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**Reader Aids**

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

# Rules and Regulations

Federal Register
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Thursday, December 17, 2009



## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### 7 CFR Part 610

### State Technical Committees

**AGENCY:** Natural Resources Conservation Service, United States Department of Agriculture.

**ACTION:** Final rule.

**SUMMARY:** The Natural Resources Conservation Service (NRCS) is publishing a final rule that sets forth the policies for State Technical Committees at 7 CFR part 610, subpart C. NRCS published the State Technical Committee interim final rule in the **Federal Register** on November 25, 2008. NRCS published standard operating procedures for State Technical Committees as a notice in the **Federal Register** on April 7, 2009. The public was invited to comment on both the interim final rule and the standard operating procedures. This final rule incorporates changes made to 7 CFR part 610, subpart C, in response to public comments received on the interim final rule and the standard operating procedures. Subsequent to the publication of this final rule, and utilizing the comments received, NRCS will make further updates to its standard operating procedures.

**DATES:** *Effective Date:* The rule is effective December 17, 2009.

**ADDRESSES:** This notice may be accessed via the Internet. Users can access the NRCS homepage at: *http://www.nrcs.usda.gov/;* select the Farm Bill link from the menu. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at: (202) 720–2600 (voice and TDD).

**FOR FURTHER INFORMATION CONTACT:** Dan Lawson, Acting Director, Conservation Planning and Technical Assistance Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6015 South Building, Washington, DC 20250; telephone: (202) 720–1510; fax: (202) 720–2998; or e-mail: *dan.lawson@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

**Regulatory Certifications**

*Executive Order 12866*

The Office of Management and Budget (OMB) has determined this final rule is not significant and will not be reviewed by OMB under Executive Order 12866.

*Regulatory Flexibility Act*

The final rule will not have a significant environmental impact on small entities. NRCS has determined that the Regulatory Flexibility Act does not apply.

*Civil Rights Impact Analysis*

NRCS has determined through a Civil Rights Impact Analysis that the State Technical Committee final rule discloses no disproportionately adverse impact for minorities, women, or persons with disabilities. The incorporated changes to 7 CFR part 610, subpart C, were required by the Food, Conservation, and Energy Act of 2008 (2008 Act). The 2008 Act changed the composition and responsibilities of the State Technical Committees. Specifically, the 2008 Act added ''agricultural producers and other professionals that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences'' and ''owners of nonindustrial private forest land'' as members of the committee. The 2008 Act removed the U.S. Fish and Wildlife Service as a statutorily identified member of the committee, and modified the requirement for agriculture producer member participation. Agriculture producer members are no longer required to have conservation expertise. Agriculture producer members are now required to represent a variety of crops and livestock or poultry raised within the State. The Secretary continues to have discretionary authority to include other agency personnel with expertise in soil, water, wetland, and wildlife management. These changes are reflected in § 610.22 of this regulation, and the language in the standard operating procedures addresses the composition of the committees which is broad enough to add members that have experience to address agricultural and natural resources issues regardless of race, color, national origin, gender, sex, or disability status. Outreach and communication strategies are in place to ensure that potential members will be provided the same information to allow them to make informed decisions regarding membership. The State Technical Committee membership applies to all persons equally regardless of race, color, national origin, gender, sex, or disability status. Therefore, the State Technical Committee rule portends no adverse civil rights implications for minorities, women, or persons with disabilities. Copies of the Civil Rights Impact Analysis may be obtained from Dan Lawson, Acting Director, Conservation Planning and Technical Assistance Division, Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 6015 South Building, Washington, DC 20250.

*Environmental Analysis*

The final rule involves the establishment of State Technical Committees. As provided by 7 CFR part 1b.3—Categorical Exclusions, the final rule involves administrative functions that are categorically excluded from further environmental review under the National Environmental Policy Act. Specifically, 7 CFR part 1b.3 states: (a) The following are categories of activities which have been determined not to have a significant individual or cumulative effect on the human environment and are excluded from the preparation of an environmental assessment or environmental impact statement, unless individual agency procedures prescribed otherwise.

