and reported 6,136 pairs (Service 2009c). This number equates to 12,272 breeding birds, which is substantially greater than historical population estimates for Texas.

Gulf Coast of Mexico.—Very little information is available about the status of the brown pelican along the Gulf Coast in Mexico. Aerial surveys indicated that brown pelicans in Mexico were virtually absent as a breeding species along the Gulf of Mexico north of Veracruz by 1968 (Service 1979, p. 10). An aerial survey conducted in March 1986 along this same stretch of coast counted 2,270 birds, down from 4,250 birds estimated in counts conducted between December 1979 and January 1980 (Blankenship 1987, p. 2). However, the counts in 1986 and in 1980 differed in the areas covered and timing of counts and represent only two data points, so it is difficult to compare the earlier and later counts. A recent survey of colonial waterbirds at Laguna Madre de Tamaulipas did not locate brown pelicans (Pronatura and Audubon Texas 2008), although brown pelicans were not sighted there during the 1986 aerial surveys either (Blankenship 1987, Table 1). No other recent information for this portion of the species' range was found, so no conclusions on population trends of the brown pelican for the Mexican portion of the Gulf Coast can be drawn.

Summary of Gulf of Mexico Coast.—Along the U.S. Gulf Coast, brown pelican populations, while experiencing some periodic or local declines, have increased dramatically from a point of near disappearance in the 1960s and 70s. Brown pelicans were present along the Gulf Coast of Mexico in 1986, but we currently lack recent information on the status of the species in this portion of its range.

West Indies

The West Indies refers to a crescent-shaped group of islands occurring in the Caribbean Sea consisting of the Bahamas, the Greater Antilles (including Cuba, Jamaica, Haiti, the Dominican Republic, and Puerto Rico), and the Lesser Antilles (a group of island countries forming an arc from the U.S. Virgin Islands on its northwest end southeast to Grenada). Van Halewyn and Norton (1984, p. 201) summarized the breeding distribution of brown pelicans throughout the Caribbean region and noted at least 23 sites where the species was reliably reported nesting in the islands of the West Indies at some time since 1950. Based on the most recent estimates available at the time, van Halewyn and Norton (1984, p. 201) documented more than 2,000 breeding pairs throughout the West Indies. More recently, Collazo *et al.* (2000, p. 42) estimated the minimum number of brown pelicans throughout the West Indies at 1,500 breeding pairs, and Bradley and Norton (2009, p. 275) estimated the West Indian population at 1,630 breeding pairs. Raffaele *et al.* (1998, pp. 224–225) describe the brown pelican as ''A common year-round resident in the southern Bahamas, Greater Antilles and locally in the northern Lesser Antilles east to Montserrat. It is common to rare through the rest of the West Indies with some birds wandering between islands.''

In a search for additional seabird breeding colonies in the Lesser Antilles, Collier *et al.* (2003, pp. 112–113) did not find brown pelicans nesting on Anguilla, Saba, and Dominica. In an attempt to survey seabirds in St. Vincent and the Grenadines, Hayes (2002, p. 51) found brown pelicans in the central Grenadines. He notes that brown pelicans were once considered common in the Grenadines and suggests that a small nesting colony may exist there, although there is no historical record of nesting.

Anguilla, Montserrat, Jamaica, the Bahamas, and Antigua.—Recent information presented in Bradley and Norton (2009, p. 275) reports 21 breeding pairs in Anguilla, 14 in Montserrat, greater than 150 in Jamaica, 50 in the Bahamas, and 53 in Antigua.

St. Maarten.—Collier *et al.* (2003, p. 113) reported finding two nesting colonies on St. Maarten Island in 2001, with a total of 64 nesting pairs, but in 2002 found no breeding pelicans at one of the two sites surveyed in 2001. Reasons for the lack of breeding activity in 2002 are unknown, although Collier *et al.* (2003, p. 113) suggested a disturbance event could have been the cause. The May 2006 newsletter for the Society for the Conservation and Study of Caribbean Birds (Society for the Conservation and Study of Caribbean Birds 2006) notes that St. Maarten's proposed Important Bird Areas of Fort Amsterdam and Pelikan Key host regionally important populations of nesting brown pelicans, although numbers of nesting birds are not given.

Puerto Rico and U.S. Virgin Islands.—Collazo *et al.* (1998, pp. 63–64) compared demographic parameters between 1980–82 and 1992–95 for brown pelicans in Puerto Rico. The mean number of individuals observed during winter aerial population surveys between 1980 and 1982 was 2,289, while mean winter counts from 1992 to 1995 averaged only 593 birds (Collazo *et al.* 1998, p. 63). Reasons for the decrease in number of wintering birds between the two periods are not known; however, migrational shifts could have contributed to the decrease in winter counts between survey periods (Collazo *et al.* 1998, p. 63). The number of nests observed at the selected study sites did not show such an appreciable decline during the same period for Puerto Rico and the nearby U.S. Virgin Islands, with nest counts ranging from 167 to 250 during 1980 to 1982, compared with 222 and 256 during 1992 to 1993 (Collazo *et al.* 1998, p. 64). Collazo *et al.* (2000, p. 42) estimated approximately 120–200 nesting pairs in Puerto Rico and 300–350 nesting pairs in the U.S. Virgin Islands. Information provided by Puerto Rico's Department of Natural and Environmental Resources places population estimates in the same relative range as Collazo *et al.* (1998) with an average of 437 individuals found in aerial surveys conducted from 1996 to 2004 (Department of Natural and Environmental Resources 2008, pp. 1, 3), although it is not known if these were summer or winter surveys. Additionally, the U.S. Virgin Islands' Department of Planning and Natural Resources reports that about 300 nesting pairs have been counted in the U.S. Virgin Islands annually (Department of Planning and Natural Resources 2008, p. 1), a comparable number to that reported by Collazo *et al.* (1998). Finally, more recent information from Bradley and Norton (2009, p. 275) reports 265 breeding pairs in Puerto Rico and 325 breeding pairs in the U.S. Virgin Islands.

Cuba.—Acosta-Cruz and Mugica-Valdés (2006, pp. 10, 65) reported that brown pelicans are a common resident species, with the population augmented by migrants during the winter. Brown pelicans have been documented nesting at five sites in the Archipiélago Sabana-Camagüey and in the Refugio de Fauna Río Máximo (Acosta-Cruz and Mugica-Valdés 2006, pp. 32–33). The number of nesting pairs at Refugio de Fauna Río Máximo was estimated at 16 to 36 pairs during monitoring in 2001 and 2002 (Acosta-Cruz and Mugica-Valdés 2006, p. 33). No estimates were given for other nesting sites. More recent data from Bradley and Norton (2009, p. 275) estimates there to be 300 nesting pairs in 18 colonies in Cuba.

Aruba.—Information provided by Veterinary Service of Aruba, the country's Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; 27 U.S.T. 1087) Management Authority, estimates the breeding population on the island to be 20 pairs with a total population estimate of 60 individuals (Veterinary Service of Aruba 2008, p. 1).

Summary of West Indies.—Although we do not have detailed information on brown pelicans throughout all of the islands of the West Indies, the distribution and abundance of current breeding colonies reported by Collazo *et al.* (2000, p. 42), van Halewyn and Norton (1984, pp. 174–175, 201), and Bradley and Norton (2009, p. 275) are all similar and in the range of 1,500 to 2,000 breeding pairs.

Caribbean and Atlantic Coasts of Mexico, Central America, and South America

No comprehensive population estimates for the Caribbean and Atlantic Coasts of Central and South America are available to our knowledge, although some estimates for other portions of the species' range include birds that nest on the mainland coast or offshore islands (e.g., van Halewyn and Norton's estimate of 6,200 pairs in the Caribbean included birds nesting on the mainland and offshore islands of Colombia and Venezuela (1984, p. 201)).

Mexico.—Isla Contoy Reserva Especial de la Biosfera off the coast of Cancun, Quintana Roo, Mexico, was the site of Mexico's largest brown pelican nesting colony in 1986, with 300 nesting pairs (Blankenship 1987, p. 2). By the spring of 1996, 700 to 1,000 pairs of brown pelicans were estimated to be nesting on Isla Contoy (Shields 2002, p. 35). Four other colonies in this region accounted for 128 nesting pairs in 1986 (Blankenship 1987, p. 2).

Belize.—Miller and Miller (2006, pp. 7, 64) analyzed Christmas Bird Count data collected in Belize from 1969–2005 and reported that brown pelican numbers over this period have remained about the same. References compiled and summarized by Miller and Miller (2006, pp. 144–149) variously report

brown pelicans as: ''Common: high density, likely to be seen many places,'' ''Transient, present briefly as migrant,'' ''Resident, species present all year,'' and ''apparently secure in Belize.'' Brown pelicans are also reported in one reference as nesting on several cays (small, low islands composed largely of coral or sand), but no information on number of nesting birds or locations are given.

Guatemala.—Brown pelicans in Guatemala are considered to be a breeding resident (Eisermann 2006, p. 55), although locations of nesting sites and number of breeding pairs are not given. Eisermann (2006, p. 65) estimated the Caribbean slope population of brown pelicans in Guatemala to consist of approximately 376 birds.

Honduras.—Thorn *et al.* (2006, p. 29) report brown pelicans nesting on the Caribbean coast of Honduras and offshore islands. Brown pelicans are reported as a common resident in Honduras, with numbers estimated to range between 10,000 and 25,000 birds and a stable population trend (Thorn *et al.* 2006, p. 20).

Nicaragua.—Zolotoff-Pallais and Lezama (2006, p. 74) report that the number of brown pelicans within Nicaragua falls within the range 1001–5000 and is stable, although they do not indicate whether this estimate represents only breeding birds.

Costa Rica.—Brown pelicans are considered a resident species in Costa Rica, but are not reported nesting on the Caribbean coast of Costa Rica (Quesada 2006, pp. 9, 46).

Panama.—Brown pelicans primarily nest in the Gulf of Panama on the Pacific coast with no nesting reported on the Caribbean coast (Angehr 2005, pp. 15–16). However, brown pelicans do winter along the Caribbean coast of Panama. In 1993, 582 brown pelicans were counted in Panama (Shields 2002, p. 22) along the Caribbean coast, and Angehr (2005, p. 79) considers brown pelicans to be a ''fairly common migrant'' along the Caribbean coast.

Colombia.—Moreno and Buelvas (2005, p. 57) report that brown pelicans occur at four sites on the Caribbean coast of Colombia, with a good population of brown pelicans in the coastal wetlands of La Guajira. However, no estimate of numbers of breeding birds was given. Information provided by Colombia's Instituto de Investigaciones Marinas y Costeras (INVEMAR) report approximately 20 breeding pairs on the Caribbean coast of Colombia with additional migratory birds present (INVEMAR 2008).

Venezuela.—Based on aerial surveys of the Venezuelan coast, Guzman and Schreiber (1987, p. 278) estimated a population size of 17,000 brown pelicans in 25 colonies. Within those breeding colonies, 3,369 nests were counted (Guzman and Schreiber 1987, p. 278). More recently, Rodner (2006, p. 9) confirms that there are approximately 25 brown pelican colonies in Venezuela. Rodner (2006, p. 9) does not give an overall estimate of the brown pelican population in Venezuela but notes more than 1,700 nests have been documented in four of the largest breeding colonies, while another recent census of four sites resulted in counts of 2,097 pelicans.

South of Venezuela, brown pelicans are reported as a nonbreeding migrant in Guyana (Johnson 2006, p. 5), French Guiana (Delelis and Pracontal 2006, p. 57), Surinam (Haverschmidt 1949, p. 77; Ottema 2006, p. 3), and Brazil (De Luca *et al.* 2006, pp. 3, 40)

Summary of the Caribbean/Atlantic Coast.—In general, brown pelicans are broadly distributed on the Caribbean and Atlantic coasts of southern Mexico and Central and South America and are still present throughout their historic range with population numbers likely in the range of 30,000 to 50,000 birds, based on the numbers presented above.

California and Pacific Coast of Northern Mexico

The most recent population estimate of the brown pelican subspecies that ranges from California to Mexico along the Pacific Coast is approximately 70,680 nesting pairs, which equates to 141,360 breeding birds (Anderson *et al.* 2007, p. 8). They nest in four distinct geographic areas: (1) The Southern California Bight (SCB), which includes southern California and northern Baja California, Mexico; (2) southwest Baja California; (3) the Gulf of California, which includes coastlines of both Baja California and Sonora, Mexico; and (4) mainland Mexico further south along the Pacific coastline (including Sinaloa and Nayarit) (Service 1983, p. 8).

During the late 1960s and early 1970s, the SCB population declined to fewer than 1,000 pairs and reproductive success was nearly zero (Anderson *et al.* 1975, p. 807). In 2006, approximately 11,695 breeding pairs were documented at 10 locations in the SCB: 3 locations on Anacapa Island, 1 on Prince Island, and 1 on Santa Barbara Island in California; 3 on Los Coronados Islands, 1 on Islas Todos Santos, and 1 on Isla San Martín in Mexico within the SCB (Henny and Anderson 2007, p. 9; Gress 2007). In 2007, brown pelicans in California nested on west Anacapa Island and Santa Barbara Island but did not nest on Prince Island (Burkett *et al.* 2007, p. 8). The populations on Todos Santos and San Martín islands were previously extirpated in 1923 and 1974, respectively; however, these were recently found to be occupied (Gress *et al.* 2005, pp. 20–25). Todos Santos Island had about 65 nests in 2004, but there were no nests in 2005. This colony is currently considered to be ephemeral, occurring some years and then not others (Gress *et al.* 2005, p. 28). At San Martín Island, 35 pairs were reported in 1999, a small colony was noted in 2000, and 125–200 pairs were seen in 2002, 2003, and 2004 (Gress *et al.* 2005, pp. 20–25).

The southwest Baja California coastal population has about 3,100 breeding pairs, the Gulf of California population is estimated at 43,350 breeding pairs, and the mainland Mexico populations (including islands) is estimated to have 12,385 breeding pairs (Anderson *et al.* 2007, p. 8). The Gulf of California population remained essentially the same from 1970 to 1988 (Everett and Anderson 1991, p. 125). It is thought that populations in Mexico have been stable since the early 1970s (when long-term studies began) because of their lower exposure to organochlorine pesticides (e.g., DDT), although annual numbers at individual colonies fluctuate widely due to prey availability and human disturbance at colonies (Everett and Anderson 1991, p. 133).

Summary of California and Pacific Coast of Northern Mexico.—Henny and Anderson (2007, pp. 1, 8) concluded that their preliminary estimates of nesting pairs in 2006 suggest a large and healthy total breeding population for California and the Pacific coast of Mexico.

Pacific Coast of Central America and South America

As with the Caribbean and Atlantic coasts of Central and South America, there are no comprehensive population estimates for brown pelicans along this portion of their range.

Guatemala, El Salvador, Honduras, and Nicaragua.—Brown pelicans are considered a nonbreeding visitor on the Pacific slope of Guatemala (Eisermann 2006, p. 4) with an estimated abundance of 2,118 birds. About 800 brown pelicans are widely distributed along the Pacific Coast of El Salvador (Ibarra Portillo 2006, p. 2). However, Herrera *et al.* (2006, p. 44) reported brown pelicans to be a nonbreeding visitor in El Salvador with numbers falling within the range 1,001–10,000 and an increasing trend. Brown pelicans occur on the Pacific Coast of Honduras but are not reported to nest there (Thorn *et al.* 2006, p. 26, 29). Zolotoff-Pallais and Lezama (2006, p. 74) report that the

number of brown pelicans within Nicaragua falls within the range 1,001–5,000, but do not indicate locations or breeding status.

Costa Rica.—The Costa Rican Ministry for Environment and Energy has reported that several breeding colonies exist on the Pacific Coast from the Nicaraguan border to the Gulf of Nicoya and include the islands of Bolanos and Guayabo (Service 2007a, p. 13). Shields (2002, p. 35) estimated as many as 850 pairs in Costa Rica. However, Quesada (2006, p. 37) estimated the brown pelican population in Costa Rica to fall within the range 10,000–25,000 birds with a stable population trend.

Panama.—Estimates of brown pelicans in Panama have varied greatly over the years. In 1981, Batista and Montgomery (1982, p. 70) estimated that 25,500 adults and chicks were known to occur on just the Pearl Island Archipelago in the Gulf of Panama. In 1982, Montgomery and Murcia (1982, p. 69) estimated 70,000 adults occurred at 7 colonies within the Gulf of Panama. By 1988, 6,031 brown pelicans were known from just the Gulf, while in 1998, only 3,017 brown pelicans were thought to occur along the entire Pacific Coast of Panama, including the Gulf (Shields 2002, p. 22). By 2005, 4,877 brown pelican nests were reported just in the Gulf of Panama and a total population was estimated to be about 15,000 individuals for the entire Pacific Coast of Panama, which includes 150 nests found at Coiba Island in 1976 (Angehr 2005, p. 6). Angehr (2005, p. 12) also reported that those individual colonies that had been studied experienced an overall increase of 70 percent in nest numbers from 1979 to 2005, and describes the brown pelican on the Pacific Coast of Panama as an ''abundant breeder.''

Colombia.—Moreno and Buelvas (2005, p. 57) list brown pelicans as occurring at three protected sites on the Pacific coast of Colombia: Malpelo Island, Gorgona Island, and Sanquianga. Naranjo *et al.* (2006b, p. 178) estimated 2,000–4,000 brown pelicans at Sanquianga on the mainland and 4,800–5,200 on Gorgona Island. Brown pelicans were considered to be one of the most abundant resident species in a 1996–1998 assessment of waterbird populations on the Pacific Coast of Colombia (Naranjo *et al.* 2006a, p. 181). Naranjo *et al.* (2006b, p. 179) concluded that preliminary results of their waterbird monitoring program on the Pacific coast of Colombia indicate that populations of Pelecaniformes (which include brown pelicans) in the three protected areas are stable. INVEMAR (2008) also report approximately 3,000 breeding pairs known from the Pacific coast of Colombia, which represents approximately 6,000 birds and is consistent with estimates by Naranjo *et al.* (2006b).

Ecuador.—On Ecuador's Galapagos Islands, Shields (2002, p. 35) cites reports of a few thousand pairs. Delaney and Scott (2002, p. 29) estimated the population on the Galapagos to be 5,000 birds. Santander *et al.* (2006, pp. 44, 49) reported that brown pelicans in the Galapagos number less than 10,000 and are considered common there, while populations on the mainland range from 25,000 to 100,000. The Ministerio del Ambiente of Ecuador has reported that nesting brown pelicans are widely distributed and fairly common along the mainland coast of that country (Rojas 2006).

Peru.—Shields (2002, p. 22) summarizes estimates of brown pelicans in Peru at 420,000 adults in 1981–1982, 110,000 in 1982–1983, 620,000 in 1985–1986, and 400,000 in 1996. Franke (2006, p. 10) reported that a 1997 survey of guano birds counted 140,000 brown pelicans with an increasing population trend reported; however, it is unclear from the report whether that number represents a total estimate of the brown pelican population in Peru or a subset of birds nesting on islands managed for guano production.