(1) Policy development, planning, and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection

when such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation; and

(7) Activities related to trade representation and market development activities abroad.

The State Technical Committee rule meets the criteria for being a categorical exclusion under § 1b.3(1) policy development, planning, and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions; and § 1b.3(6) activities which are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation.

*Paperwork Reduction Act*

Section 2904 of the 2008 Act provides that the promulgation of regulations and administration of Title II of the Act will be made without regard to chapter 35 of Title 44 of the U.S.C., also known as the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this final rule.

*Executive Order 12988*

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this final rule are not retroactive. The provisions of this final rule preempt State and local laws to the extent that such laws are inconsistent with this final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at parts 11, 614, and 780 of Title 7 of the CFR must be exhausted.

*Executive Order 13132*

This final rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. The Department of Agriculture (USDA) has determined that this final rule conforms with the Federalism principles set forth in the Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities on the various levels of government. Therefore, USDA concludes that this final rule does not have Federalism implications.

*Executive Order 13175*

This final rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. NRCS has assessed the impact of this final rule on Indian Tribal governments and has concluded that this rule will not have substantial direct effects 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.

*Unfunded Mandates Reform Act of 1995*

NRCS assessed the effects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

**Discussion of State Technical Committees**

*Interim Final Rule and Standard Operating Procedures*

NRCS published an interim final rule on November 25, 2008. This rule incorporated changes to 7 CFR part 610, subpart C, required by the 2008 Act amendments to Subtitle G of Title XII of the Food Security Act of 1985 (1985 Act). The 2008 Act changed the composition and responsibilities of State Technical Committees. Specifically, the 2008 Act added ''agricultural producers and other professionals that represent a variety of disciplines in the soil, water, wetland, and wildlife sciences'' and ''owners of nonindustrial private forest land'' as eligible members of the committee. The 2008 Act removed several Federal agencies as statutorily identified members of the committee, and modified the requirement for agriculture producer member participation. The requirement that agricultural producer members have ''demonstrable conservation expertise'' was deleted and replaced with a requirement that agricultural producer members represent a variety of crops and livestock or poultry raised within the State. NRCS continues to have discretionary authority to include other agency personnel with expertise in soil, water, wetland, and wildlife management. These changes were reflected in § 610.22 of the interim final rule.

Section 1261(c) of the 1985 Act, as revised by the 2008 Act, states that: ''each State Technical Committee will be composed of agricultural producers and other professionals that represent a variety of disciplines in soil, water, wetland, and wildlife sciences.'' To ensure that recommendations of State Technical Committees take into account the needs of the diverse groups served by USDA, the interim final rule provided in § 610.22 that committee membership will include, to the extent practicable, individuals with demonstrated ability to represent the conservation and related technical concerns of particular historically underserved groups and individuals; i.e. minorities, women, persons with disabilities, socially and economically disadvantaged groups, and beginning farmers and ranchers. Since the State Conservationist determines the membership on the State Technical Committee, individuals or groups wanting to participate as members may submit to the State Conservationist a request that explains their interest and outlines their relevant credentials for becoming a member. The State Conservationist ensures that all interests are adequately represented and heard on the committee, and that the recommendations, when adopted, address natural resource concerns.

Section 1261 of the 1985 Act provides that each committee is advisory and has no implementation or enforcement authority. The 2008 Act amendments continue this provision in Section 1262(c)(1). However, in Section 1262(c)(2), the committees' role is expanded to provide advice on whether Local Work Groups are addressing State priorities. In the interim final rule, NRCS revised § 610.24(c) to incorporate this change.

The 2008 Act amendments to Section 1261(b)(1) require the Secretary to establish standard operating procedures for committees. NRCS published standard operating procedures as a notice in the **Federal Register** on April 7, 2009. NRCS incorporated these procedures in agency directives which are available through the NRCS State Technical Committees' Web site and offices.

The 2008 Act stated that any Local Working Group will be considered to be a subcommittee of the applicable State Technical Committee, and thus exempt from the Federal Advisory Committee Act (FACA). NRCS changed § 610.21, Purpose and Scope, and § 610.25, Specialized Subcommittees, in the

interim final rule to incorporate this statutory provision.

**Discussion of Comments**

NRCS received a total of 16 responses from Soil and Water Conservation Districts (SWCDs), State Associations of Conservation Districts, Indian Nations Conservation Alliance, conservation and agriculture interests, State natural resource agencies, Association of Fish and Wildlife Agencies, and a Federal agency. NRCS received many positive comments including the following: One respondent appreciated the use of subcommittees to address specific issues; another respondent applauded the change exempting Local Working Groups from the FACA in order that stakeholders may also take part in the discussion; three respondents approved of the addition of the State Technical Committees' role in the review of Local Working Groups to ensure consistency; another respondent approved of the public attendance at meetings; one respondent supported the 14-day public notice; another respondent expressed support for the standard operating procedures; and one respondent supported the addition of ''owners of non-industrial private forest land'' required by the 2008 Act. NRCS appreciates receiving this feedback which affirms the language in the interim final rule and standard operating procedures.

Other comments generally reflected the need for NRCS to enhance communication between the agency and the committees, as well as ensure that all groups are adequately represented on the committees. The comments are categorized by topic.

*1. Responsibilities of State Technical Committees*

*Comment:* Seven respondents requested that NRCS expand the list of activities in § 610.24(a). Among these responses, one respondent recommended NRCS include Highly Erodible Land and Wetland Conservation provisions; two respondents requested the Conservation Cooperative Partnership Initiative (CCPI); one recommended the Agricultural Management Assistance (AMA) Program be added; another respondent recommended adding the Conservation Innovation Grants and the Agricultural Water Enhancement Program; another respondent requested interim conservation practice standard creation and revision be added, including conservation practice standards for specialty crops, organic production, precision agriculture, energy conservation and bioenergy production, native and managed pollinators, and forestry; and another respondent requested State-specific conservation practice standards, policies, guidelines, and programs.

One respondent requested § 610.24 be expanded to include after the list of programs the following: ''Each State Technical Committee may also provide advice on such other programs or conservation issues as may be requested by the State Conservationist.''

*Response:* NRCS partially agrees with the respondents and amends Section § 610.24(a) to include the CCPI and conservation practice standards and specifications. The AMA Program is not listed since it is not a Title XII program under the 1985 Act, and therefore not encompassed by the statutory authority of State Technical Committees under Subtitle G of Title XII. In response to the comments received, NRCS is inserting ''not limited to'' in the sentence preceding the listed activities and programs. This is to clarify that State Technical Committees may offer recommendations on programs and activities other than the ones listed as long as they are within Title XII.

*Comment:* One respondent recommended adding subprogram allocation decisions to the list of recommendations to be made by the State Technical Committee in § 610.24 (a).

*Response:* No changes were made to the rule in response to this comment. NRCS believes the updated language in § 610.24 allows for the issue to be a topic of discussion for State Technical Committees.

*2. State Technical Committee and Local Working Group Membership*

*Comments:* Numerous comments were received regarding the composition of State Technical Committees and Local Working Groups. Two respondents were concerned that State Conservationists may be more restrictive than Congress intended. Respondents suggested a number of adjustments to specifically recognize certain groups including: Tribal conservation districts; non-profit organizations with expertise reaching beginning and socially disadvantaged farmers and ranchers; U.S. Fish and Wildlife Service; a representative of State Fish and Wildlife Agencies; State Forestry Associations; and representatives from Federal, State or local government agencies with statutory responsibility for the resources being analyzed by the subcommittee. They also requested clarification that the list is not exhaustive and that the requirement for agriculture producers to have conservation expertise be reinstated.

Another respondent wanted a broad array of agencies, organizations, producers, and conservation professionals to serve on Local Working Groups, and another respondent commented that the State Conservationist should have broad latitude to invite and allow varied expertise while keeping the State Technical Committee to a workable size.

Another respondent requested that the standard operating procedures make it clear that Local Working Groups need to include members with expertise to identify the most significant environmental challenges associated with agriculture production.