Chile.—The range of brown pelicans in Chile extends from the extreme northern city of Arica (Rodríguez 2006) to occasionally as far south as Isla Chiloé (Aves de Chile 2006, p. 1). The total population size for Chile is unknown (Shields 2002, p. 35). The breeding population on Isla Pájaro Niño in central Chile was 2,699 pairs in 1995–1996, 1,032 pairs in 1996–1997, and none during the 1997–1998 El Niño (a temporary oscillation of the ocean-atmosphere system) year (Simeone and Bernal 2000, p. 453).

Two sightings of brown pelicans in Argentina in 1993 and 1999 are considered ''hypothetical'' records because they are not documented by specimens, photographs, or other concrete evidence (Lichtschein 2006).

Summary of Pacific Coast of Central and South America.—Brown pelicans are abundant breeders along the Pacific coast of Central and South America with population numbers in the range of 65,000 to 200,000 birds, not including an estimated 400,000 birds in Peru.

Summary—Global Distribution and Population Estimates

As discussed above, currently listed brown pelican populations are widely distributed throughout the coast of the Gulf of Mexico from Mississippi to Texas and the coast of Mexico; along the Caribbean coast from Mexico south to Venezuela; along the Pacific Coast from British Columbia, Canada, south through Mexico into Central and South America; and in the West Indies. Population estimates for various States, regions, and countries reviewed above are not strictly comparable because they were not made using any standard protocol or methodology, and in many cases the process by which the estimates were developed is not described. For example, surveys conducted in different parts of the year may yield differing results due to migratory trends and breeding patterns. While in some cases these estimates may be reliable in describing local abundance and trends, because of their incomparability, they have limited value in estimating absolute size or trends in the global population.

During our 5-year status review of the brown pelican, we estimated the global listed brown pelican population based on the best available information at the time of the review, which included most but not all of the individual estimates given above. Although these estimates represented the best available information at the time of the review, because of the lack of standardization and major differences in determining population estimates, we used conservative assumptions in tabulating these data in order to make a conservative estimate of the global population size of the brown pelican (*see* Service 2007a, pp. 43–45 and 60–62). Specifically, where only numbers of nests are known, the total number of nests was simply doubled to obtain an estimate of total population size for an area. This method likely underestimates the population size because there are likely to be unpaired or immature nonbreeders in the population. Additionally, where a population estimate found in the literature was a range of numbers, the lower number was used in calculating the global estimate. Population size is merely one factor in determining whether a species is recovered, and this approach assures we are making our determination in a manner that is protective of the species.

This total, or global estimate, as given in our 5-year review, is for the listed brown pelican, which does not include the Atlantic coast of the United States, Florida, and Alabama. The total based on regional estimates is over 620,000 individuals, which includes an estimated 400,000 pelicans from Peru (Service 2007a, pp. 43–45 and 60–62). This is likely a conservative estimate given that estimates for some countries

given above (for example, estimates for Colombia and Cuba) were not readily available at the time we conducted our 5-year review. Other recent estimates yield similar numbers. Kushlan *et al.'s* (2002, p. 64) estimate for the North American Waterbird Conservation Plan area, which includes Canada, the United States, Mexico, Central America, the Caribbean, and Caribbean islands of Venezuela, was 191,600–193,700 breeders. Delaney and Scott (2002, p. 29) applied a correction factor to Kushlan *et al.'s* estimate to account for immature birds and nonbreeders to estimate a population of 290,000 birds. Neither estimate includes birds on the Pacific Coast of South America. Delaney and Scott (2002, p. 29) additionally estimated the brown pelican population on the Galapagos to be about 5,000 birds, and the population on the Pacific Coast of South America (estimate is for the subspecies *Pelecanus occidentalis thagus,* found in Peru and Chile) to range from 100,000–1,000,000 birds. Shields' (2002, p. 21) population estimate of 202,600–209,000 brown pelicans also did not include the Peruvian subspecies. While each of these estimates covers slightly different areas, they are all in general agreement and indicate that the listed population of brown pelicans, excluding the Peruvian subspecies, totals 200,000 or more individuals, while the Peruvian subspecies numbers in the few hundred thousand.

Recovery Plan

Section 4(f) of the Act directs us to develop and implement recovery plans for listed species. While brown pelicans were listed throughout their range, recovery planning efforts for the brown pelican focused primarily on those portions of the species' range within the United States. We have published three recovery plans for the brown pelican: (1) Recovery Plan for the Eastern Brown Pelican (Service 1979); (2) the California Brown Pelican Recovery Plan (Service 1983); and (3) Recovery Plan for the Brown Pelican in Puerto Rico and the U.S. Virgin Islands (Service 1986).

Section 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation and survival of threatened and endangered species, unless we find that such a plan will not promote the conservation of the species. The Act directs that, to the maximum extent practicable, we incorporate into each plan: (1) Site-specific management actions that may be necessary to achieve the plan's goals for conservation and survival of the species; (2) objective, measurable criteria, which when met would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the list; and (3) estimates of the time required and cost to carry out the plan. However, revisions to the List (adding, removing, or reclassifying a species) must reflect determinations made in accordance with section 4(a)(1) and 4(b). Section 4(a)(1) requires that the Secretary determine whether a species is threatened or endangered (or not) because of one or more of five threat factors. Therefore, recovery criteria must indicate when a species is no longer threatened or endangered by any of the five factors. In other words, objective, measurable criteria, or recovery criteria, contained in recovery plans must indicate when an analysis of the five threat factors under 4(a)(1) would result in a determination that a species is no longer threatened or endangered. Section 4(b) requires the determination made under section 4(a)(1) as to whether a species is threatened or endangered because of one or more of the five factors be based on the best available science.

Thus, while recovery plans are intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulation required under section 4(a)(1). Determinations to remove a species from the list made under section 4(a)(1) must be based on the best scientific and commercial data available at the time of the determination, regardless of whether that information differs from the recovery plan.

In the course of implementing conservation actions for a species, new information is often gained that requires recovery efforts to be modified accordingly. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met For example, one or more criteria may have been exceeded while other criteria may not have been accomplished, yet the Service may judge that, overall, the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, planning, implementing, and evaluating the degree of recovery of a species that may, or may not, fully follow the guidance provided in a recovery plan.

Thus, while the recovery plan provides important guidance on the direction and strategy for recovery, and indicates when a rulemaking process may be initiated, the determination to remove a species from the List is ultimately based on an analysis of whether a species is no longer threatened or endangered. The following discussion provides a brief review of recovery planning for the brown pelican, as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the species.

The Recovery Plan for the Eastern Brown Pelican, which includes the Atlantic and Gulf Coasts of the United States, does not identify recovery criteria because the causes of the species' decline were not well understood at the time the plan was prepared. The recovery team viewed the wide distribution of the species, rather than absolute numbers, as the species' major strength against extinction (Service 1979, p. iv). This recovery plan also addressed brown pelicans in Alabama, Florida, and the Atlantic Coast of the United States, but because these populations have already been delisted, we only discuss the plan's objectives for the portion of the range that remained listed in Louisiana and Texas.

The recovery plan states a general objective to reestablish brown pelicans on all historically used nesting sites in Louisiana and Texas (Service 1979, p. iii). The plan identified 9 sites in Louisiana and 11 sites in Texas. These included historic, current (at the time of the recovery plan), and restored islands. Since 2005, brown pelicans have nested at between 11 and 15 sites in Louisiana and at 12 sites in Texas (Hess and Linscombe 2006, pp. 1–4, 7–8; Service 2006, p. 2). These sites include some of the same sites identified in the recovery plan as well as previously unknown or newly colonized sites.

The number and location of nesting sites has varied from year to year along the Gulf Coast due in part to frequent tropical storms, but generally meet the recovery plan goals for number of

nesting sites. The northern Gulf of Mexico coast is subject to frequent severe tropical storms and hurricanes, which can cause significant changes to brown pelican nesting habitat. Past storms have resulted in changes to or loss of historical nesting sites, but brown pelicans seem well adapted to responding to losses of breeding sites by moving to new locations (Hess and Durham 2002, p. 7; Wilkinson *et al.* 1994, p. 425; Williams and Martin 1968, p. 136), and the species has clearly shown its ability to rebound (Williams and Martin 1968, p. 130; Holm *et al.* 2003, p. 432; Hess and Linscombe 2006, pp. 5, 13) (*see* ''Storm effects, weather, and erosion impacts to habitat'' under Factor A for further discussion).

While nesting is not occurring on all historically identified sites in Texas and Louisiana, the number of currently used nesting sites meets or exceeds the numbers identified in the recovery plan and supports sustainable populations of brown pelicans. Because brown pelicans have demonstrated the ability to move to new breeding locations when a nesting island is no longer suitable, meeting the exact number and location of nesting sites in Texas and Louisiana identified in the recovery plan is not necessary to achieve recovery for the brown pelican. As discussed further below, we also have considered the population's wide distribution, numbers, and productivity as indicators that the threats have been reduced such that the population is recovered and sustainable.

The Recovery Plan for the Brown Pelican in Puerto Rico and the U.S. Virgin Islands has delisting criteria solely for the area covered by the plan. The criteria are to maintain a 5-year observed mean level of: (1) 2,300 individuals during winter, and (2) 350 breeding pairs at the peak of the breeding season. Both recovery criteria are solely based on demographic characteristics and do not provide an explicit reference point for determining whether threats have been reduced. The levels in the criteria were based on studies of brown pelicans from 1980 to 1983 (Collazo 1985). Subsequent winter counts from 1992 to 1995 in Puerto Rico were 74 percent lower than during 1980–1982 (593 individuals compared to 2,289). Although the 1992 to 1995 counts did not include the Virgin Islands, it appears likely that the first criterion had not been met as of 1995 (Collazo *et al.* 1998). However, reasons for lower counts are unknown. Collazo *et al.* (1998, pp. 63–64) concluded that habitat was not limiting and suggested that migrational shifts could have contributed to the decrease in numbers and that longer term monitoring of at least 6 to 8 years is needed to define an acceptable range of population parameters for brown pelicans in the Caribbean. Collazo *et al.* (1998, p. 64) also concluded that contaminants are not affecting brown pelican reproduction.

Thus, while the first criterion, based on 4 years of data, may not be sufficient to establish a realistic figure to reflect recovery, it also does not address whether threats to the species are still present. Also, because the criterion applies to only a small portion of the species' range, as well as only a portion of the species' range in the Caribbean, we do not consider it relevant for determining whether the brown pelican is recovered globally. Of the two recovery criteria, the second criterion is the more appropriate to the evaluation of the status of the species as it reflects population productivity. The number of pairs seemed to be holding steady between the early 1980s and the 1990s with estimates given by Collazo *et al.* (2000, p. 42) of 165 pairs for Puerto Rico and 305–345 pairs for the U.S. Virgin Islands. While this estimate is not a 5-year observed mean, the estimated number is consistent with the recovery criterion for number of breeding pairs. Moreover, data from the U.S. Virgin Islands (Department of Planning and Natural Resources 2008, p. 1) supports the Collazo *et al.* (2000, p. 42) numbers by estimating the brown pelican population there at about 300 breeding pairs.

The California Brown Pelican Recovery Plan only covers the California brown pelican subspecies (*P. o. californicus*), which includes the Pacific Coast of California and Mexico, including the Gulf of California. The primary objective of this recovery plan is to restore and maintain stable, self-sustaining populations throughout this portion of the species' range. To accomplish this objective, the recovery plan calls for: (1) Maintaining existing populations in Mexico; (2) assuring long-term protection of adequate food supplies and essential nesting, roosting, and offshore habitat throughout the subspecies' range; and (3) restoring population size and productivity to self-sustaining levels in the SCB at both the Anacapa and Los Coronados Island colonies. Existing populations appear to be stable in Mexico and throughout the subspecies range (Everett and Anderson 1991, p. 133; Henny and Anderson 2007, pp. 1, 8), food supplies are assured by the Coastal Pelagic Species Fishery Management Plan, and the majority of essential nesting and roosting habitat throughout the subspecies' range is protected (*see* ''Summary of Factors Affecting the Species'' below for further discussion). Therefore, criteria 1 and 2 of the recovery plan have been met.

For population and productivity objectives, the recovery plan included the following additional criterion: (a) When any 5-year mean productivity for the SCB population reaches at least 0.7 young per nesting attempt from a breeding population of at least 3,000 pairs, the subspecies should be considered for reclassification from endangered status to threatened status; and (b) When any 5-year mean productivity for the SCB population reaches at least 0.9 young per nesting attempt from a breeding population of at least 3,000 pairs, the subspecies should be considered for delisting. Consideration for reclassification to threatened would require a total production averaging at least 2,100 fledglings per year over any 5-year period. Consideration for delisting would require a total production averaging at least 2,700 fledglings per year over any 5-year period.

The criterion, including both productivity and population size, for downlisting to threatened has been met at least 10 times since 1985. The delisting population criterion of at least 3,000 breeding pairs has been exceeded every year since 1985, with the exception of 1990 and 1992, which saw only 2,825 and 1,752 pairs, respectively. In most years, the nesting population far exceeds the 3,000 pair delisting goal; it has exceeded 6,000 pairs for 10 of the last 15 years (Gress 2005). Additionally, the delisting criterion of at least 2,700 fledglings per year over any 5-year period has been met at least 11 times since 1985 (Gress 2005). However, although productivity has improved greatly since the time of listing, the productivity criterion for delisting has not been met and the SCB population consistently has low productivity, with a mean of 0.63 young fledged per nesting attempt from 1985 to 2005 (Gress and Harvey 2004, p. 20; Gress 2005).

Productivity is an important parameter used for evaluating population health; however, it is difficult to determine an objective and appropriate minimum value. The 0.9 young per nesting attempt given in the recovery plan was the best estimate based on a review of brown pelican reproductive parameters in Florida and the Gulf of California (Schreiber 1979, p. 1; Anderson and Gress 1983, p. 84), because pre-DDT productivity for the SCB population was unknown. Despite the fact that this goal has not been

reached, reproduction has been sufficient to maintain a stable population for more than 20 years. Most colonies expanded during this interval, including the long-term colonization of Santa Barbara Island, which suggests that productivity has been sufficient to maintain a stable-to-increasing population. In conclusion, the first two recovery criteria for the California Brown Pelican Recovery Plan have been met. As discussed above, the population component of the third criterion has been far exceeded, while the productivity component has not been met. We have concluded, based on current population size and productivity, that the productivity component of the third criterion is no longer appropriate because current productivity is sufficient to maintain a viable population of brown pelicans. Please see responses to comments 6 and 8 below for additional discussion of the productivity criterion.

Recovery Planning Summary—The three recovery plans for the brown pelican discussed above have not been actively used in recent years to guide recovery of the brown pelican because they are either outdated, lack recovery criteria for the entire species, or in the case of the eastern brown pelican, lack recovery criteria altogether. No subsequent revisions have been made to any of these original recovery plans. No single recovery plan covers the entire range of the species in the United States, and the remainder of the range outside the United States, including Central America, South America, and most of the West Indies is not covered by a recovery plan. Additionally, the recovery criteria in these plans do not specifically address the five threat factors used for listing, reclassifying, or delisting a species as outlined in section 4(a)(1) of the Act. Consequently, the recovery plans do not provide an explicit reference point for determining the appropriate legal status of the brown pelican based either on alleviating the specific factors that resulted in its initial listing as an endangered species or on addressing new risk factors that may have emerged since listing. As noted above, recovery is a dynamic process and analyzing the degree of recovery requires an adaptive process that includes not only evaluating recovery goals and criteria but also new information that has become available. Thus, while some recovery criteria and many of the goals in the three brown pelican recovery plans have been met, our evaluation of the status of the brown pelican in this rule is based largely on the analysis of threats in our recently completed 5-year review (Service 2007a, pp. 1–66), available at *http://ecos.fws.gov/docs/five_year_review/doc1039.pdf,* and presented below.

Summary of Public and Peer Review Comments and Recommendations

In our February 20, 2008 proposed rule, we requested all interested parties submit information, data, and comments concerning multiple aspects of the status of the brown pelican. The comment period was open from February 20, 2008, through April 21, 2008.

In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited opinions from eight expert scientists who are familiar with this species regarding pertinent scientific data and assumptions relating to supportive biological and ecological information for the proposed rule. Reviewers were asked to review the proposed rule and the supporting data, to point out any mistakes in our data or analysis, and to identify any relevant data that we might have overlooked. Four of the eight peer reviewers submitted comments. Three of those four were generally supportive of the proposal to remove the brown pelican from the Federal List of Threatened and Endangered Species while the fourth reviewer did not offer an opinion. Their comments are included in the summary below and/or incorporated directly into this final rule.

During the 60-day comment period, we received comments from 19 individuals, organizations, and government agencies. We have read and considered all comments received. We updated the rule where it was appropriate, and we responded to all substantive issues received, below.

Peer Review Comments

(1) Comment: The inclusion of brown pelicans on the List (Federal List of Threatened and Endangered Wildlife) has provided us with a means of protecting habitat that has also protected many other species that share the marine habitat with the brown pelican. With this delisting, we will lose protections afforded to all these other marine species.

Response: When making listing and delisting determinations, we are only to consider the best scientific and commercial information data in preparing the five-factor analysis. This analysis has us consider a variety of impacts to the species in question and the regulatory mechanisms that may mitigate those impacts, but does not allow us to consider impacts of listing and delisting on other species. However, brown pelicans will remain protected by the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–711; 40 Stat. 755) and, as discussed below, numerous other mechanisms confer protections to the brown pelican and to other species and habitats that are not dependent on the protections afforded brown pelicans by the Endangered Species Act.

(2) Comment: Multiple commenters expressed concerns over our global population estimate, specifically noting that the number reached is vague and speculative because a complete and coordinated survey for the entire species has never been done. Reviewers requested use of additional information if possible and, if not possible, inclusion of a more thorough justification for relying on the old and widely varying data in our global population estimate.

Response: The Act directs that we use the best scientific and commercial data available in making our determinations. This rulemaking was initially prompted by a petition to delist the species (*see* the ''Previous Federal Actions'' section of our proposed rule (February 20, 2008; 73 FR 9408)). In order to fulfill our requirements to respond to the petition and complete the rulemaking process once begun, we are statutorily required to make a determination at this time based on the best scientific and commercial data currently available to us. We recognize that additional research and coordinated efforts would yield a more reliable and accurate global population estimate. We have used the best available scientific and commercial data in developing our global population estimate. However, we have not relied solely upon this estimate in making our determination that the brown pelican no longer warrants listing. This number is developed and presented in efforts to provide the reader a general estimate of the scale of the global population, allow comparisons with other available estimates, and provide a summary and conclusion of the various estimates provided. While the accuracy of the specific number cannot be determined due to differences in survey methodology and information quality, the relative scale of the number, in the hundreds of thousands, is useful in demonstrating the degree of recovery the species has acheived and the absence of significant threats to the species. We have expanded the discussion under the ''Summary—Global Population Estimate'' section to further explain our rationale in developing this estimate.

(3) Comment: The discussion of the significance of the Puerto Rico brown

pelicans makes it seem that the Service is saying these birds are not important.