*Response:* The 2008 Act removed specific membership for several Federal agencies and supported broad representation from the agriculture community. The interim final rule mirrored the statute in terms of the composition of the State Technical Committee. However, NRCS believes it is important to obtain and utilize the expertise of representatives from the conservation and agriculture communities, as well as Federal and State agencies, and does not want to limit a State Conservationist's ability to have access to necessary resources. NRCS has incorporated the following policy in the standard operating procedures: ''* * * the State Conservationist will invite other Federal agencies and persons knowledgeable about economic and environmental impacts of conservation techniques and programs to participate, as needed.'' Additionally, NRCS incorporated language in § 610.22 of this final rule to address membership concerns. Specifically, NRCS revised the language in paragraph (a)(6) to remove the acreage size requirement for the Federally recognized Indian Tribes; in paragraph (b) added as invitees State and regional agencies and organizations; in paragraph (c) added Beginning Farmers and Ranchers; and in paragraph (d) clarified that it is the responsibility of the State Conservationist to seek a balanced representation of interests among the membership.

Further, NRCS addressed concerns related to historically underserved groups by including the following in the standard operating procedures: ''To ensure that recommendations of State Technical Committees take into account the needs of diverse groups served by USDA, membership will include, to the extent practicable, individuals with demonstrated ability to represent the conservation and related technical concerns of particular historically

underserved groups and individuals including, but not limited to, the following:

- Minorities;
- Women;
- Persons with disabilities; and
- Socially and economically disadvantaged groups.''

*Comments:* Two respondents requested that NRCS revise § 610.22(d) regarding decisions to deny membership. One respondent recommended NRCS require that if the State Conservationist rejects an application for participation, they inform the applicant of the grounds for rejection. Another respondent recommended specific language related to the ability to appeal these decisions. One respondent recommended the statement, ''It is the State Conservationist's responsibility to ensure equal representation of all interests'' be included. Another respondent recommended that NRCS insert the word ''individual'' before the word ''membership.''

*Response:* NRCS agrees with most of the comments and has incorporated the following language in the standard operating procedures, ''The State Conservationist will respond to requests for State Technical Committee membership in writing within a reasonable period of time, not to exceed 60 days.'' In § 610.22(d) of the final rule, NRCS added clarification that it is the responsibility of the State Conservationist to seek a balanced representation of interests among the membership on the State Technical Committee. However, decisions related to membership are at the discretion of the State Conservationist.

*Comment:* One respondent commented that most Tribal conservation districts and many socially disadvantaged community-based organizations do not have the resources to pay travel expenses for a representative to attend State Technical Committee meetings. The respondent asked whether NRCS can cover the cost of these travel expenses.

*Response:* Tribal conservation districts and socially disadvantaged farmers and ranchers' participation in State Technical Committee meetings is important to NRCS. NRCS is not offering to pay expenses of State Technical Committee participants; however, State Conservationists may have various means of facilitating the participation of producers and organizations in State Technical Committee meetings such as the use of net conference hook-ups in remote locations, holding State Technical Committee meetings in strategic locations, and other arrangements. If an individual or an organization is having difficulty participating on the State Technical Committee because of limited financial resources, it is recommended that the matter be brought to the attention of the State Conservationist. No changes were made to the rule in response to this comment.

*Comment:* One respondent recommended that § 610.24 be extensively rewritten prior to issuing the final rule. The rewrite should include a clear description of the membership and meetings of State Technical Committee subcommittees, including but not limited to Local Working Groups, and should include a clear and comprehensive description of the Local Working Group's responsibilities.

*Response:* In response to this comment, NRCS has incorporated language in the standard operating procedures relating to these issues and has modified § 610.25(b)(3) in the final rule. The public can view the standard operating procedures at the following Web address: *http://directives.sc.egov.usda.gov/*, or obtain a copy from their local NRCS office.

*Comment:* One respondent recommended that NRCS revise § 610.25(b) and in the interim, before issuing the final rule, issue more immediate guidance to direct State Conservationists to include non-profit organizations to participate on Local Working Groups.

*Response:* NRCS has modified § 610.25(b)(3) as a result of this comment. Also, the recently published standard operating procedures contain a discussion on membership of Local Working Groups and will be updated as a result of this and other comments.