Response: In evaluating the brown pelican and whether it continues to require regulatory protection under the Act, we have looked at the species from a range-wide perspective first. The species' population numbers have rebounded and threats have been removed or reduced to the point that protection under the Act is no longer needed range wide. Next, we assessed whether any population may be experiencing localized threats over a significant portion of the range of the pelican such that its loss would lead to the species as a whole being at a greater risk of extinction. As discussed in ''Significant Portion of the Range'' section below, we have determined that the Puerto Rico population does not warrant listing as a significant portion of the range of the species, although this analysis does not imply that any subspecies, population, or subpopulation of brown pelican is not important to the long-term conservation of the brown pelican. In addition, once the pelican is delisted, brown pelicans will remain protected by the Migratory Bird Treaty Act and numerous other mechanisms, as discussed below. We will continue working with the Puerto Rico Department of Natural Resources through the post-delisting monitoring process to monitor the status of the brown pelican in Puerto Rico.

(4) Comment: A complete study of the genetics of the entire species would seem to be strongly warranted in order to further elucidate unique, small breeding populations.

Response: We agree and encourage continued research on the brown pelican; however, we don't believe a full understanding of the genetics of each individual breeding population is required in order to make our delisting decision, especially in the face of decreased threats and increased conservation and management opportunities.

(5) Comment: While population numbers confirm that delisting is the correct action, threats to the brown pelican still remain. There needs to be monitoring of the brown pelican and the marine environment post-delisting.

Response: Under section 4(g)(1) of the Act, we are required to monitor all species that have been recovered and delisted for at least 5 years post-delisting. On September 30, 2009 (74 FR 50236), we announced the availability of a draft post-delisting monitoring plan for the brown pelican which we expect to finalize within a year. We do not anticipate any of the factors currently affecting the brown pelican to become a threat to the status of the species in the future; however, if at any time during the monitoring program, data indicate that the protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

(6) Comment: A peer reviewer noted that the productivity criterion developed in the California Brown Pelican Recovery Plan was somewhat subjective and based on comparisons to brown pelican productivity elsewhere. Despite this problem, the peer reviewer notes that the overall conclusions reached in the proposed rule concerning these productivity criteria—that a significant recovery has occurred in the Southern California Bight—are reasonable and logical.

Response: While recovery planning and the recovery criteria often included in recovery plans provide useful tangible benchmarks for the planning of conservation, the Act requires us to base listing and delisting assessments on the status of the species and an analysis of the factors affecting the species. This process allows us to determine that a species has achieved recovery even if it has not met all of its recovery criteria. In this case, the significant recovery of the California populations of brown pelican in terms of population trends and total population numbers has been deemed indicative of recovery of the species, although the specific productivity goal has not been met. *Please see* the ''Recovery Plan'' section above for additional discussion.

(7) Comment: Multiple commenters requested the Service to consider various updates to the Act, the Act's implementing regulations, and the recovery planning process. A peer reviewer specifically indicated that the Act has become ''out-of-step'' with principles that have more recently emerged from the fields of wildlife management and conservation biology.

Response: While we appreciate input on the efficacy of our program, these comments are not relevant to this rulemaking for the brown pelican.

Public Comments

(8) Comment: Concerning the California brown pelican Recovery Plan, a mean productivity value of 0.63 seems low. Perhaps better clarification should be made regarding the productivity value of similar birds and how 0.63 compares.

Response: Comparisons of productivity between species can be very tenuous. A large number of factors affect differences in productivity between species and even populations of the same species, including relative size of the animals, quality of the habitat, access to resources, breeding strategy, and feeding type. Conceptually, in order to maintain a population at a stable level, a productivity value of 2.0 (2 successful fledglings per nest) would be needed in order to keep a population level steady, assuming all fledglings survive to breeding age and each pair only reproduces once. In other words, this scenario would result in one-to-one replacement of adults by the new generation. Brown pelicans breed multiple times throughout relatively long lifetimes, thus they have multiple chances to replace themselves, making numbers near and even below 1.0 acceptable. The key point in our assessment is that the California populations have expanded and stabilized despite a productivity number below the target set in our 1983 California Brown Pelican Recovery Plan (Service 1983).

(9) Comment: The rule should include a discussion of potential weather-related issues caused by global warming including hurricane frequency and potential impacts to food supply.

Response: The Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2007a, p. 30). Numerous long-term changes have been observed including changes in arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, wind patterns and aspects of extreme weather including droughts, heavy precipitation, heat waves and the intensity of tropical cyclones (IPCC 2007b, p. 7). While continued change is certain, the magnitude and rate of change is unknown in many cases.

Tropical storms (including hurricanes) have become more intense over the period of record (U.S. Climate Change Science Program (CCSP) 2008, p. 5). Multiple studies and analyses have been done concerning how tropical storm activity may change in the future. Predicting change in frequency and intensity is quite complicated with some factors potentially negating or exacerbating each other (e.g., sea surface temperature versus vertical wind shear, a measure of the difference in wind speed and duration over a vertical distance). There is general agreement that, based on current information, the intensity of individual storms is likely to increase over time; however, the global frequency of tropical storms is believed to stay stable or even decrease (CCSP 2008, p. 112). Some authors show an increase in global frequency of tropical storms (CCSP 2008, p. 112), but the likely magnitude and rate of those

predicted increases is not known. Aside from the global predictions, there is some information that suggests the frequency of intense tropical storms in the North Atlantic may increase due to atmospheric moisture and increased sea surface temperatures; other studies show decreased frequency due to effects of wind shear.

At this time, the best available information does not allow us to predict whether a decrease in brown pelican populations would result from or be correlated with a future increase in hurricane activity. If this information should change in the future, the post-delisting monitoring program will reflect these declines and the situation may be reassessed in the future.

The distribution and abundance of marine fish species is dependent on a variety of factors that may be influenced by climate change including nutrient availability, ocean currents, and water temperature. It has been shown that population levels of anchovies, a main food source of pelicans in some areas, decrease in portions of the Pacific Ocean in response to the warmer waters found in El Niño years. Thus, it is possible that increased ocean temperatures, which may result from climate change, could decrease food supplies for brown pelicans. However, other studies show that El Niño results in increased population levels of sardines, another brown pelican prey species (Chaves *et al.* 2003, p. 217). In fact, multiple authors have shown that when anchovy abundances are high, sardine abundances are low and vice versa (Tourre *et al.* 2007, p. 4).

Because the brown pelican is a generalist in terms of prey sources, it is able to adapt to available food sources. Additionally, global fish populations are likely to be affected by climate change in much more complex ways than by simple ocean temperature rise, particularly the potential for shifting ocean currents and locations of nutrient upwelling. The response of ocean currents to global climate change is not well understood at this time due to the complicating factors of natural climate variability that occurs on various spatio-temporal scales, including the quasi-biennial (2- to 3-year periods), the inter-annual (3- to 7-year periods), the quasi-decadal (8- to 13-year periods), and the inter-decadal (17- to 23-year periods) (Tourre *et al.* 2007, p. 1), thus the response of marine fish species and effects to brown pelicans is even less predictable. At this time, we are not able to predict a decrease in brown pelican population levels in response to food availability effects of global climate change.

(10) Comment: The rule should include an expanded discussion on avian flu and other avian diseases.

Response: Discussion of multiple diseases and potential effects to brown pelicans can be found in the ''Disease and Predation'' section below. We have updated this section to include a discussion of avian influenza, also known as bird flu.

(11) Comment: Multiple commenters indicated that a variety of issues (e.g., avian botulism, domoic acid poisoning, avian disease, oil spills, mortality from recreational fisheries, coastal development) could be threatening the species throughout some portion of the range or are a greater threat to the brown pelican than we have presented in our analysis without providing additional information, references, or insight to explain their rationale.

Response: We believe we have used the best available scientific and commercial data in developing our five-factor analysis. An important point to consider when evaluating the status of a wide-ranging species such as the brown pelican is the scope, or the geographic and temporal extent, of the threat affecting the species. Some threats adversely impact one or more individuals of a species, while a threat to the species would be considered a factor that results in a decline in one or more population parameters. There are a lot of factors that have effects to individuals and local populations; however, these factors are not leading to population level impacts and certainly not resulting in rangewide adverse impacts.

(12) Comment: The Puerto Rican, West Indies, eastern Caribbean, and Colombian populations of brown pelican should remain listed because threats still persist in these areas.

Response: We acknowledge that a variety of factors continue to impact brown pelicans in various portions of the range of the species; however, we did not find that these factors are endangering the species throughout all or a significant portion of the range of the species now or in the foreseeable future. Please see additional discussion in the ''Significant Portion of the Range'' section below.

(13) Comment: The brown pelican continues to be threatened by pesticides because pesticides not registered for use in the United States are readily available for use in areas outside the United States.

Response: It is true that the number and kinds of pesticides available and registered for use varies from country to country. However, we have no information indicating that pesticide use is adversely impacting the brown pelican throughout all or a significant portion of the range of the species. In order to find pesticide use to be a threat to the brown pelican we would have to have information available that shows that pesticides are actually being used and are being used in a manner that impacts the species. It would be speculative to assert that pesticide use is a threat to the brown pelican solely because pesticides are accessible in some areas. In addition, we have determined that pesticides known to have affected brown pelican populations in the past are no longer a threat to the species. Please see the ''Pesticides and Contaminants'' section below.

(14) Comment: Additional discussion concerning the monitoring and enforcement of the Stockholm Convention is needed.

Response: The Stockholm Convention on Persistent Organic Pollutants is an international treaty that aims to eliminate the use of persistent organic pollutants (e.g., DDT) globally. The Convention went into effect on May 17, 2004, and carries the force of international law. Monitoring of activities under the Convention is achieved through voluntary reporting of production, import, and export activities to the Conference of the Parties. Currently, the Parties to the Convention are drafting measures for non-compliance with the Convention. The key portion of the draft noncompliance measures includes suspension from rights of the Convention for parties found to be noncompliant. Of particular importance is suspension from support under Articles 13 and 14 of the Convention, which provide for technical and financial assistance to developing country Parties and Parties with economies in transition. Further, violation of international laws generally may result in economic sanctions or could be brought before the International Court of Justice. Finally, pursuant to becoming Parties to the Convention, many countries across the range of the brown pelican have adopted national measures to reduce or eliminate use of various persistent organic pollutants. These measures are enforceable through a variety of local and national laws. *Please see* the ''Pesticides and Contaminants'' section below for additional discussion.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing

species, reclassifying species, or removing species from listed status. We may determine a species to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act, and we must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) The species has recovered and is no longer endangered or threatened (as is the case with the brown pelican); and/or (3) The original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of threatened or endangered. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future after delisting or downlisting and the removal or reduction of the Act's protections.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' in the ''significant portion of its range'' (SPR) phrase refers to the range in which the species currently exists. The Act does not define the term ''foreseeable future.'' However, in a January 16, 2009, memorandum addressed to the Acting Director of the Service, the Office of the Solicitor, Department of the Interior, concluded, ''* * * as used in the [Act], Congress intended the term 'foreseeable future' to describe the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species (M–37021, January 16, 2009).''

In considering the foreseeable future as it relates to the status of the brown pelican, we considered the factors acting on the species and looked to see if reliable predictions about the status of the species in response to those factors could be drawn. We considered the historical data to identify any relevant existing trends that might allow for reliable prediction of the future (in the form of extrapolating the trends). We also considered whether we could reliably predict any future events that might affect the status of the species, recognizing that our ability to make reliable predictions into the future is limited by the variable quantity and quality of available data.

For the purposes of this analysis, we will evaluate whether the currently listed species, the brown pelican, should be considered threatened or endangered. Then we will consider whether there are any portions of the brown pelican's range in danger of extinction or likely to become endangered within the foreseeable future. The following analysis examines all five factors currently affecting, or that are likely to affect, the listed brown pelican populations within the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Nesting Habitat

Brown pelicans breed annually from spring to summer above 30 degrees north latitude, annually from winter to spring between 20 and 30 degrees north latitude, and irregularly throughout the year on 8.5- to 10-month cycles below 20 degrees north latitude (Shields 2002, p. 12). Brown pelicans usually breed on small, coastal islands free from mammalian predators. Brown pelicans use a wide variety of nesting substrates. Nests are built on the ground when vegetation is not available, but when built in trees, they are about 1.8 meters (m) to 12.2 m (6 to 40 feet (ft)) above the water's surface (McNease *et al.* 1992, p. 252; Jiménez 2004, pp. 12–17).

Along the Pacific Coast of California south to Baja California and in the Gulf of California, brown pelicans nest on dry, rocky substrates, typically on off-shore islands (Service 1983, pp. 5–6). Along the U.S. Gulf Coast, brown pelicans mainly nest on coastal islands on the ground or in herbaceous plants or low shrubs (Shields 2002, p. 13; Wilkenson *et al.* 1994, pp. 421–423), but will use mangrove trees (*Avicennia* spp.) if available (Lowery 1974, p. 127; Blus *et al.* 1979a, p. 130). In some areas of the Caribbean, along the Pacific Coast of Mexico, and the Galapagos Islands, mangroves (*Avicennia* spp., *Rhizophora* spp., *Laguncularia* spp.) are the most common nesting substrate, although other substrates are used as well (Collazo 1985, pp. 106–108; Guzman and Schreiber 1987, p. 276; Service 1983, p. 15; Shields 2002, p. 13). Various types of tropical forests, such as tropical thorn and humid forests, also provide nesting habitat for brown pelicans in southern Mexico, South and Central America, and the West Indies (Collazo 1985, pp. 106–108; Guzman and Schreiber 1987, p. 2). Peruvian brown pelicans (found in Peru and Chile) nest only on the ground (Shields 2002, p. 13).

Nesting habitat destruction from coastal development. Within the United States, the majority of brown pelican nesting sites are protected through land ownership by conservation organizations and local, State, and Federal agencies. We are not aware of any losses of brown pelican nesting habitat to coastal development within the United States. In countries outside of the United States, some coastal and mangrove habitat used by brown pelicans has been lost to recreational and other coastal developments (Collazo *et al.* 1998, pp. 63). Mainland nesting colonies in Sinaloa and Nayarit, Mexico, have been impacted by increasing mariculture (the cultivation of marine life) and agriculture through habitat degradation, disturbance, and some removal of mangrove habitat (Anderson *et al.* 2003, pp. 1097–1099; Anderson 2007), although the extent of impacts is unknown. Van Halewyn and Norton (1984, p. 215) cited cutting and loss of mangrove habitat as a threat for seabirds, including brown pelicans, in the Caribbean. Aside from these limited accounts, we are not aware of any significant losses of brown pelican nesting habitat from coastal development anywhere within its range.

Some destruction of current and potential brown pelican nesting habitat is likely to occur in the future. However, a large number of brown pelican nesting sites throughout the species' range are currently protected (*see* discussion below). In some cases, loss of mangrove habitat has been specifically cited. However, brown pelicans do not nest exclusively in mangroves. They utilize a variety of nesting substrates and readily colonize new nesting sites in response to changing habitat conditions. For example, Collazo *et al.* (1998, p. 63) documented the loss of one nesting site in Puerto Rico, but stated the belief that the pelicans relocated to a new nesting colony nearby (see also discussion of colonization of new sites under ''Storm effects, weather, and erosion impacts to habitat''). Destruction of nesting habitat is likely to affect brown pelicans on a local scale only where nesting colonies overlap with coastal or mariculture development. In cases where nesting habitat destruction results in the loss of a nesting site, it is likely to be limited to a single season of lost reproduction because birds will likely disperse to

other colonies or establish a new colony in a new location. Because numerous brown pelican nesting sites are protected, brown pelicans may relocate to new nesting sites if any unprotected sites are destroyed, and any loss of nesting habitat is likely to result in only limited loss of reproduction that will not affect population levels, we do not believe that nesting habitat destruction from coastal development currently threatens brown pelicans, nor do we believe it will become a threat that endangers the brown pelican throughout all of its range in the foreseeable future.

Storm effects, weather, and erosion impacts to habitat. Many nesting islands along the U.S. Gulf Coast have been impacted by wave action, storm surge erosion, and a lack of sediment deposition (McNease and Perry 1998, p. 9), resulting in loss or degradation of nesting habitat. Since 1998, nesting habitat east of the Mississippi River in Louisiana has undergone continual degradation or loss from tropical storms and hurricanes, resulting in a reduced number of successfully reared brown pelican young in this area (Hess and Linscombe 2006, p. 4). In 2003 and 2004, brown pelican nesting and reproduction was distributed approximately equally between areas east and west of the Mississippi River. After tropical storms in 2004, nesting habitat east of the Mississippi River was reduced, resulting in a shift to 95 percent of nesting and reproduction to west of the Mississippi River. In 2005, hurricanes Katrina and Rita resulted in approximately 349 km^2 (217 mi^2) of coastal land loss (Barras 2006, p. 4). This figure represents total coastal land loss, including interior marshes. Although a figure for barrier island loss would be a more appropriate measure of impacts to brown pelicans, we are not aware of any recent, comprehensive analysis of barrier island loss. Previous estimates of loss did not include the benefits of numerous restoration projects discussed below. While Louisiana's brown pelican nesting islands east of the Mississippi River were reduced by over 70 percent and what remains is vulnerable to overwash from future storm tides, at the time, these islands supported only about 5 percent of the total Louisiana population of brown pelicans (Hess and Linscombe 2006, pp. 3, 6; Harris 2006). Louisiana brown pelican nesting islands west of the Mississippi River, which accounted for 95 percent of the 2005 brown pelican breeding population, were degraded, but still supported the four main nesting colonies (Hess and Linscombe 2006, p. 5) (*see* discussion of nesting in Louisiana under ''Distribution and Population Estimate'').

In some instances, brown pelicans have responded to losses of breeding sites by dispersing and using other areas (Hess and Durham 2002, p. 7). Hess and Linscombe (2001, p. 5) believe that a shift in nesting from the Baptiste Collette area to Breton Island in Louisiana was the result of high Mississippi River levels and associated muddy water, which limited sight feeding. Additionally, two new brown pelican nesting colonies were established between 2000 and 2005 on Baptiste Collette and Shallow Bayou (Hess and Linscombe 2006, p. 5). Wilkinson *et al.* (1994, p. 425) reported the loss of large brown pelican nesting colonies on Deveaux Bank in South Carolina following a hurricane and subsequent movement and use of new nesting locations on that island and on Bird Key Stono. Hess and Linscombe (2001, p. 4) believe that tropical storm and hurricane-induced habitat damage to the Chandeleur Islands contributed to the initial dispersal of pelicans to southwest Louisiana and the formation of a nesting colony on newly created habitat at the Baptiste Collette bar channel.

While pelicans generally exhibit nest site fidelity, they can also demonstrate flexibility and adaptability. In Texas and Louisiana they have established breeding colonies on islands artificially created or enhanced by material dredged by the U.S. Army Corps of Engineers (Corps) from nearby ship channels (Hess and Linscombe 2001, pp. 5–6; Hess and Linscombe 2006, p. 5). For example, Little Pelican Island and Alligator Point in Texas are maintained by the disposal of dredged material (Yeargan 2007). The Corps in Louisiana beneficially uses approximately 8.5 million m^3 (11.1 million yds^3) of dredged material each year in the surrounding environment (Corps 2004, p. xi). For example, dredged material was used to retard erosion and secure Queen Bess Island as brown pelican nesting habitat (McNease *et al.* 1994, p. 8). It was also used to restore and enhance brown pelican habitat on Raccoon Island in 1987 and Last Island in 1992 following Hurricane Andrew (McNease and Perry 1998, p. 10; Hess and Linscombe 2001, p. 5). Use of these islands by pelicans demonstrates both the utility of these artificially generated habitats and the pelican's ability to find and establish nesting colonies on them.

While storms in Louisiana and the U.S. Gulf Coast are expected to continue in perpetuity, there are numerous projects that are intended to protect the coast from this land loss. Coastal habitat protection and restoration have been and will continue to be priorities for Louisiana, since coastal land loss has much broader negative implications to the State economy, oil and gas production, navigation security, fisheries and flyways, and strategic petroleum reserves. The Coastal Wetlands Planning, Protection, and Restoration Act of 1990 (CWPPRA), which provides Federal grants to acquire, restore, and enhance wetlands of coastal States, is one of the first programs with Federal funds dedicated exclusively to the long-term restoration of coastal habitat (104 Stat. 4779). As of April 2006, 10 CWPPRA barrier island restoration projects in Louisiana have been implemented (costing over 75.8 million dollars), with another 9 currently under construction or awaiting construction. Several of these directly enhance or protect current brown pelican nesting habitat (for example, Raccoon Island), while the rest occur on islands that were historically used or could be used for nesting in the future (Louisiana Coastal Wetlands Conservation and Restoration Task Force 2006, p. 13).

Two other restoration plans being implemented in coastal Louisiana are the Louisiana Coastal Area Ecosystem Restoration Plan (LCA) and Louisiana's Comprehensive Master Plan for a Sustainable Coast (State Master Plan). The LCA, administered by the Corps of Engineers with State cost-share assistance, focuses on the protection of coastal wetlands, including barrier island restoration. The State Master Plan includes barrier island protection and restoration as a key component. In addition, Louisiana's Coastal Impact Assistance Program (CIAP) also provides funding for barrier island restoration. The State Master Plan serves as Louisiana's overarching document to guide hurricane protection and coastal restoration efforts in the State. While none of these plans are considered existing regulatory mechanisms for the purposes of this delisting rule and they are not designed specifically to benefit brown pelicans, they may provide opportunities for us to monitor and to minimize the threats to brown pelicans from habitat loss and degradation caused by storms in the Louisiana Gulf Coast region after the species is delisted. They also demonstrate the level of importance State and Federal agencies place on maintaining and protecting those areas.

In other portions of the species' range, storms and weather conditions may also remove or degrade vegetation used for

nesting by brown pelicans. Hurricanes (category 3 or higher) such as Hugo and Georges have severely affected red (*Rhizophora mangle*) and black (*Avicennia germinans*) mangrove habitat in Puerto Rico. Other coastal trees such as *Bursera simaruba* and *Pisonia subcordata,* which are prime nesting trees for pelicans in the U.S. Virgin Islands, have also been completely defoliated or torn down by hurricanes (Saliva 1989). Mangroves and other coastal trees may either be uprooted, completely defoliated, or killed (through dislodging of submerged roots by strong wave action), and several breeding seasons may pass before those areas recover. Similar effects of hurricanes and storms on nesting vegetation would be expected in other areas where brown pelicans nest in trees (some areas in the Caribbean, portions of the Pacific coast of Mexico, and parts of Central and South America). Along the U.S. Gulf Coast, mangroves can be killed off by extreme cold weather (Blus *et al.* 1979a, p. 130; McNease *et al.* 1992, p. 225; McNease *et al.* 1994, p. 6). Coastal black mangroves, decimated by freezes since the 1980s, were historically the nesting shrub of choice for brown pelicans in Louisiana, but now clumps of vegetation, like dense stands of nonwoody plants or low woody shrubs, are used (McNease *et al.* 1992, p. 225; Shields *et al.* 2002, p. 23).

While localized losses and degradation of nesting habitat from hurricanes, storms, and erosion have been documented (Wilkinson *et al.* 1994, p. 425; Hess and Linscombe 2006, p. 4), brown pelicans have demonstrated that they are capable of recovering from such losses. For example, brown pelican nests producing young in Louisiana have generally increased from a low in 1993 of 5,186 to a high of 16,501 in 2004 (Hess and Linscombe 2006, pp. 5, 13). During this timeframe, numerous tropical storms and hurricanes have made landfall on the Louisiana coast (Hess and Linscombe 2006, pp. 9–11). As of May 2006, less than a year after Hurricanes Katrina and Rita, Hess and Linscombe (2007, p. 4) noted a total of 8,036 nests in 15 colonies. Additionally, brown pelicans have shown they are capable of dispersing from nesting sites. Examples of this dispersal are the natural expansion and population growth observed following the reintroduction program in Louisiana (McNease and Perry 1998, p. 1) and more recently with the establishment of a new nesting colony at Rabbit Island (Hess and Linscombe 2003, p. 5). It is reasonable to expect island erosion will continue; however, it is also reasonable to expect State and Federal agencies to continue active maintenance and restoration of barrier islands through programs such as the CWPPRA and the State Master Plan.

We lack data on the effects of storms and erosion elsewhere in the range of the brown pelican. However, outside of the Gulf of Mexico and Caribbean, storms generally are less frequent and less severe. It is evident from the information on pelican responses to storms in the Gulf of Mexico that they are capable of successfully adapting to the changes that storms bring. In addition, brown pelicans are broadly distributed along the Gulf of Mexico, nesting at 15 sites in Louisiana in 2006 (LDWF 2007, pp. 1, 3) and 12 sites in Texas in 2006 (Service 2006, p. 2). The species' broad distribution and multiple nesting colonies reduce the risk that any single storm would affect the entire Gulf coast population of brown pelicans. Therefore, we believe that habitat modification or destruction of brown pelican nesting habitat by storms or coastal erosion will not endanger the brown pelican throughout all of its range in the foreseeable future.

Nesting Habitat Protection

A number of factors may affect the quantity and quality of brown pelican nesting habitat from year to year. However, almost all the U.S. nesting sites are protected from manmade habitat destruction and human disturbance, and a significant number of nesting sites outside the United States are also protected. Protections include designations as wildlife refuges, biosphere reserves, and national parks, as well as land ownership and protection by conservation organizations and local, State, and Federal governments. Because these protections are designed not only to protect brown pelicans, but other resources as well, such as other species of colonial waterbirds, and wetland, coastal, and marine habitats, we do not expect these protections to change when the brown pelican is delisted.

Gulf of Mexico Coast. Many of the Texas islands used by brown pelicans are leased, managed, and monitored by local chapters of the National Audubon Society (Audubon) (Audubon 2007a, p. 1). In Texas, Audubon staff assess the conditions of brown pelican islands throughout the year (Yeargan 2007) and implement management actions to address issues such as erosion and fire ant control. Additionally, there are local ''Bird Wardens'' that patrol the islands regularly (Audubon 2007b, p. 1). The two largest brown pelican nesting colonies in Texas, both in Corpus Christi Bay, Texas (Sundown Island, owned by the Port of Corpus Christi, and Pelican Island, owned by the Texas General Land Office), are part of the Texas Audubon Society's Coastal Sanctuaries program (Yeargan 2007; Audubon 2007b, p. 1; Service 2007b, p. 2). Audubon also owns North Deer Island, which houses the most productive waterbird colony in Galveston Bay and is the largest natural island remaining in the bay (Audubon 2007c, p. 1). A third major nesting site, Little Pelican Island, Galveston Bay, is owned by the U.S. Army Corps of Engineers (Corps) (Yeargan 2007). Audubon, in cooperation with the Corps, Texas Parks and Wildlife Department, and the Service, has placed signs around Little Pelican Island advising the public to avoid landing on the island during the nesting season (Service 2007b, p. 3).

Also in Galveston Bay, Evia and Midbay islands, owned by the Port of Houston, are important brown pelican nesting islands, and Alligator Point in Chocolate Bayou, owned by the Texas General Land Office, also supports breeding brown pelicans (Yeargan 2007). Brown pelicans are counted annually as part of the Texas Colonial Waterbird Survey (Service 2006, p. 1; Erfling 2007). Signs advising the public to avoid landing were posted at each island listed above and later lost during Hurricane Ike in 2008; however, the signs are to be replaced after the hurricane debris is removed (Erfling 2009).

Louisiana's North Island and Breton Island, two pelican nesting islands within the Chandeleur Islands chain, are part of the Service's Breton National Wildlife Refuge system (GulfBase 2007, p. 1). Signs are posted at the edge of the water indicating that the site is closed to human intrusion during the nesting season. In addition, during the nesting season, law enforcement personnel patrol the islands during periods of high human presence, such as on weekends and holidays (Fuller 2007c). One of Louisiana's largest pelican nesting colonies, Raccoon Island, in addition to Wine Island, East Island, Trinity Island, and Whiskey Island, are part of the Isles Dernieres Barrier Islands Refuge owned and managed by the LDWF, which restricts public access (Fuller 2007d). Additionally, there are several other small, intermittently used nesting colony sites, such as Martin and Brush islands, that are privately owned. However, these sites are remote and are likely only subject to occasional offshore recreational and commercial fishing activity.

West Indies. The two nesting sites documented by Collier *et al.* (2003, p. 113) on St. Maarten are protected: Fort Amsterdam as a registered and protected historic site, and Pelikan Key as part of a marine park. In addition, both sites have been proposed as Important Bird Areas (Society for the Conservation and Study of Caribbean Birds 2006, pp. 11–12).

In Puerto Rico and the U.S. Virgin Islands, most breeding colonies of brown pelicans are located within Commonwealth or Federal protected areas. Cayo Conejo, on the south coast of Vieques Island, Puerto Rico, is one of the two most active and largest brown pelican nesting colonies in Puerto Rico (Saliva 2003). The U.S. Navy began using the eastern portion of Vieques Island for training exercises in the early years of World War II, and acquired the eastern and western portions of the island between 1941 and 1943 (Schreiber 1999, pp. 8, 13, 18–21). Since that time, it has been used in varying intensities for activities including amphibious landings, naval gunfire support, and air-to-ground training (Service 2001, p. 4). In May 2003, the Navy ceased operations on Vieques Island via the Floyd D. Spense Defense Authorization Act of 2001 and transferred these lands to the Service, which subsequently designated it as the Vieques Island National Wildlife Refuge.

In the U.S. Virgin Islands, brown pelican colonies are fairly inaccessible on high cliffs or steep cays (Collazo 1985, pp. 106–108; Saliva 1996b); therefore, it is unlikely that human intrusion would be a major factor affecting pelican reproduction in those colonies.

The six nesting sites in Cuba identified by Acosta-Cruz and Mugica-Valdés (2006, pp. 32–33) are within areas identified as wetlands of international importance under the Convention on Wetlands of International Importance especially as Waterfowl Habitat. The convention itself does not provide specific protections of identified wetlands, but does commit the parties to the convention to formulate and implement planning for the conservation and management of wetlands within their countries. One of the brown pelican sites in Cuba, Refugio de Fauna Río Máximo, is additionally protected as a wildlife refuge (Acosta-Cruz and Mugica-Valdés 2006, pp. 32–33).

California and Pacific Coast of Mexico. Pelican nesting colonies in California occur within Channel Islands National Park and are protected from human disturbance and coastal development. West Anacapa Island, where approximately 75 percent of the SCB population nests (Gress *et al.* 2003, p. 15), is designated as a research natural area by Channel Islands National Park and closed to the public (NPS 2004, p. 4). To protect pelican nesting areas, Santa Barbara Island trails are seasonally closed (NPS 2006, p. 1), and Scorpion Rock off Santa Cruz Island is permanently closed to the public (NPS 2004, p. 2). In 1980, the waters adjacent to the Channel Islands were designated as a National Marine Sanctuary (15 CFR 922). This designation implements restrictions which include, but are not limited to, (1) no tankers and other bulk carriers and barges, or any vessel engaged in the servicing of offshore installations within 1.8 kilometers (km) (1.15 miles (mi)); (2) no motorized aircraft at altitudes less than 305 m (1,000 ft) over the waters within 1.8 km (1.15 mi); and (3) no exploring for, developing, or producing oil and gas unless authorized prior to 1981 (NOAA 2006, Appendix C).

Additionally, in 2003, the California Department of Fish and Game (CDFG) designated the waters adjacent to nesting brown pelican habitat on West Anacapa island as a Marine Reserve, increasing protections for that colony by prohibiting fishing and other boating activities at depths of less than 37 m (120 ft) from January 1 to October 31 of each year (California Code of Regulations, Title 14, Sections 27.82, 630, and 6321). In 1999, commercial squid fishing boats operating offshore of West Anacapa and Santa Barbara islands during the pelican breeding season, presumably because the (nonlocal) fishermen were not aware of the closure during the breeding season, used bright lights at night to attract squid to the surface (Gress 1999, p. 1). Use of lights at night was associated with brown pelican nest abandonment, chick mortality, and very low productivity (Gress 1999, pp. 1–2). Squid fishing has been observed around the Channel Islands in recent years, although it has not occurred near the colonies at a noticeable level since 1999 (Whitworth *et al.* 2005, p. 19). In 2004, the California Fish and Game Commission adopted the requirement of light shields and a limit of 30,000 watts per boat operating around the Channel Islands (CDFG Regulations, Section 149, Title 14, CCR). Although occasional disturbances may occur during the breeding season, such as illegal boating within the Marine Sanctuary, we believe the protections and active enforcement by the National Park Service (NPS) and CDFG have ensured that all nesting colonies in California remain relatively disturbance free.

As noted above, Mexico's nesting brown pelicans are monitored annually as an indicator species in the Gulf of California (Godinez *et al.* 2004, p. 48). All of the island nesting colonies and many of the mainland Mexico nesting colonies are protected from habitat destruction or modification by Mexican law because the sites are federally protected and designated as either Biosphere Reserve Areas for Protection of Flora and Fauna or National Parks (Anderson and Palacios 2005, p. 16; Carabias-Lilio *et al.* 2000, p. 3).

Central America, South America, and Caribbean Coast of Mexico. Isla Contoy Reserva Especial de la Biosfera off the coast of Cancun, Quintana Roo, Mexico, is Mexico's largest brown pelican nesting colony on the Caribbean coast. It is currently protected as a National Park within a Biosphere Reserve. Visitation is limited and strictly controlled to minimize impacts to the seabirds that nest and roost there.

Guatemala—Eisermann (2006, p. 63) identified 12 sites where brown pelicans are present within Guatemala, but did not indicate whether any of these are nesting sites. Of these 12 sites, 10 have some level of conservation as either Wildlife Refuges, National Parks, Areas of Multiple Use, or private protected areas (Eisermann 2006, p. 13).

Honduras—In Honduras, two of the four identified nesting sites for brown pelicans are currently protected: Monumento Natural Marino del Archipiélago de Cayos Cochinos and Laguna de Los Micos within Parque Nacional Blanca Jeannette Kawas (Thorn *et al.* 2006, pp. 8, 11, 29). A third nesting area, the cays of Isla Utila, has been proposed for protection as Refugio de Vida Silvestre Cayos de Utila and Reserva Marina Utila (Thorn *et al.* 2006, p. 9).

Nicaragua—Although Zolotoff-Pallais and Lezama (2006, p. 79) do not indicate any nesting sites for brown pelicans, they indicate that brown pelicans occur at four sites designated as wetlands of international importance under the Convention on Wetlands of International Importance especially as Waterfowl Habitat.

Costa Rica—In Costa Rica, the three major brown pelican nesting sites reported by Quesada (2006, p. 34), Isla Guayabo, Isla Negrita, and Isla Pararos, are protected as Biological Reserves. A fourth site, Isla Verde, identified as a roosting location for brown pelicans, is protected as a National Park (Quesada 2006, p. 34).

Panama—Angehr (2005, pp. 23, 26, 30, 34) identifies four nesting sites used

by brown pelicans in Panama that are on lands with some official protective status: (1) Isla Barca Quebrada, within Coiba National Park; (2) Iguana Island, within Isla Iguana Wildlife Refuge; (3) a group of small islands mostly within the Taboga Wildlife Refuge; and (4) Pearl Islands, owned by the Panamanian environmental organization ANCON (National Association for the Conservation of Nature). There are many more nesting areas in Panama, but they lack protective status.

Colombia—In Colombia, the seven sites where brown pelican were documented to occur by Moreno and Buelvas (2005, pp. 11, 57) are included in a system of protected areas or as part of sanctuaries for wildlife and plants.

Venezuela—In Venezuela, Rodner (2006, p. 28) indicates that at least 9 of the 25 nesting colonies for brown pelicans are protected as either Parques Nacional, Monumentals Natural, or Refugios de Silvestre.

Ecuador—About 87 percent of the Galapagos Islands are a National Park (Exploring Ecuador 2006, p. 1), and commercial and tourist access to the Park is regulated by the government of Ecuador to protect natural resources (Service 2007a, p. 23). The resident human population on the Galapagos Islands has expanded in recent years, as has the number of tourists (Charles Darwin Foundation 2006, p. 13). The Charles Darwin Foundation, which works in the islands under an agreement with the government of Ecuador, has developed a strategic plan to address the management of increasing human presence in the islands (Charles Darwin Foundation 2006, p. 7). The plan's general objective is to ''forge a sustainable Galapagos society in which the people who inhabit the islands will act as agents of conservation.''

Peru—Proabonos, an agency in Peru's Ministry of Agriculture, protects and manages brown pelican nesting islands (Zavalaga *et al.* 2002, p. 9; Proabonos 2006). Additionally, Franke (2006, p. 8) indicates brown pelicans occur at four protected sites, although it is not clear whether these are nesting sites as well: Santuario Nacional Los Manglares de Tumbes, Zona Reservada Los Pantanos de Villa, National Reserve Paracas, and Santuario Nacional Lagunas de Mejía. Estimated increases in the brown pelican population along coastal Peru have been attributed to protective measures by the Government of Peru. The Ministry of Agriculture's Forest and Wild Fauna Management Authority (IRENA) lists the brown pelican as endangered, and provides prohibitions against take of the species without a permit (Taura 2006).

Chile—Simeone and Bernal (2000, p. 450) reported that Isla Pájaro Niño in Chile has been designated a Nature Reserve by the Chilean government for the protection of Humboldt penguins, brown pelicans, and other seabirds. The breakwater connecting the island to the mainland has controlled access, which has reduced human disturbance (Simeone and Bernal 2000, p. 455).

In summary, efforts to conserve nesting habitat are positively affecting nesting brown pelicans, resulting in an overall rangewide recovery. Although loss of nesting habitat has occurred on a local scale, for instance, in Puerto Rico (Collazo *et al.* 1998, p. 63) and Mexico (Anderson *et al.* 2003, p. 1099), we have no evidence that nesting habitat is limiting pelican populations on a regional or global scale. Threats from human disturbance of nesting colonies throughout most of the species' range have been abated through protection efforts, including federal and state ownership and management, designation of National Parks and Biosphere Reserves, signage to deter people from entering colonies, and restricted access. While nesting habitat at a local scale is lost to storms and erosion, particularly in the Gulf of Mexico (McNease and Perry 1998, p. 9), birds have been found to disperse to and colonize other natural areas (Hess and Durham 2002, p. 7) and manmade islands (Hess and Linscombe 2006, pp. 3, 6; Harris 2006).