*Comment:* One respondent commented that it is important that the rule is clear that the work of State Technical Committees will continue even if some required representatives choose not to participate regularly.

*Response:* NRCS concurs with the suggestion and will insert ''if willing to serve'' in the final rule to clarify that the work of State Technical Committees will continue in the absence of a representative from an invited group.

*3. State Conservationists' Response to Recommendations*

*Comments:* Seven respondents commented about communication between the Local Working Group, State Technical Committee, and the State Conservationist and the importance of receiving feedback on Local Working Group recommendations. Several requested that if the recommendations are not incorporated into the USDA program delivery system, NRCS should state the reasons behind that decision.

*Response:* NRCS agrees with the comments and has established the following policy within the standard operating procedures: ''The State Conservationist will inform the State Technical Committee as to the decisions made in response to all State Technical Committee recommendations within 90 days. This notification will be made in writing to all State Technical Committee members and posted to the NRCS State Web site.''

*4. Subcommittees*

*Comment:* One respondent commented that the interim final rule requires State Technical Committee subcommittees to provide recommendations they develop to the State Technical Committee in a general session where the public is notified and invited to attend, but it does not impose the same requirement on Local Working Groups.

*Response:* Specialized subcommittees of State Technical Committees may or may not have public participation; and, therefore, the standard operating procedures state that subcommittee recommendations are to be brought forth to the State Technical Committee, where the public is invited, for review or action. The same requirement is not imposed on Local Working Groups as the meetings are open to the public. In regard to the mechanism(s) to be used by State Technical Committees to review whether Local Working Groups are addressing State priorities, NRCS is suggesting that State Conservationists recommend a process to the State Technical Committees that accommodates the needs of their respective States.

*Comment:* One respondent recommended § 610.25 be revised to add a statement requiring that State Conservationists open the invitation to participate on subcommittees to the entire State Technical Committee.

*Response:* NRCS revised § 610.25(a) in the final rule to read, ''In some situations, specialized subcommittees, made up of State Technical Committee members, may be needed to analyze and examine specific issues. The State Conservationist may assemble certain members, including members of Local Working Groups and other knowledgeable individuals, to discuss, examine, and focus on a particular technical or programmatic topic.'' The recommendations from the subcommittee are to be presented to the full State Technical Committee.

*5. Local Working Groups*

*Comments:* Four respondents commented on the importance of SWCDs convening Local Working Groups. The respondents stated that SWCDs are uniquely positioned to undertake the process of bringing everyone together to provide input. Another respondent commented that SWCDs be supported with additional resources so that they have the capacity to fulfill their mandated responsibilities.

*Response:* NRCS agrees that SWCDs are uniquely positioned to organize and convene the Local Working Groups and has incorporated the following language in the standard operating procedures, ''Local Working Groups are normally chaired by the appropriate SWCD. In the event the SWCD is not able, or does not choose to chair the Local Working Group, NRCS' district conservationist (or designated conservationist) will be responsible for those duties.'' This language has already been incorporated into the NRCS Conservation Programs Manual (440) subpart B, part 501 (*see http://directives.sc.egov.usda.gov/*). NRCS views these comments as relating to procedural issues and, therefore, did not make any changes to the regulation.

NRCS recognizes the importance of the SWCD having an adequate level of resources necessary to fulfill their responsibilities. However, no changes were made to the rule in response to this comment. NRCS believes this suggestion is beyond the scope of this regulation.

*Comments:* Five respondents commented that they did not feel it is appropriate to expect the State Conservationist to be present at all Local Working Group meetings. NRCS should be represented by the district conservationist or designated conservationist.

*Response:* NRCS did not intend for State Conservationists to be present at Local Working Group meetings. Although NRCS did not make changes to the rule in response to this comment, the agency will clarify its operating procedure.

*Comment:* One respondent commented that Local Working Groups should meet once per year at a minimum.

*Response:* NRCS agrees with the comment and has incorporated the following language in the standard operating procedures: ''The Local Working Group should meet at least once each year at a time and place designated by the Chairperson, unless otherwise agreed to by the members of the Local Working Group. Other meetings may be held at the discretion of the Chairperson. Meetings will be called by the Chairperson whenever it is determined that there is business that should be brought before the Local Working Group.''