Roosting Habitat

Disturbance-free roosting habitat is essential for brown pelicans throughout the year, for drying and maintaining plumage, resting, sleeping, and conserving energy (Jaques and Anderson 1987, pp. 4–5). Roosts also act as information centers for social facilitation. Essential characteristics of roost sites include: Proximity to food resources; physical barriers to minimize predation and disturbance; sufficient size for individuals to interact normally; and protection from adverse environmental conditions, such as wind and surf (Jaques and Anderson 1987, p. 5). Communal roosts occur on offshore rocks and islands; on beaches at mouths of estuaries; and on breakwaters, pilings, jetties, sandbars, and mangrove islets (Jaques and Anderson 1987, pp. 14, 19; Shields 2002, p. 7). Brown pelicans have two types of roosts, day and night roosts. Night roosts need to be larger and less accessible to predators and human disturbance than day roosts (Jaques and Anderson 1987, p. 27; Jaques and Strong 2003, p. 1). Along the Pacific Coast, brown pelicans use roost sites that are different from nest sites (Jaques and Anderson 1987, pp. 14, 19; Briggs *et al.* 1981, pp. 7–8). In other areas, brown pelicans generally use their nesting grounds as roosting grounds year round (Saliva 2003; Hess and Durham 2002, p. 1; Hess and Linscombe 2001, p. 1; King *et al.* 1985, p. 204). Because brown pelicans also use nesting sites as roosting sites and most of these nesting areas are already protected, as described above, we believe roosting habitat is also generally adequately protected. However, we have identified southern California as one area where roosting habitat may be limited. We discuss the adequacy of protections of southern California roosting habitat and its effects on the species below.

While not known to be a concern in other portions of the brown pelican's range, natural roost habitat is limited along the southern California coast due to a lack of rocky substrate, as well as coastal development and wetland filling (Jaques and Strong 2003, p. 1). Most roosts in southern California occur on jetties and breakwaters under jurisdiction of the Corps, although private structures such as barges and oil platforms also provide significant roost habitat (Strong and Jaques 2003, p. 20). Night roost habitat is further limited to large areas where disturbance is minimal, which may be causing pelicans to expend unnecessary energy to fly between daytime roosting/foraging areas along the mainland and distant night roosts in the Channel Islands (Jaques *et al.* 1996, p. 46; Jaques and Strong 2003, p. 12).

In California, all rocks, islands, pinnacles, and exposed reefs above mean high tide within 22.2 km (13.8 mi) of shore are included within the California Coastal National Monument, managed by the U.S. Bureau of Land Management (U.S. Bureau of Land Management 2005, pp. 1–3). Management includes monitoring and protecting geologic formations and the habitat they provide for seabirds and other wildlife (U.S. Bureau of Land Management 2005, pp. 1–3). Many pelican roost sites are on protected rocks and islands within the California Coastal National Monument.

The central California coast supports an important temporal component of pelican roosting habitat, supporting 69 to 75 percent of pelicans in California in the fall (Strong and Jaques 2003, p. 28). The Farallon Islands National Wildlife Refuge and Monterey Bay National Marine Sanctuary in central California protect and support roosting habitat (15 CFR 922; Thayer and Sydeman 2004, p. 2; Service 2007c, p. 1). CDFG designated the waters around the Farallon Islands

as a State Marine Conservation Area, and the islands are part of the Gulf of the Farallons National Marine Sanctuary (CDFG 2007, p. 7; 15 CFR 922). The Marine Sanctuaries prohibit aircraft from flying below 305 m (1,000 ft) within their boundaries, and limit allowable uses to research, educational, and recreational activities. In general, commercial and recreational uses of marine resources are prohibited, but certain commercial and recreational harvests of marine resources may be permitted (CDFG 2007, pp. 4–5; 15 CFR 922).

Vandenberg Air Force Base (AFB), in southern California, consulted under section 7 of the Act with the Service regarding the effects of low-flying test flights, and agreed to avoid flying directly over roosting pelicans occurring on their mainland base (Service 2003a, p. 1). We have consulted with Vandenberg AFB multiple times regarding the impacts of missile launches on roosting pelicans and have determined that impacts are limited to a short-term startle effect (Service 1998, 1999, 2003a). A maximum of 30 missile launches per year at Vandenberg AFB are estimated (Vanderberg AFB 2008, p. 14). Therefore, potential impacts from missile launches are minimal because they are temporary in nature and will likely only occur a few times per month.

The Sonny Bono Salton Sea National Wildlife Refuge, inland from San Diego, is also used for roosting during the post-breeding season, and supports and protects up to 5,000 pelicans in the summer within its boundaries (Service 2007d, pp. 1–2). However, roosting habitat is expected to decrease after the year 2018 as a result of reductions of Colorado River water reaching the Salton Sea (Service 2002, p. 52), which could decrease the availability of forage fishes to pelicans and reduce the suitability of roosting habitat in this area (Service 2002, pp. 18, 51). The Bureau of Reclamation will compensate for this loss by creating new roosting habitat along the southern California coast (Service 2002, p. 52).

An atlas of pelican roost sites along portions of the central and northern California coasts was completed that will allow management agencies to evaluate the overall status of roosting habitat and help prioritize roost sites for protection. A similar atlas for the southern California coast was completed in January of 2009 (Service 2009a). In addition, the following restoration plans include projects that will benefit brown pelicans, regardless of the brown pelican listing status: American Trader Restoration Plan, Command Oil Spill Restoration Plan, Torch/Platform Irene Restoration Plan, Kure/Humboldt Bay Oil Spill Restoration Plan (KRP), Stuyvesant/Humboldt Coast Oil Spill Restoration Plan (SRP), and Montrose Settlement Restoration Plan (MSRP). The purpose of these plans is to restore natural resources, including seabirds, that were injured as a result of oil spills and hazardous substance releases along the California coast. One component of all these plans is to reduce human disturbance at roost sites in northern, central, and southern California through education, monitoring, and enforcement (American Trader Trustee Council 2001, p. 16; Command Oil Spill Trustee Council 2004, p. 60; Torch/Platform Irene Trustee Council 2006, p. 33; CDFG and Service 2008, p. 40; CDFG and Service 2007, p. 26; MSRP 2005, p. D6–1). The American Trader Trustee Council also funded a pilot program in 2004 to create new night roosting habitat in the form of a floating platform in the San Diego Bay National Wildlife Refuge salt ponds. While pelican use has been limited, the American Trader Trustee Council is exploring ways to enhance and improve the platform. The MSRP also includes roost site creation and/or enhancement as suitable restoration projects for the brown pelican (MSRP 2005, p. D6–1).

While some roosting habitat in the United States may still be susceptible to human disturbance, much of the brown pelican roosting habitat occurs within protected areas. There are ongoing efforts to identify and prioritize important roost sites, reduce disturbances at these sites, enhance existing roosts, and create new roost habitat. Southern California is the only area we are aware of with potentially limited roost sites. We have no information to indicate that roosting habitat may be limiting elsewhere in the species' range. Nevertheless, the limited number of existing roost sites has had no known impacts to the species and the population appears to be stable or increasing. Therefore, we do not believe that roost site disturbance will adversely affect the brown pelican throughout all of its range in the foreseeable future.

Prey Abundance

Brown pelicans feed on surface-schooling fish such as menhaden (*Brevoortia* spp.), mullet (*Mugil* spp.), sardines (*Sardinops sagax*), and anchovies (*Engraulis* spp.), which they catch by plunge-diving in coastal waters (Palmer 1962, p. 279; Blus *et al.* 1979b, p. 175; Gress *et al.* 1990, p. 2; Schreiber *et al.* 1975, p. 649; Schreiber 1980, p. 744; Kushlan and Frohring 1985, p. 92). The availability of high quality forage in the offshore area within 30 to 50 km (18 to 30 mi) of a colony during the breeding season is critical to pelicans for feeding young (Anderson *et al.* 1982, p. 28). Additionally, reproductive success is dependent on abundance and availability of prey within foraging distance of the colony (Anderson *et al.* 1982, pp. 23, 30; Everett and Anderson 1991, p. 133). Therefore, commercial harvests of pelican prey species have the potential to affect brown pelican population dynamics.

Commercial fishing. The Magnuson-Stevens Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*) requires management plans for commercial fish species to ensure optimum yield with guaranteed perpetuation of that resource and minimal impact to the ecosystem of which it is a part. Each coastal region of the United States is a member of one of eight Fishery Management Councils, each of which implements the local fishery management plan (16 U.S.C. 1801 *et seq.*).

The Pacific Fishery Management Council prepared the Anchovy Fishery Management Plan. Amendment 8 to the Anchovy Fishery Management Plan, adopted December 15, 1999 (64 FR 69888), changed the name of the Anchovy Fishery Management Plan to the Coastal Pelagic Species Fishery Management Plan (CPSFMP) and added Pacific sardine (*Sardinops sagax*), Pacific mackerel (*Scomber japonicus*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*) to the fishery management unit (CPSFMP 1998, p. 1–1). Amendment 8 divided these species into the categories of actively managed and monitored. Harvest guidelines for actively managed species, Pacific sardine and Pacific mackerel, are based on formulas applied to current biomass estimates and designed to ensure that adequate forage is available for seabirds, marine mammals, and other fish. There are no harvest guidelines for the monitored species (northern anchovy, jack mackerel, and market squid) because they are not currently intensively fished, although harvest and abundance data will be monitored (CPSFMP 1998, pp. 4–5). The northern anchovy fishery essentially ceased in 1983 due to a depressed market. The depressed market for northern anchovy is thought to be a long-term or possibly permanent condition, although this fishery continues today at a minimal level (CDFG 2001, pp. 303–305). A comprehensive assessment of the northern anchovy fishery will be conducted if the annual harvest approaches 25,000 metric tons (mt) (25,097 tons); however, the annual

harvest as of 1999 was estimated to be only about 7,000 mt (6,889 tons) of an estimated biomass of 388,000 mt (381,872 tons) (Service 1999, pp. 1–2).

On June 10, 1999, the Service determined that Amendment 8 to the Anchovy Fishery Management Plan will not adversely affect brown pelicans in California because it would not decrease the availability of fish to pelicans (Service 1999, p. 1). The CPSFMP (1998, pp. 2–5) will continue to ensure that adequate forage is available to pelicans if economic conditions change and northern anchovies become more intensively fished. The CPSFMP will also ensure that other forage fishes used by pelicans, such as Pacific sardines and Pacific mackerel, are also managed to preserve adequate forage reserves (CPSFMP 1998, pp. 2–5). Implementation of the CPSFMP is not dependent on the brown pelican's status as an endangered species, and should not be affected by this delisting rule.

The central subpopulation of the northern anchovy extends south of the U.S. border along the west coast of Baja California, Mexico. However, there is no bilateral agreement between the United States and Mexico regarding the management of this subpopulation, and the Mexican fishery is managed independently and not restricted by a quota (CDFG 2001, p. 304). The Coronados Islands pelican population may have suffered reduced breeding success during the late 1970s as a result of intensive commercial anchovy harvests in Mexico (Anderson and Gress 1982, p. 130). Declines in the anchovy population in the early 1980s may have been caused by intensive harvesting in Mexico that far exceeded the California fishery (Service 1983, p. 57). Similar to the U.S. fishery, anchovy harvests in Mexico have decreased sharply over time, from an average 86,363 mt (85,000 tons) per year from 1962 to 1989, to an average of 3.65 mt (3.6 tons) from 1990 to 1999 (CDFG 2001, p. 303). However, if economic conditions change and anchovies become more intensively harvested in Mexico, availability of anchovies for pelicans could be reduced.

While no brown pelican prey species appear to be currently regulated by the Gulf of Mexico Fishery Management Council or the Caribbean Fishery Management Council (Web sites accessed*: http://www.gulfcouncil.org/,* and *http://www.caribbeanfmc.com/*) in the United States, regulations under authority of the Magnuson-Stevens Fishery Conservation and Management Act are sufficient to protect prey abundance for brown pelicans, including brown pelican food species currently being commercially fished and any that may be in the future. Therefore, we do not believe that commercial fishing will endanger the brown pelican or its prey throughout the United States, Mexico, and Caribbean portion of its range in the foreseeable future.

We do not have information from other countries on commercial fishery impacts to brown pelican prey abundance. However, we have no evidence to suggest that commercial fishing is limiting brown pelican populations. Populations of brown pelicans in Central and South America are generally large with stable or increasing trends, indicating that food resources are not limiting.

El Niño and Freeze Events. A mixture of subarctic and tropical waters, upwelling events, and varying depths of the Pacific Ocean result in seasonal, inter-annual (between year), and long-term variability in fish availability for brown pelicans (Dailey *et al.* 1993, pp. 11–13). El Niño events that occur periodically in the Pacific Ocean are characterized by warm, nutrient-poor water and reduced productivity (Dailey *et al.* 1993, p. 11; Leck 1973, p. 357; Duffy 1983b, p. 687), thus reducing brown pelican reproductive success and causing mortality in pelican chicks (Hayward 2000, p. 111). Pelicans have the flexibility to respond to changes in food supplies through variable reproductive rates, although a long-term decline in food abundance could have serious impacts on the pelican population (Anderson *et al.* 1982, p. 30). An incidental effect of El Niño is movement of brown pelicans into developed areas, presumably in search of food, exposing them to collision hazards with structures and vehicles (Leck 1973, p. 357). During the 1997 El Niño event, an increase was reported in the local pelican population from 200 to 4,000 birds within a few weeks within the city of Arica, Chile (CNN 1997, p. 1). El Niño events are generally limited to a single breeding season, and are not likely to result in long-term population declines (Dailey *et al.* 1993, p. 11).

McNease *et al.* (1994, p. 10) found that severe freezes limited feeding due to surface ice formation. Fish mortality related to freezes also negatively impacts the pelican's food supply on a short-term basis (McNease *et al.* 1994, p. 10). However, these events are typically localized and restricted to a single season in duration.

El Niños and severe freezes may impact brown pelicans on a short-term, localized basis, but they do not pose a rangewide threat to the continued existence of the species. The pelican is a long-lived species that has evolved with natural phenomena such as variation in food resources, winter storms, and hurricanes, such that sporadic breeding failures have little effect on long-term population stability (Shields 2002, p. 23). These factors are only significant when population sizes are small and reproduction is limited (as was the case in the late 1960s due to impaired breeding success caused by organo-chlorine residues). Because current population sizes and distribution are large and reproduction has been restored to a level that can compensate for normal environmental fluctuations, we do not believe these natural events threaten the species throughout all of its range in the foreseeable future.

Other Habitat Protections

U.S. laws that provide protections to brown pelican habitat are the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), which requires equal consideration and coordination of wildlife conservation with other water resource developments, and the Estuary Protection Act (16 U.S.C. 1221 *et seq.*), which requires Federal agencies to assess impacts of commercial and industrial developments on estuaries. Section 10 of the Rivers and Harbors Act (33 U.S.C. 401 *et seq.*) regulates the building of any wharfs, piers, jetties, and other structures and the excavation or fill within navigable water. Sections 402 and 404 of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act (91 Stat. 1566) and the Water Quality Improvement Act (101 Stat. 7), provide for the development of comprehensive programs for water pollution control and efficient and coordinated action to minimize damage from oil discharges.

Additional environmental laws that help protect pelican habitat and food sources include: Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3901 *et seq.*), which authorizes the purchase of wetlands from Land & Water Conservation Fund monies; North American Wetlands Conservation Act of 1989 (16 U.S.C. 4401 *et seq.*) which provides funding for wetland conservation programs in Canada, Mexico, and the United States; Anadromous Fish Conservation Act of 1965 (16 U.S.C. 757a *et seq.*), which provides funds for conservation, development, and enhancement of anadromous fish (marine fish that breed in fresh water) through cooperation with States and other non-Federal interests; Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*), as amended by the Coastal Barrier Improvement Act of 1990, which

encourages conservation of hurricane-prone, biologically rich coastal barrier islands by restricting Federal expenditures that encourage development of coastal barrier islands, such as providing National Flood Insurance; Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), which provides fiscal incentives for the protection, restoration, or enhancement of existing coastal wetlands or creating new coastal wetlands and assessing the cumulative effects of coastal development on coastal wetlands and fishery resources; Shore Protection Act of 1988 (33 U.S.C. 2601 *et seq.*); Outer Continental Shelf Lands Act of 1954, as amended in 1978 and 1985 (43 U.S.C. 1301 *et seq.*); National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701 *et seq.*); Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*); Act to Prevent Pollution From Ships of 1980 (33 U.S.C. 1901 *et seq.*); Marine Pollution and Research and Control Act of 1989; Ocean Dumping Ban Act of 1988 (33 U.S.C. 1401 *et seq.*); Marine Protection, Research, and Sanctuaries Act of 1988 (Pub. L. 100–688); and Federal Insecticide, Fungicide, and Rodenticide Act of 1996 (7 U.S.C. 136 *et seq.*). These laws and regulations, taken collectively, help ensure the conservation of brown pelicans and their habitat.

Climate Change

The Intergovernmental Panel on Climate Change (IPCC) concluded that warming of the climate system is unequivocal (IPCC 2007a, p. 30). Numerous long-term changes have been observed including changes in arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, wind patterns and aspects of extreme weather including droughts, heavy precipitation, heat waves and the intensity of tropical cyclones (IPCC 2007b, p. 7). Species that are dependent on specialized habitat types, limited in distribution, or occurring already at the extreme periphery of their range will be most susceptible to the impacts of climate change. Such species would currently be found at high elevations, extreme northern/southern latitudes, or dependent on delicate ecological interactions, or sensitive to nonnative competitors. The brown pelican does not meet the profile of a species most susceptible to climate change. It is a wide-ranging species and is relatively general in its habitat selection as it is able to breed in a variety of coastal habitat types and feed on a variety of prey items. It is likely that the range of the species may shift and population centers may redistribute, but effects of climate change would not be expected to result in significant rangewide declines in the foreseeable future, based on information currently available.

In summary, conservation efforts are continuing to positively affect brown pelicans, resulting in an overall rangewide recovery. Although loss of nesting habitat has occurred on a local scale, for instance in Puerto Rico (Collazo *et al.* 1998, p. 63) and Mexico (Anderson *et al.* 2003, p. 1099), we have no evidence that nesting habitat loss is limiting pelican populations on a regional or global scale. While localized nesting habitat is lost to storms and erosion, particularly in the Gulf of Mexico (McNease and Perry 1998, p. 9), birds have been found to colonize in other natural areas (Hess and Durham 2002, p. 7) and on manmade islands (Hess and Linscombe 2006, pp. 3, 6; Harris 2006). The only area where we have determined roost sites to be limited is in southern California, but this has not had any known impacts to the population. Much of the U.S. brown pelican roosting habitat is within protected areas. We have no evidence to suggest that commercial fishing in the United States and elsewhere is limiting brown pelican populations by reducing the species' fish prey base and regulatory mechanisms are in place within the United States to manage fisheries to ensure adequate prey base for sea birds and other species. El Niños and severe freezes may impact brown pelicans on a short-term, localized basis, but these events do not pose a significant threat to the species. Although some local factors continue to affect brown pelicans, these factors are not of sufficient magnitude to affect any brown pelican populations. Therefore, we believe that the present or threatened destruction, modification, or curtailment of the brown pelican's habitat or range is not a significant factor affecting the brown pelican throughout all of its range, both now and for the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any overutilization for commercial, recreational, scientific, or educational uses of brown pelicans, although within the United States, Canada, and Mexico, the brown pelican is protected from any such threats. In 1936, the Protection of Migratory Birds and Game Mammals Treaty was signed by the United States, Canada, Japan, Russia, and Mexico (50 Stat. 1311; TS 912), which adopted a system for the protection of certain migratory birds, including the brown pelican, in the United States and Mexico. This Treaty provides for protection from shooting and egg collection by establishment of closed seasons and refuge zones. Implementation of the treaty in the United States was accomplished by amending the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*). The MBTA and its implementing regulations (50 CFR parts 20 and 21) prohibit take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase, or barter, any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit, and require that such use not adversely affect populations (50 CFR 21.11). The MBTA and its implementing regulations will adequately protect against overutilization of pelicans within the United States, Canada, and Mexico (*see* discussion of the MBTA in ''Effects of this Rule'' section below). Another Federal law that will continue to offer some form of protection for the brown pelican is the Lacey Act (16 U.S.C. 3371–3378), which helps the United States and other foreign countries enforce their wildlife conservation laws by prohibiting trade in wildlife, fish, and plants that have been illegally taken, possessed, transported, or sold in violation of other federal, state, and foreign laws protecting wildlife.

We do not have any information to indicate that overutilization for commercial, recreational, scientific, or educational uses is occurring now or will occur in the future. Therefore, we do not believe overutilization is a significant factor affecting the brown pelican throughout all of its range, both now and in the foreseeable future.

C. Disease or Predation

Several diseases have been identified as causing illness and mortality of brown pelicans. The diatom *Pseudo-nitzchia australis* (an algae) occasionally blooms in large numbers off the California coast and produces the toxin domoic acid that occasionally causes mortalities in pelicans (USGS 2002a, p. 5). Erysipelas, caused by the bacterium *Erysipelothrix rhusiopathiae,* caused mortality of about 350 pelicans off the coast of California during the winter of 1987–1988 (Shields 2002, p. 32). This outbreak was thought to have been caused by unusually warm waters combined with a large number of pelicans in that area. Avian botulism, caused by the bacterium *Clostridium botulinum,* has caused illness and mortality of pelicans at the Sonny Bono Salton Sea National Wildlife Refuge (USGS 2002b, p. 6). None of these disease outbreaks have had known long-term impacts on the population, and

because occurrences are few and self-limiting, we do not believe impacts from these diseases will become a threat to brown pelicans throughout all of their range in the foreseeable future.

West Nile virus is listed on the Center for Disease Control's West Nile Virus Web page (*http://www.cdc.gov/westnile*) as causing the mortality of white pelicans (*Pelecanus erythrorhynchos*), the only other species of pelican native to North America. However, according to this same Web site and the USGS, no brown pelican deaths due to West Nile virus have been reported, although antibodies for the virus have been found in captive brown pelicans (USGS 2003a, p. 6). We do not believe impacts from West Nile virus will become a threat to brown pelicans throughout all of their range in the foreseeable future, since there is no evidence to date that it negatively impacts pelicans. The post-delisting monitoring plan will be designed to detect declines in brown pelican populations that might arise from a variety of threats, including West Nile virus. There is an extensive network of Federal and State wildlife agencies and other cooperators that monitor colonial nesting waterbird species, including the brown pelican (see ''Post-Delisting Monitoring Plan'' section below).

Similar to West Nile virus, avian influenza, also known as bird flu, is not currently impacting brown pelicans, but may be a threat in the future. The term avian influenza refers to multiple strains of the influenza virus carried by birds. Just as with the variety of strains of human influenza virus, the avian influenza viral strains differ in strength, transmission rates, and effects. Strains of avian influenza known as low pathanogenic avian influenza (LPAI) are commonly carried in the intestines of wild birds and generally do not result in sick or dead birds (CDC 2006, p. 1). However, if domesticated birds come into contact with a LPAI, the viral strain can mutate to a highly pathanogenic avian influenza (HPAI), which can result in significant illness and death (USGS 2006, p. 2). The mutated HPAI strain can be secondarily transmitted back to wild birds in addition to a variety of other species, including humans. Currently, the HPAI strain of avian influenza is not known to occur in the range of the brown pelican (USGS 2009). It is possible that the HPAI strain could be carried into the range of the brown pelican through human travel, importation of tainted materials, and migratory birds coming in from affected areas (USGS 2005, p. 2). At this time, avian influenza is not impacting brown pelicans and it is not known how populations would respond to exposure. Multiple government and international agencies are monitoring the progress of the disease (*see,* for example, USDA's BioSecurity for Birds at *http://www.aphis.usda.gov/animal_health/birdbiosecurity*). These avian influenza specific monitoring programs, in addition to our own post-delisting monitoring plan, are designed to detect declines in brown pelicans and other bird populations that might arise from threats such as avian influenza in the future.

Ticks have been implicated as the cause of nest abandonment on both a Texas and Peruvian island (King *et al.* 1977b, p. 1; Duffy 1983a, p. 112). However, these events were localized and apparently have had no long-term impact on population levels in these areas. Mites and liver flukes have also been reported in brown pelicans (50 FR 4942; February 4, 1985), but have not been noted to cause significant health impairment in healthy birds. We have no evidence that mites, liver flukes, or other parasites are limiting brown pelican populations now or are likely to in the future. Therefore, we do not believe impacts from parasites will become a threat to brown pelicans throughout all of their range in the foreseeable future.

Brown pelicans require nesting areas in close proximity to food supplies and free from mammalian predators and human disturbance (Anderson and Keith 1980, p. 65). There is no known significant impact from mammalian predation on brown pelicans, particularly since they generally nest at sites free of mammals that could depredate eggs or young. Mammalian predators introduced to seabird nesting islands, such as domestic cats (*Felis catus*) and rats (*Rattus* spp.), can have serious impacts on small and medium-sized seabirds, but they appear to have little impact on pelicans (Anderson *et al.* 1989, p. 102). However, in some areas we anticipate that the brown pelican will benefit from feral cat removal programs. The Montrose Trustee Council is planning to remove the feral cats from San Nicolas Island, a known brown pelican roosting location off the southern California coast, starting in 2009 (Service 2009b).

There are numerous reported avian predators of chicks and eggs: magnificent frigatebirds (*Fregata magnificens*), gulls (*Larus* spp.), red-tailed hawks (*Buteo jamaicensis),* peregrine falcons (*Falco peregrinus*), American kestrels (*Falco sparverius*), short-eared owls (*Asio flammeus*), cattle egrets (*Bulbulcus ibis*), night herons (*Nycticorax* spp.), American oystercatchers (*Haematopus palliatus*), crows (*Corvus* spp.), and mockingbirds (*Mimus gilvus*) (Schreiber 1979, p. 40; Saliva and Burger 1989, p. 695; Jiminez 2004, pp. 16–17). Avian predators occasionally destroy unguarded pelican nests, and disturbances to nesting colonies may flush pelicans from nests, increasing the risk of predation on eggs and young (Schreiber and Riseborough 1972, p. 126). However, if brown pelicans are undisturbed, at least one member of the breeding pair usually remains close to the nest to protect the eggs and vulnerable nestlings (Duffy 1983a, p. 113; Schreiber and Riseborough 1972, p. 126; Shields 2002, p. 12). In the absence of other human disturbances, egg and nest predation by mammals and other birds does not appear to impose a significant limitation on brown pelican reproduction. Most nesting islands are protected from human disturbance as discussed above. Therefore, we do not believe impacts from mammalian or avian predation will become a threat to brown pelicans throughout all of their range within the foreseeable future.

Disease and predation generally affect only small numbers of individuals. In addition, many disease events are usually limited in area and may only affect brown pelicans for a short period of time (e.g., for a single breeding season). Because brown pelicans are long lived, sporadic breeding failures that may be caused by parasites, disease, or predation, especially on a local scale, have little effect on long-term population stability (Shields 2002, p. 23). Because current populations and distribution are large and reproduction has been restored to a level that can compensate for normal environmental fluctuations, we do not believe that disease, parasites, and predation are a significant factor affecting brown pelicans throughout the species' range, both now and in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

As discussed in each of the factors, many regulatory mechanisms will remain in place after delisting that ensure future threats will be reduced or minimized. We believe these protections, taken together, provide adequate regulatory mechanisms to prevent the brown pelican from becoming endangered throughout all of its range in the foreseeable future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural Factors

This discussion addresses direct mortality of brown pelicans. See Factor A for impacts to habitat from natural weather events such as storms and El Niño. Weather events and El Niño events may affect habitat and prey abundance as discussed above, but also may result directly in death or injury of individual brown pelicans. Boersma (1978, p. 1482) reported El Niño-season starvation of nestling brown pelicans in the Galapagos Islands. The 1982–83, 1986–87, and 1991–1994 El Niño events may have reduced the number of nesting brown pelicans in those years at Cayo Conejo, Puerto Rico (Schreiber 1999, p. 12). In extreme cases adult mortality has resulted from El Niño events (Shields 2002, p. 32), such as the especially severe El Niño (Southern Oscillation) of 1983 (Duffy 1986, p. 591). Mortality was not noted during the less severe event of 1978 (Boersma 1978, p. 1482). Shields (2002, p. 23, and reference cited within) states that food shortages as a result of El Niño and other climatic and oceanographic events may result in abandonment of nests and starvation of nestlings, but rarely results in adult mortality except in extreme events. Because brown pelicans are long lived, such sporadic and short-term breeding failures have little impact on long-term population viability.

Storms accompanied by severe tidal flooding can have a significant negative effect on brown pelican productivity (McNease *et al.* 1994, p. 10). While some adults may be killed during storm events, most impacts result in juvenile mortality and reduced fledgling production (Wilkinson *et al.* 1994, p. 425; Hess and Linscombe 2006, p. 4). Additionally, eggs and nestlings may be lost due to flooding (Hess and Linscombe 2006, p. 23) and nests built in trees are easily dislodged and destroyed during strong winds or major storms (Jiminez 2004, pp. 12–17; Saliva 1989). While McNease *et al.'s* (1994, p. 10) observations indicated a female that has produced eggs or nestlings will not nest again in the same season, Hess and Linscombe (2006, pp. 3, 7, 23) found pelicans rebuilding new nests on top of flooded and damaged nests.

In addition to freezes in Louisiana limiting brown pelican foraging and resulting in fish mortality, as discussed above under Factor A, McNease *et al.* (1994, p. 10) found effects from severe freezes included high initial brown pelican mortality from hypothermia, prolonged exposure to low temperatures, and death while plunge-diving into ice-covered water. However, severe freeze events in Louisiana are infrequent (McNease *et al.* 1994, p. 10) and have not precluded the Louisiana population from growing to large numbers since the restocking program began in the 1960s.

Winter storms and severe freezes may locally impact pelicans. For example, larger than usual numbers of pelicans began washing up on beaches in California during the winter of 2008–2009. This die-off of 300 to 400 birds appears to have occurred as a result of a winter storm event in the Pacific Northwest and weather-related stress in the northernmost portion of the winter range of the species where pelicans had remained late in the year due to relatively mild weather (California Department of Fish and Game 2009, pp. 7–8).

These natural factors may adversely affect brown pelicans on a short-term, localized basis, but do not pose a rangewide threat to the continued existence of the species. These factors generally affect only a limited number of individuals, affect only a localized area, or affect reproductive success for a single season. The pelican is a long-lived species that has evolved with natural phenomena such as variation in food resources, winter storms, and hurricanes. These factors are only significant when population sizes are small and reproduction is limited. Because current populations and distribution are large and reproduction has been restored to a level that can compensate for normal environmental fluctuations, we do not believe that natural events will endanger the species throughout all of its range in the foreseeable future.

Manmade Factors

Human disturbance of nesting pelicans. Adverse effects on nesting pelicans from human disturbance by recreationists, scientists, educational groups, and fishermen have been well documented (Anderson 1988, p. 342; Anderson and Keith 1980, pp. 68–69). Disturbance at nesting colonies, such as walking among or near nests, has been shown to adversely affect reproductive success of pelicans, and even result in abandonment of nests or entire colonies (Anderson and Keith 1980, p. 69).

Collier *et al.* (2003, pp. 112–113) offer human disturbance as the cause of a suspension of breeding activity in a brown pelican colony on St. Martin in the Lesser Antilles. The colony was near a resort with heavy boat and jet ski use. When a jet ski passed within about 400 m (1,312 ft) of a colony, 40 pelicans flushed, leaving their nests unattended and unprotected from predators, but none flushed when a slow-moving dive boat approached within 10 m (33 ft) of the colony.

In Puerto Rico and the U.S. Virgin Islands, most breeding colonies of brown pelicans are located within Commonwealth or Federal protected areas. The adverse effects of human disturbances by recreational vessels and fishermen have been suggested as potentially resulting in abandonment of pelican nests located at low elevations and close to the water (Jiménez 2004, pp. 12–17). Pelicans have been seen flushing from nests when boats approached within 152.4 m (500 ft), and have been noted to leave their nests unattended for as long as humans remained within this proximity (Saliva 1996a; Saliva 2003). Raffaele *et al.* (1998, pp. 224–225) summarized historical records of pelicans nesting in Puerto Rico and noted their extirpation from at least three colonies and suggests boat traffic as the cause. Schreiber (1999, p. 20) noted that one of these extirpated colonies may have moved to a nearby bay, hidden from boaters.

Along Mexico's Pacific Coast, human disturbance at colonies has resulted in nest abandonment, predation of eggs and chicks, and total abandonment or relocation of individual colonies (Anderson and Keith 1980, p. 69). Fishermen, birders, photographers, educational groups, and egg collectors (in past years) have occasionally disturbed the pelican colonies at critical times during the breeding season (Gress *et al.* 2005, p. 7). However, nesting brown pelicans are monitored annually as an indicator species in the Gulf of California (Godinez *et al.* 2004, p. 48), and although annual numbers fluctuate widely due to a number of factors, including disturbances at some colonies, the populations are considered stable (Everett and Anderson 1991, p. 133; Anderson and Palacios 2005, p. 2).

Although the threat of human disturbance has declined in Mexico as a result of conservation efforts and increased protection (Luckenbach Trustee Council 2006, p. 82), enforcement remains limited (Anderson *et al.* 2003, pp. 1103–1104) and many colonies are still susceptible to disturbances (Godinez 2006). However, effects from disturbance have not been substantial enough to result in documented population declines in the last 20 years (Anderson *et al.* 2004, p. 37). Therefore, while these local impacts are still occurring, we do not believe they currently threaten brown pelicans or will become a threat that endangers the brown pelican throughout all of its range in the foreseeable future.

Future conservation actions in Mexico that are not a factor in our rule to delist the brown pelican, but that would benefit brown pelicans and reduce human disturbance if implemented, are the restoration of seabird colonies on five pelican nesting islands along the Pacific Coast of Baja California as part of the Luckenbach Restoration Plan and the Montrose Settlements Restoration Program (MSRP) (Luckenbach Trustee Council 2006, pp. 74–82, 100, 106; MSRP 2005, pp. D5–11–12). Proposed restoration activities include reducing sources of disturbance at colonies by redesigning paths and walkways to manage human traffic, shielding light sources, and performing public outreach and education (Luckenbach Trustee Council 2006, pp. 20, 77).

While human disturbance can cause brown pelicans to flush from their nests, there are also situations where the birds have become habituated to nearby intense uses (for example, aircraft activity) without obvious effects on breeding efforts (Schreiber *et al.* 1981, p. 398). We believe the current protections provided by regulatory mechanisms other than the Endangered Species Act for nest sites in the United States and to prevent human disturbances to U.S. nesting colonies will adequately continue to protect brown pelicans throughout their range within the United States. Additionally, while human disturbance to brown pelican nesting colonies is still occurring outside of the United States, most of the countries in the species' range are protecting, and are expected to continue to protect, brown pelicans through implementation of restoration plans, designated biosphere reserves and parks, and land ownership and protection by conservation organizations and local, State, and Federal governments (*see* above for discussion of nesting habitat protections). These protections are implemented through various mechanisms that do not rely on the U.S. Endangered Species Act and therefore are expected to continue if the brown pelican is delisted. The current levels of human disturbance are not sufficient to cause population declines of brown pelicans, because brown pelicans may become habituated to some level of disturbance, may shift nesting locations (as indicated above in discussion of loss of nesting habitat), or may only experience a temporary loss of reproduction, such as for a single breeding season. While human disturbance of brown pelican colonies is continuing, we do not believe the level of disturbance is currently sufficient to result in population declines of brown pelicans throughout all of the species' range in the foreseeable future.

Pesticides and Contaminants. During initial recovery planning for brown pelicans, it was recognized that organochlorine pesticides were the major threat to the brown pelican in the United States and these pesticides acted by direct toxicity (affecting all age classes) and by impairing reproduction (reducing recruitment into the population) (Hickey and Anderson 1968, p. 272; Risebrough *et al.* 1971, pp. 8–9; Blus *et al.* 1979b, p. 183). Impairment of reproduction was attributed to a physiological response to the presence of high levels of the organochlorine dichlorodiphenyldichloroethylene (DDE) (Hickey and Anderson 1968, p. 272). DDE is the principal metabolite of DDT, a synthetic organochlorine compound that was widely used as a commercial and agricultural pesticide from the 1950s through the early 1970s (Risebrough 1986, p. 401; 37 FR 13369; July 7, 1972). Brown pelicans gradually accumulated these toxins by eating contaminated prey (Hickey and Anderson 1968, p. 271). DDE interferes with calcium deposition during eggshell formation, resulting in the production of thin-shelled eggs that are easily crushed during incubation (Gress 1995, p. 10). DDE also causes the death of embryos in the egg, and the death or aberrant behavior of recently hatched young (Blus 1982, p. 26). The primary reason for severe declines in the brown pelican population in the United States was DDT contamination in the 1960s and early 1970s.

In California, ocean sediments off the coast of Los Angeles were heavily contaminated with DDT residues from a DDT manufacturing facility that discharged waste into the sewage system, which entered the marine environment through a submarine outfall (Gress 1995, p. 10). This input ceased in 1970, after which DDT and DDE residues in the marine environment decreased sharply, and pelican reproductive success improved as eggshell thickness increased (Gress 1995, p. 10; Gress and Lewis 1988, p. 13). Reproductive declines are thought to occur when pelican eggshells average 15 to 20 percent thinner than normal (Gress 1994, p. 7). Mean eggshell thickness from 1986 to 1990 was only 4.6 percent thinner than the pre-1947 mean, a level which may contribute to lowered fledging rates in some birds, but is no longer causing population-wide reproductive impairment in brown pelicans (Gress 1995, p. 92).

DDE was also found to be detrimental to the reproductive success of brown pelicans in both Texas and Louisiana (King *et al.* 1977a, p. 423) and was the direct cause of brown pelican deaths in Louisiana (Holm *et al.* 2003, p. 431). Since banning of the use of DDT, levels of DDE residues have declined. The level of DDE residues in eggs collected in Texas from 1975 to 1981 was about one half the level found in eggs collected in 1970 (King *et al.* 1985, p. 205; King *et al.* 1977a, p. 423).

In 1997, Mexico introduced a plan to strictly curtail and then phase out use of DDT by 2007 (Environmental Health Perspectives 1997, p. 1). Mexico used DDT for control of malaria until 1999 (Salazar-García *et al.* 2004, p. 542), and then eliminated its use by 2000, several years ahead of schedule (Gonzalez 2005, p. 1). Recent contaminants studies in the Gulf of California, Mexico, indicate that this area remains one of the least contaminated with persistent organic pollutants in western North America (Anderson and Palacios 2005, p. 8).

Eggs were collected during the periods 1980 to 1982 and 1992 to 1993 in Puerto Rico and the U.S. Virgin Islands (Collazo *et al.* 1998, pp. 62–63). Concentrations of DDE and polychlorinated biphenyls (PCBs) were significantly higher in the Puerto Rico eggs than the U.S. Virgin Island eggs collected in the 1980s. However, Collazo *et al.* (1998, p. 64) state that brown pelican reproduction has not been affected by contaminants in Puerto Rico and the U.S. Virgin Islands at least since the 1980s. Additionally, contaminant concentrations in the eggs collected in the 1990s were significantly lower than those collected in the 1980s (USGS 2002b, p. 5).

The Environmental Protection Agency (EPA) banned the use of DDT in the United States in 1972 (37 FR 13369), and Canada's National Office of Pollution Prevention banned its use in 1985 (Canada Gazette 2005, p. 1). The Stockholm Convention on Persistent Organic Pollutants (*http://chm.pops.int/*) eliminated or reduced the use of 12 persistent organic pollutants, including DDT, in all participating countries in 2001. All countries within the breeding range of the brown pelican are participants. In addition to the United States and Canada, Cuba and Costa Rica have banned its use; Belize, Columbia, Mexico, and Venezuela have restricted its use; and eight countries limited access in other ways (*http://www.pesticideinfo.org*). Although low-level DDE contamination will probably persist for many years in areas where DDT was used, the impact to pelican

populations is now believed to be negligible and is expected to continue to lessen over time. Because regulatory mechanisms are in place to ban or strictly limit use of DDT, and current levels of DDE contamination are no longer causing population-wide reproductive impairment in brown pelicans, DDT or DDE will not endanger the brown pelican throughout all of its range within the foreseeable future.

A number of other organochlorine pesticides have also been documented to have affected brown pelicans in some portions of their range. The organochlorine pesticide endrin is the probable cause of the brown pelican's rapid decline and subsequent disappearance in Louisiana (King *et al.* 1977a, p. 427). Endrin was first used in the Mississippi River Basin in 1952. In 1958, dead fish were reported near sugarcane fields where endrin was used, and die-offs of fish and other wildlife began to consistently occur when heavy rains produced runoffs from those fields (King *et al.* 1977a, p. 427). King *et al.* (1977a, p. 427) reported an estimated six million menhaden found dead between 1960 and 1963. Extensive fish kills persisted in the lower Mississippi River and other streams in sugarcane growing parishes of Louisiana through 1964 (King *et al.* 1977a, p. 427). It was concluded that endrin from both agricultural and industrial sources was responsible for the fish kills (King *et al.* 1977a, p. 427). Fish-eating ducks, such as mergansers, were also reported floating dead in streams and bayous (King *et al.* 1977a, p. 427).

According to Winn (1975, p. 127), the adverse impact of endrin on brown pelicans was demonstrated when more than 300 of the 465 birds introduced to Louisiana since 1968 died during April and May 1975. Brain tissue from five dead pelicans was analyzed. Chemists at Louisiana State University identified seven pesticides in the brain tissue, all chlorinated hydrocarbons widely used in agriculture. Most of the birds analyzed contained what experts regard as potentially lethal levels of endrin. In addition to endrin, residues of six other organochlorine pesticides (DDE, dieldrin, toxaphene, benzene hexachloride, hexachloro-benzene (HCB), and heptachlor epoxide) were found (Winn 1975, p. 127). This significant die-off demonstrated the vulnerability of brown pelicans to endrin and emphasized the possible role of pesticides in the brown pelican's decline in the eastern United States. Endrin is also one of the pesticides targeted for elimination by the Stockholm Convention on Persistent Organic Pollutants (*http://chm.pops.int/*). Although it is not currently banned in the United States, it is not registered for use in the United States or Canada and is banned in Belize, Colombia, Cuba, and Peru (*http://www.pesticideinfo.org*).

Dieldrin (another organochlorine pesticide) was also detected at levels considered detrimental to reproductive success for brown pelicans in the eastern portion of the United States (Blus *et al.* 1974, p. 186; Blus *et al.* 1975, p. 653; Blus *et al.* 1979a, p. 132). There is only slight evidence that dieldrin thins eggshells, whereas there is strong evidence indicating that it adversely affects egg hatching, post-hatching survival, and behavior of young birds (Dahlgren and Linder 1974, pp. 329–330; Blus 1982, p. 27). The agricultural use of dieldrin in the United States ceased in 1970 and it was discontinued as a termite control in 1987 (Centers for Disease Control and Prevention 2005, p. 340). From 1975 through 1978, dieldrin residues collected from brown pelican eggs in Texas were found at levels that do not pose a threat to reproductive success and survival (King *et al.* 1985, p. 206).

Other organochlorine insecticides, including chlordane-related compounds, HCB, and toxaphene, were rarely detected in brown pelican eggs collected in Texas from 1975 to 1978 (King *et al.* 1985, p. 206). PCBs are chemicals that were used as coolants and lubricants in transformers, capacitors, and other electrical equipment. Due to concern over the toxicity and persistence of PCBs, they were banned in the United States in 1978 (43 FR 33918) under authority of the Toxic Substance Control Act of 1976 (15 U.S.C. 2601 *et seq.*). Concentrations of PCBs in brown pelican eggs collected in Texas declined more than eight-fold between 1970 and 1981 (King *et al.* 1985, p. 206), and are now at levels not believed to be detrimental.

Claims have been made that organochlorine pesticides are still used in South and Central America (NatureServe 2007, p. 2). However, we are not aware of any reports of pesticides affecting reproduction outside of the United States. Nearly every nation within the range of the brown pelican has signed the 2001 Stockholm Convention on Persistent Organic Pollutants (Resource Futures International 2001, p. 11). Signatories to the Convention agree to eliminate the production and use of DDT, endrin, dieldrin, chlordane, HCB, toxaphene, and PCBs, as well as other persistent organic pollutants, with an exemption for use of DDT for disease vector (an organism that transmits disease, such as mosquitoes) control in accordance with World Health Organization recommendations and guidelines and when alternatives are not available. Parties exercising this exemption are to periodically report their use (Resource Futures International 2001, p. 12). These reports are listed on the Convention's Web site: *http://chm.pops.int/*. The evidence we have found indicates that reproduction in brown pelicans is no longer affected by the use of persistent organochlorine pesticides. Regulatory mechanisms are currently in place to eliminate or severely restrict their use such that they do not threaten the brown pelican throughout all of its range within the foreseeable future.

While effects from other environmental contaminants were not thoroughly known in the 1970s and 1980s, there were indications that some localized contaminant-related problems still existed for the brown pelican. National Wildlife Health Laboratory records of brown pelican mortality from 1976 to 1983 documented 10 die-off incidents totaling over 212 birds along the U.S. Atlantic Coast (Service 2007a, p. 29). More recently National Wildlife Health Laboratory records from July 1995 through June 2003 documented 13 incidents of brown pelican mortality for the continental United States east of the Rocky Mountains. None of these records cite problems with heavy metals, and pesticides were implicated in just one of these cases (USGS 2003b). Two pelicans from Florida had moderate brain acetlycholinesterase activity depression, an indicator of poisoning from either organophosphorus or carbamate pesticides. While these currently applied, short-lived, non-organochlorine pesticides may cause occasional mortality of individual pelicans, they do not accumulate within the body, nor do they persist in the environment; therefore, they are unlikely to result in widespread reproductive failure like that caused by the use of organochlorine pesticides.

In the United States, an important regulatory mechanism benefitting brown pelicans is the requirement that pesticides be registered with the EPA. Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act, the EPA requires environmental testing of the effects of all new pesticides on representative wildlife species prior to EPA granting a pesticide registration. The EPA evaluates pesticides before they can be marketed and used in the United States to ensure that they will not pose unreasonable adverse effects to human health and the environment. Pesticides that meet this test are granted a license or

''registration,'' which permits their distribution, sales, and use according to requirements set by EPA to protect human health and the environment. The requirement for evaluation of pesticides during the registration process would not be altered if the pelican was delisted and protection of the Endangered Species Act were not available.

Efforts to ban and restrict use of persistent organic pollutants have reduced the contaminants that are most likely to cause widespread reproductive failures, and thus endangerment of the species. Other contaminants continue to be detected in some brown pelican populations, but these are generally short-lived pesticides or contaminants and effects have only been noted to occur on a local scale and affect few individuals and therefore are unlikely to have long-term effects on brown pelican reproduction or numbers. Regulatory mechanisms within the United States to evaluate and register pesticides, as well as the international convention restricting use of persistent organic pollutants, ensure that contaminant-caused mortality and widespread reproductive failures are unlikely to occur in the future. Therefore, we do not believe pesticides and contaminants are a significant factor affecting the brown pelican throughout all of its range, both now and for the foreseeable future.

Commercial fishing. Commercial fishing can have a direct effect on pelicans through physical injury caused by trawling gear. In 1998, a number of live and dead brown pelicans washed up on the beach at Matagorda Island, Texas (Sanchez 2007). Many had obvious wing damage. This incident coincided with the opening of the summer shrimp season. A similar incident in 1999 also coincided with the summer shrimp season (Sanchez 2007). It is possible that the young, inexperienced birds were colliding with the shrimp net lines while attempting to feed on the bycatch (unwanted marine creatures that are caught in the nets while fishing for another species), resulting in incidental death. Commercial fishing may adversely affect individual brown pelicans on a short-term, localized basis, but we do not believe it poses a rangewide threat to the continued existence of the species. Therefore, we do not believe this impact will become a significant factor affecting the brown pelican throughout all of its range in the foreseeable future.

Recreational fishing. Recreational fishing can have a direct effect on pelicans through physical injury caused by fishing tackle. Pelicans are occasionally hooked by people fishing from piers or boats (Service 1983, p. 62). Superficially embedded hooks can often be removed without damage; however, a small tear in the mouth pouch can hinder feeding and cause death from starvation (Service 1983, p. 63). Mortality is likely if a hook is swallowed or if there is substantial injury during hook removal (Service 1983, p. 63). Pelicans can become ensnared in monofilament fishing line which can result in serious injury, infections from cuts, impaired movement and flight, inability to feed, and death (Service 1983, p. 63).

Pelican Harbor Seabird Station, Inc., a Florida wildlife rehabilitator, reported that of the 200 pelicans handled in 1982, roughly 71 percent had fishing-related injuries. Of these, 12 (8.5 percent) died or were permanently crippled; the remainder were rehabilitated. Fishing-related injuries comprised about 35 percent of all observed mortality (February 4, 1985; 50 FR 4943). Another seabird rehabilitation group reported treating some 450 brown pelicans for fish line or hook injuries over a 4-year period (February 4, 1985; 50 FR 4943). However, this number of individuals affected is small in comparison to global population numbers and is therefore unlikely to affect long-term population stability.

Mortality from recreational fishing is thought to be insignificant to overall population dynamics, although it has been a significant cause of injury/mortality to newly fledged pelicans near colonies in California in the past (Service 1983, p. 62). Live anchovies used for bait and chumming (cut or ground bait dumped into the water to attract fish to the area where one is fishing) attract young pelicans, and they often swallow baited hooks that they encounter, which become embedded in bills or pouches (Service 1983, p. 63). In California, the closure to vessels at depths of less than 37 m (120 ft) offshore of West Anacapa Island has provided physical separation between fishing boats and the nesting colony, which has greatly reduced the likelihood of these interactions (Gress 2006). Several educational pamphlets have been developed and distributed by National Oceanic and Atmospheric Administration-Fisheries, in conjunction with the Service, NPS, and CDFG, to inform recreational fishermen in California about the impacts of hook and line injuries to pelicans and other seabirds and give step-by-step instructions for removing hooks and fishing lines from entangled birds.

While injuries and deaths from recreational fishing do occur, we believe they are accidental and localized, that they affect only few individuals, and are not likely to pose a significant factor affecting the brown pelican throughout all of its range, both now and in the foreseeable future.

Offshore oil and gas development. Oil spills and chronic oil pollution from oil tankers and other vessels, offshore oil platforms, and natural oil seeps continue to represent a potential source of injury and mortality to pelicans (Carter 2003, p. 3). The effects of oil on pelicans persist beyond immediate physiological injuries. Survival and future reproductive success of oiled pelicans that are rehabilitated and released are lower than for non-oiled pelicans (Anderson *et al.* 1996, p. 715). Injury and mortality of large numbers of pelicans would likely result if a significant oil spill occurred near a nesting colony during the breeding season or near traditional roost sites.

Oil spills from oil tankers and other vessels are far more common than spills from oil platforms (Carter 2003, p. 3). Since 1984, twelve major oil spill-related seabird mortality events occurred along the coast of California, all of which may have adversely affected breeding, roosting, or migrating pelicans (Hampton *et al.* 2003, p. 30). Only one of these events was from an offshore oil platform; the rest were from tankers, oil barges, or non-tanker vessels (Hampton *et al.* 2003, p. 30). As an example, on February 7, 1990, the oil tanker vessel American Trader ran aground at Huntington Beach, California, and spilled 1.6 million liters (416,598 gallons) of Alaskan crude oil (American Trader Trustee Council 2001, p. 1). An estimated 195 pelicans died as a result of the spill, and 725 to 1,000 oiled pelicans were observed roosting in the Long Beach Breakwater after the spill (American Trader Trustee Council 2001, p. 10). The spill occurred just before the start of the breeding season as the birds gathered at traditional roosts before moving to breeding islands, making large numbers of birds vulnerable to the oil (American Trader Trustee Council 2001, p. 10).

Along the United States coastline, National Marine Sanctuary regulations prohibit vessels, including oil tankers, from operating within 1.85 km (1.15 mi) of any of the Channel or Farallon islands or in the Monterey Bay or Olympic Coast sanctuaries (15 CFR 922). In the event of a major oil spill, this is probably an insufficient distance from the pelican nesting colonies to prevent impacts. Vessels frequently pass through the SCB in established shipping lanes that are within 5 km (3 mi) of Anacapa Island to the north and within 50 km (31 mi) to the south (Carter *et al.* 2000, p. 436). A traffic separation

scheme north of Anacapa Island in the Santa Barbara Channel separates opposing flows of vessel traffic. The shipping lanes and traffic separation scheme in the SCB reduces the likelihood of spills because it reduces the probability of vessel-to-vessel and vessel-to platform collisions. Shipping traffic is increasing offshore of California, and this may result in increased oil spills and pollution events (McCrary *et al.* 2003, p. 48). There is also a shipping lane that passes within 25 km (16 mi) of Los Coronados Islands in Mexico (Carter *et al.* 2000, p. 436). However, because impacts of tanker spills are localized and occur infrequently, we expect that brown pelicans will be affected only within localized areas in the event of spills and that individual birds will only be affected infrequently. Therefore, we do not believe this impact is a significant factor affecting the brown pelican throughout all of its range, both now and in the foreseeable future.

There are 27 offshore oil platforms and 6 artificial oil and gas islands off the coast of southern and central California (McCrary *et al.* 2003, p. 43). There are no platforms within the Channel Islands National Marine Sanctuary (McCrary *et al.* 2003, p. 44), and oil and gas exploration and development are prohibited within this Sanctuary, excluding a few oil and gas leases that existed prior to its designation. Oil and gas exploration and development are prohibited in the other three National Marine Sanctuaries, Olympic Coast (Washington), Gulf of the Farallones (California), and Monterey Bay (California) (15 CFR 922), with the exception of a few leases that existed prior to each sanctuary's creation, although new petroleum operations are unlikely to occur on these leases (McCrary *et al.* 2003, p. 45). The sanctuaries essentially provide a minor buffer from oil platform accidents, allowing time for breakup of oil discharges, and time to respond before the oil reaches the shore. The last major spill from any of the oil platforms or associated pipelines was a well blowout in 1969 that released 80,000 barrels in the Santa Barbara Channel. The Minerals Management Service (MMS) estimates the risk of a spill of 1,000 barrels or more over the next 28 years at 41 percent (McCrary *et al.* 2003, p. 45). However, the likelihood that a spill would affect brown pelicans would depend on the location, timing, and local conditions associated with the spill. Past spills from oil platforms have not limited brown pelican recovery in California.

In the Gulf of Mexico, the Outer Continental Shelf (OCS) is categorized into planning areas. The Central Planning Area includes Louisiana and Mississippi, and the Western Planning Area includes Texas (Ji *et al.* 2002, p. 19). Based on sheer volume of oil transported to those facilities, coastal birds and their habitats in these areas are at greatest risk from spills originating in coastal waters. An MMS Oil Spill Risk Analysis (OSRA) predicted that in these Planning Areas large oil spills associated with OCS activities are low-probability events (Service 2003b, p. 7). The OSRA estimated only a 4 to 8 percent probability that an oil spill in the Gulf of Mexico greater than 1,000 barrels of oil would occur and contact brown pelican habitat in the Central Planning Area, and a similar spill scenario has only a 4 to 7 percent probability of reaching the Western Planning Area (Ji *et al.* 2002, pp. 56, 59). Estimates derived from the OSRA model are ''conservative'' in that they presume the persistence of the entire volume of spilled oil over the entire duration time and do not include cleanup activities or natural weathering of the spill (Ji *et al.* 2002, pp. 12–13).

Beginning in the 1980s, MMS established comprehensive pollution prevention requirements that include redundant safety systems, along with inspecting and testing requirements to confirm that those devices are working properly (Service 2003b, p. 7). There was an 89 percent decline in the volume of oil spilled per billion barrels produced from OCS operations between 1980 and the present, compared to the total volume spilled prior to 1980. Additionally, this spill reduction volume occurred during a period when OCS oil production has been increasing (Service 2003b, p. 7). Spills less than 1,000 barrels are not expected to persist as a slick on the water surface beyond a few days (Service 2003b, p. 8). Because spills in the OCS would occur at least 3 miles from shore, it is unlikely that any spills would make landfall prior to breaking up (Service 2003b, p. 8).

There are a number of regulatory mechanisms within the United States that address oil and gas operations. MMS is also responsible for inspection and monitoring of OCS oil and gas operations (McCrary *et al.* 2003, p. 46). All owners and operators of oil handling, storage, or transportation facilities located seaward of the coastline must submit an Oil Spill Response Plan to the MMS for approval (30 CFR 254). Several Federal and State laws were instituted in the 1970s to reduce oil pollution (Carter 2003, p. 2). In 1990, State and Federal oil pollution acts were passed, and agencies developed programs to gather data on seabird mortality from oil spills, improve seabird rehabilitation programs, and develop restoration projects for seabirds (Carter 2003, p. 2). There have also been improvements in oil spill response time, containment, and cleanup equipment (McCrary *et al.* 2003, p. 46). In the absence of swift and effective action by the responsible party for a spill, the U.S. Coast Guard will initiate action pursuant to the Oil Pollution Act of 1990 to control and clean up a spill offshore under regional area contingency plans, which have been developed for this scenario (40 CFR 300 Subpart B). These measures have not entirely eliminated the potential for oil spills, but have reduced the likelihood of spills, thereby reducing pelican deaths and alleviating the magnitude of the impacts on pelicans and other seabirds if a spill were to occur (Carter 2003, p. 3).

If an oil spill or other hazardous materials release does occur in the United States, the Natural Resource Damage Assessment (NRDA) process is in place to identify the extent of natural resource injuries (including injuries to wildlife), the best methods for restoring those resources, and the type and amount of restoration required. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (33 U.S.C. 2701), and the Federal Water Pollution Control Act or Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) form the legal foundation for the NRDA Restoration Program and provide trustees with the legal authority to carry out Restoration Program responsibilities. Trustees for natural resources include the Departments of Agriculture, Commerce, Energy, and the Interior, and other agencies authorized to manage or protect natural resources (EPA 2007a, EPA 2007b, Department of the Interior 2007). Therefore, if an oil spill occurs and brown pelicans are negatively affected, injuries to brown pelican populations or their habitat may be restored through this process. For example, in California, negative effects to brown pelicans have been mitigated through the implementation of restoration measures in the American Trader Restoration Plan, the Command Oil Spill Restoration Plan, the Torch/Platform Irene Restoration Plan, and the Montrose Settlement Restoration Plan.

Oil spills from oilfields, pipelines, or ships have impacted brown pelicans in some other countries. For example,

oiling related to an oilfield in Mexico (King *et al.* 1985, p. 208; Anderson *et al.* 1996, p. 211) and from a ship in the Galapagos Islands, Ecuador (Lougheed *et al.* 2002, p. 5) affected brown pelicans. Although 117 brown pelicans were reported as affected by the 2001 spill in the Galapagos Islands from the fuel tanker Jessica, no mortalities of pelicans were reported (Lougheed *et al.* 2002, p. 29). From these accounts, brown pelicans frequently survive these incidences, especially when receiving some rescue cleanup. Oil spills have been identified as a possibility in oil-producing areas of Venezuela, with concern for effects on marine productivity and the food supply of brown pelicans, as well as for direct oiling of birds (Service 2007a, p. 39). While spills outside of the United States are still a possibility, they would be localized and thus would not become a threat that would endanger the brown pelican throughout all of its range in the foreseeable future. In addition, there are a number of international conventions and their amendments, including the International Convention on Civil Liability for Oil Pollution Damage, International Convention on Oil Pollution Preparedness Response and Co-operation, International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, and the International Convention on the Establishment of an International Fund of Compensation for Oil Pollution Damage. The majority of countries within the range of brown pelicans are parties to one of more of these international agreements (*http://sedac.ciesin.org/entri/treatyMultStatus.jsp*), which would assist with prevention, as well as response and restoration activities in the event of oil spills outside the United States.

Other much less common effects of offshore oil and gas development have occasionally been documented. There have been several instances in Louisiana of unusual and infrequent mortalities, generally involving juvenile brown pelicans, associated with the design and construction of inshore and offshore oil platforms (Fuller 2007a, p. 1). Brown pelicans have been observed strangling in inshore rig railings and drowning in uncovered casements (large pipes used in the drilling process that may fill with water). The number of brown pelican mortalities in these incidences was low. However, through consultation with the Service, MMS, and the Louisiana Department of Natural Resources, those features were modified to virtually eliminate the problem (Fuller 2007a, p. 1). Because brown pelicans are also protected by the MBTA, these modifications to prevent mortalities are expected to remain in place after the protections of the Act are removed.

Oil spills and oil pollution continue to have potential impacts on brown pelicans, but spill prevention, response, and restoration activities have become more organized and effective, and the breeding range is large enough that a single spill, even a major one, would likely only affect a small fraction of the population. Additionally, the death of pelicans from design flaws on platforms is rare and being remedied. Therefore, we believe that oil and gas activities, while they may occasionally have short-term impacts to local populations, will not become threats that endanger the brown pelican throughout all of its range in the foreseeable future.

Miscellaneous. Within the United States, brown pelican mortalities have been documented from electrocution on power lines and drowning in water intake pipes. In both cases, through consultation with the Service, those features were modified to virtually eliminate the problem (Fuller 2007b, p. 1). These events were unusual instances of short-term, localized impacts to brown pelicans. Continued protection of brown pelicans under the MBTA will ensure that future brown pelican mortality caused by design of man-made features are similarly addressed.

Conclusion

As required by the Act, we considered the five threat factors in order to assess whether the brown pelican is threatened or endangered throughout all of its range. When considering the listing status of the species, the first step in the analysis is to determine whether the species is in danger of extinction throughout all of its range. If this is the case, then the species is listed as endangered in its entirety. For instance, if the threats on a species are acting only on a portion of its range, but the effects of the threats are such that they place the entire species in danger of extinction, we would list the entire species.

As discussed above, the primary reason for severe declines in the brown pelican population in the United States, and for designating the species as endangered, was likely DDT contamination in the 1960s and early 1970s. Additionally, pesticides like dieldrin and endrin were also found to negatively impact brown pelicans. Since the banning of these organochlorine pesticides, brown pelican abundance within the United States has shown a dramatic recovery, and although annual reproductive success varies widely, populations have remained generally stable for at least 20 years. The EPA requires registration and testing of new pesticides to assess potential impacts on wildlife, so we do not anticipate that a pesticide that would adversely affect brown pelicans will be permitted in the future. Although DDT contamination continues to persist in the environment, based on the nesting population size, overall population stability, and improved reproductive success, the continued existence of brown pelicans is no longer threatened by exposure to DDT or its metabolites, and populations within the United States have recovered adequately to warrant delisting. We have no evidence that brown pelicans outside the United States ever declined in response to persistent organic pesticides.

Nesting and roosting colonies in the United States are expected to continue to be protected from human disturbance through local conservation measures, laws, numerous restoration plans, and ownership of many of the nesting and roosting habitats by conservation groups and local, State, and Federal agencies. In most countries outside of the United States where brown pelicans occur, protection is expected to continue through implementation of restoration plans, designated biosphere reserves and parks, and land ownership by conservation organizations and local, State, and Federal governments.

Some nesting and roosting habitat is expected to continue to be limited at certain local scales, just as some habitat destruction is expected to continue. However, the majority of nesting sites within the United States and many outside the United States are protected. While some nesting habitat may be lost, it is not likely to be a limiting factor in brown pelican reproductive success, since pelicans are broadly distributed and have the ability to shift breeding sites in response to changing habitat and prey abundance conditions. In response to storms, erosion, and lack of sedimentation, brown pelicans have exhibited their dispersal capabilities; they have established new colonies elsewhere, and shown an ability to rebound from low numbers. Additionally, there are several restoration activities, such as artificial island creation and enhancement with dredge material and barrier island restoration and protection that will continue to enhance and protect brown pelican habitat, particularly within the U.S. Gulf Coast region.

Impacts from weather events, such as El Niños and severe freezes, are also expected to continue. Natural factors

such as these may adversely affect pelican reproduction and survival on a short-term, localized basis, but alone pose only a minimal threat to the species at current population numbers.

Brown pelican prey abundance in the United States will continue to be monitored and managed in accordance with the Magnuson-Stevens Fishery Conservation and Management Act of 1976. We do not have any information from outside of the United States on commercial fishery impacts to brown pelican prey abundance; however, based on population numbers, there is no reason to believe that commercial fisheries are currently limiting brown pelican reproductive success.

Brown pelicans are not threatened with overutilization for commercial, recreational, scientific, or educational purposes. Research on pelicans is generally observational and noninvasive. Although several diseases have been identified as a source of mortality for brown pelicans, they appear to be self-limiting and sporadic and are not likely to impact long-term population trends. Predation is a minor threat that occurs when disturbance to nesting colonies leaves eggs and chicks unprotected, making it essential that nesting colonies are protected from disturbance, as noted above.

Commercial and recreational fishing may adversely affect brown pelicans on a localized basis, but pose no rangewide threat to the continued existence of the species. Oil spills and oil pollution continue to be a potential threat, but the breeding range is large enough that a single spill, even a major one, would likely only affect a small fraction of the population. This threat has been alleviated in the United States to some degree by stringent regulations for extraction equipment and procedures, traffic separation schemes, shipping lanes that reduce the likelihood of collisions or spills, and improvements in oil spill response, containment, and cleanup. These measures reduce the probability of spills and also may reduce adverse impacts if a spill were to occur.

Foreseeable Future

As discussed above, the brown pelican continues to be affected by a variety of localized, short-term impacts. These localized impacts are generally expected to continue in perpetuity. For example, there is no reason to think that development; hurricanes and other storm events; random human disturbance; fishery activities; oil spills; and infestation by mites, tick, and liver flukes will not continue at some rate indefinitely into the future. Because these impacts are generally limited to one breeding season in duration, occur infrequently, or occur in only a small portion of the range of the species, they are not expected to result in declines in the rangewide status of the species. In order to reliably predict that these impacts may result in endangerment in the foreseeable future, the rate, magnitude, or intensity of the threats would have to increase to the point that population level impacts (e.g., repeated nesting failures) were seen in at least a significant portion of the range of the species. The brown pelican is a long-lived species that breeds multiple years such that sporadic breeding failures have little effect on long-term population stability (Shields 2002, p. 23). In many cases, pelicans will relocate to alternative breeding areas or pelicans from other areas will recolonize affected sites. Current science does not allow us to extrapolate declines in the species' status if threats remain at current levels and further does not allow us to reliably predict that these localized, short-term impacts will change in such a way in the future such that pelicans will respond negatively over a significant portion of the range of the species.

Some diseases such as domoic acid poisoning, erysipelas, and avian botulism occur rarely and are subject to the same fact patterns discussed above concerning short-term, localized threats. When considering diseases such as West Nile virus and avian influenza, it would not be unexpected for either disease to move into the range of the brown pelican; however, the timing, intensity, and response of pelicans across the range of the species cannot be reliably predicted. Thus, the scientific information does not support these diseases as threats to the brown pelican in the foreseeable future.

Predation of chicks and eggs is occurring at a level low enough to allow for populations to recover and expand across the range of the species. This background level of predation is not expected to increase or otherwise change in the future such that this trend would be reversed as a result of predation.

The use of pesticides and contaminants that were known to affect brown pelicans across the range of the species has discontinued in most portions of the range of the species through implementation of bans, laws, and treaties. In order to determine that pesticide and contaminant use may be a threat to the brown pelican in the future, its use must not only be occurring, but be occurring at a level that impacts the long term population levels over at least a significant portion of the range of the species. Current scientific and commercial information simply does not indicate that these two things are happening or that some change will occur allowing it to happen in the future.

The fact that threats are not considered foreseeable does not mean that they are not possible, only that current scientific understanding does not allow us to reliably predict that impacts will increase or that a population decline will result in response to that impact in the future. Given current information on threats and ongoing conservation and management activities, it would be speculative to assume that these impacts will increase to a reliably measureable level, thus it is not foreseeable that the threats will impact the species meaningfully in the future.

In conclusion, the single most important threat to the continued existence of the brown pelican was from DDT, which is now banned in the United States, Mexico, and Canada. In Central and South America and the West Indies, most countries have either banned or restricted use of DDT or made its importation illegal (*http://www.pesticideinfo.org/DetailChemReg.jsp?Rec-Id=PC33482*). Although other localized threats to the brown pelican remain throughout its range, as discussed above, they are at a low enough level that none are likely to have long-term population level or demographic effects on brown pelican populations in the foreseeable future. We believe this species is no longer in danger of extinction throughout its range, nor is it likely to become so in the foreseeable future.

Significant Portion of the Range

Having determined that the brown pelican does not meet the definition of threatened or endangered throughout its range, we must next consider whether there are any significant portions of its range that are in danger of extinction or are likely to become endangered in the foreseeable future. On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of In Danger of Extinction Throughout All or a Significant Portion of Its Range'' (U.S. Department of the Interior 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The

contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species. In other words, in considering significance, the Service should ask whether the loss of this portion likely would eventually move the species toward extinction, but not necessarily to the point where the species should be listed as threatened throughout its range.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are not significant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, or the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic or occasional disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species overall. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation insures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Applying the process described above for determining whether a species is threatened in a significant portion of its range, we next addressed whether any portions of the range of the brown pelican warranted further consideration. We noted in the five-factor analysis that numerous factors continue to affect brown pelicans in various geographical areas within the range. However, we conclude that these areas do not warrant further consideration because the areas where localized effects may still occur are small (in the context of the range of the species) and affect a few pelicans from one year to the next (such as abandonment of a single breeding colony or entanglement in fishing gear), thus there is no substantial information that these areas are a significant portion of the range. Some areas that may be significant experience short-term or sporadic events (such as the Gulf Coast region experiencing tropical storm events, or Pacific Coast populations experiencing reduced nesting success during an El Niño event), but we do not have substantial information that brown pelicans in these areas are likely to become in danger of extinction in the foreseeable future.

As discussed previously in Distribution and Population Estimates, Recovery Plans, and Factors A and E, declines in wintering numbers of brown pelicans have been noted in Puerto Rico (Collazo *et al.* 2000, p. 40), which superficially suggest that Puerto Rico warrants further consideration. However, Puerto Rico does not represent a large block of high quality habitat, is not known to act as a refugium, and is not known to contain important concentrations of specialized habitat types (e.g., breeding, foraging). As discussed above, brown pelican populations generally are able to recolonize neighboring sites that may have been lost or extirpated during a catastrophic event (e.g., hurricane). In this sense, Puerto Rico contributes to the resiliency of brown pelican populations; however, all brown pelican populations contribute to resiliency in this way and the Puerto Rico populations are not known to contribute more significantly to resiliency than neighboring populations and as such are considered to have a low contribution to the resiliency of the species. Because Puerto Rico represents a small portion of the range of the species, both geographically and in total numbers (240–400 out of 620,000 birds), these populations have a low contribution to the redundancy of the species. Finally, brown pelicans in Puerto Rico belong to the subspecies of brown pelican distributed throughout the West Indies and along the Caribbean coasts of Colombia and Venezuela and are not known to contain any unique genetic materials, morphologies, or behaviors and thus have a low contribution to the representation of the species. While it is important to note that brown pelicans may serve a vital role in the local flora and fauna of Puerto Rico and neighboring areas, these populations are not significant to the species as a whole

under the resiliency, redundancy, and representation framework.

In addition to a determination that the Puerto Rico populations are not significant to the conservation of the species, we did not find that these populations are in danger of extinction now or in the foreseeable future. Causes for the apparent decline in number of wintering birds are not known and no specific threats to brown pelicans in Puerto Rico and the Virgin Islands were identified in the five factor analysis above. Although numbers of breeding pelicans in Puerto Rico and the Virgin Islands varied from year to year in both the 1980s and 1990s, there was no trend in breeding pelican numbers that would suggest that the species is in danger of extinction in that area. Nesting sites are protected from development, human disturbance of nesting sites is not known to be limiting, contaminants are not affecting brown pelican populations (Collazo *et al.* 1998, pp. 63–64), and numbers of nesting pairs appear to be holding steady (Collazo *et al.* 2000, p. 42). Juvenile and adult pelicans from the Virgin Islands disperse to Puerto Rico (Collazo *et al.* 1998, p. 63), so proximity to breeding colonies on the Virgin Islands and other islands would likely re-establish the species on Puerto Rico even if it were lost. In the absence of identified threats or evidence that brown pelicans in Puerto Rico represent a significant portion of the species' range, we did not consider this portion of the range further.

INVEMAR (2008) states that pelicans in Colombia may be impacted by a variety of factors including port construction, mangrove deforestation, development, overfishing, pollution, disease, and hunting. However, we have found no information to indicate that these factors are leading to declines in numbers of brown pelican in Colombia. In fact, the seven sites where Moreno and Bulevas (2005, p. 11) document brown pelicans to occur in Colombia all have some form of protection. For example, the largest population in Colombia occurs on Isla Gorgona which is a Parque Nacional Natural, or national park, and is protected from most disturbance. Further, similar to the situation for Puerto Rico, the Colombian populations of brown pelican do not appear to be genetically different from other brown pelicans and this portion of the range does not appear to include a concentration of an important specific habitat type or a large portion of unusually high quality habitat. In summary, in our analysis of the five listing factors, we did not identify any significant continuing threats in any portion of the species range that warrants further consideration.

In conclusion, major threats to brown pelicans have been reduced, managed, or eliminated. Remaining factors that affect brown pelicans occur on localized scales, are short-term events, or affect small numbers of individuals and do not have long-term effects on population numbers or distribution of the species. We have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause the brown pelican to become in danger of extinction within the foreseeable future throughout all or any significant portion of its range. We believe the brown pelican no longer requires the protection of the Act, and, therefore, we are removing it from the Federal List of Endangered and Threatened Wildlife.

Effect of This Rule

This rule revises 50 CFR 17.11(h) to remove the brown pelican from the List of Endangered and Threatened Wildlife. Because no critical habitat was ever designated for this species, this rule would not affect 50 CFR 17.95.

The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, no longer apply. Federal agencies are no longer required to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species. This rulemaking, however, does not affect the protection given to all migratory bird species under the MBTA.

The take of all migratory birds, including brown pelicans, is governed by the MBTA. The MBTA makes it unlawful to at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof (16 U.S.C. 703(a)). Brown pelicans are among the migratory birds protected by the MBTA. The MBTA regulates the taking of migratory birds for educational, scientific, and recreational purposes. Section 704 of the MBTA states that the Secretary of the Interior (Secretary) is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed, and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that any take is compatible with the protection of the species. Modification to brown pelican habitat would constitute a violation of the MBTA only to the extent it directly takes or kills a brown pelican (such as removing a nest with chicks present).

Post-Delisting Monitoring Plan

Section 4(g)(1) of the Act requires that the Secretary, through the Service, implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the monitoring program, data indicate that the protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. At the conclusion of the monitoring period, we will review all available information to determine if relisting, the continuation of monitoring, or the termination of monitoring is appropriate. We proposed a draft post-delisting monitoring plan in the **Federal Register** on September 30, 2009 (74 FR 50236) and expect to finalize that post-delisting monitoring plan within a year.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with actions adopted pursuant to section 4(a) of the Act. We

published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references we cited is available upon request from the Clear Lake Ecological Services Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are staff members of the Southwest Regional Office, Albuquerque, New Mexico.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Pelican, brown'' under BIRDS from the List of Endangered and Threatened Wildlife.

Dated: October 28, 2009.

Christine E. Eustis,

Acting Director, Fish and Wildlife Service.

[FR Doc. E9–27402 Filed 11–16–09; 8:45 am]

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S. 475/P.L. 111–97
Military Spouses Residency Relief Act (Nov. 11, 2009; 123 Stat. 3007)

S. 509/P.L. 111–98
To authorize a major medical facility project at the Department of Veterans Affairs Medical Center, Walla Walla, Washington, and for other purposes. (Nov. 11, 2009; 123 Stat. 3010)

Last List November 10, 2009

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