*Comments:* Five respondents requested that the Local Working Group, as a subcommittee to the State Technical Committee, provide a report to the State Conservationist and a summary of all Local Working Group meetings be presented during the State Technical Committee meeting. Respondents differed in their recommendations on the NRCS representative that should receive the report. Recommendations included delivering it to the State Conservationist, district conservationist, or area conservationist.

*Response:* NRCS agrees with the comments and has addressed them in the standard operating procedures as follows: ''Local Working Group recommendations are to be submitted to State Technical Committee Chairperson or the district conservationist (or designated conservationist), as appropriate, within 14 calendar days after a meeting.'' The standard operating procedures allow for flexibility in the procedure by which Local Working Group recommendations are forwarded to the State Technical Committee. Ultimately, the intent is to ensure that the State Technical Committee receives the information.

*Comment:* One respondent was concerned that the process to obtain, evaluate, and implement recommendations of Local Working Groups may be overly complicated and burdensome to accomplish in a timely manner. The respondent encouraged simplification in the process and that significant weight be given to local and State priorities in determining allocation of NRCS program funds.

*Response:* NRCS appreciates the respondent's comment regarding an overly complicated process and has attempted to provide a ''blueprint'' for States to operate State Technical Committees in an efficient manner, as well as allow for adequate flexibility for States to tailor the State Technical Committee operations to meet their needs. No changes were made to the rule in response to this comment; however, the agency will consider this comment when updating the current standard operating procedures.

*Comment:* One respondent commented that Local Working Groups should provide the State Technical Committee with information on their recommendations, including the process used to develop the recommendations.

*Response:* NRCS agrees that this requirement would help Local Working Groups support their recommendations; however, requiring the Local Working Groups to do this may overly complicate the process. No changes were made to the rule in response to this comment. The agency encourages Local Working Groups to include additional information to support their recommendations.

*Comment:* One respondent commented that § 610.25(b)(2) be modified to allow for Local Working Groups to not only provide recommendations on local natural resource priorities and criteria for conservation activities and programs, but to also provide input to the State Technical Committee for their consideration in establishing State priorities.

*Response:* This comment is addressed in the standard operating procedures through the following language, ''Local Working Group recommendations are to be submitted to the State Technical Committee Chairperson or the district conservationist (or designated conservationist), as appropriate, within 14 calendar days after a meeting.'' The Local Working Group recommendations may include input related to establishing State priorities.

*6. Other*

*Comment:* One respondent recommended NRCS establish a Web page for State Technical Committee and Local Working Group meetings to include membership lists, meeting announcements, agenda, minutes, and any determinations related to recommendations.

*Response:* NRCS generally agrees with this comment and has already included the suggestion in the standard operating procedures.

*Comment:* One respondent commented that State Conservationists should have the discretion to take additional transparency and accountability steps beyond the national standard operating procedures.

*Response:* NRCS agrees that State Conservationists should have this discretion. The national policy in the standard operating procedures details the minimum requirements governing the operation of State Technical Committees. State Conservationists have the discretion and flexibility to make management decisions providing all applicable laws and regulations are followed. No changes were made to the rule in response to this comment.

*Comment:* One respondent recommended that the public notice of the State Technical Committee meetings

include the proposed agenda and the links to any relevant documents that may be available on the Web. The respondent also recommended that State Technical Committee members be provided with any documents which will be under discussion at least 14 days before the meeting.

*Response:* The suggestion was included in the standard operating procedures, ''The State Conservationist will prepare a meeting agenda and provide it to the committee members at least 14 calendar days prior to a scheduled meeting.'' As this recommendation is included in policy, no changes were made to the rule in response to this comment.

*Comment:* One respondent requested the 14-day meeting notice be modified to a 30-day meeting notice to allow for less conflict and more participation.

*Response:* While the 14 days is a minimum, NRCS recognizes that more advance notice is desirable. Many State Technical Committees find that establishing a schedule for regular (*e.g.* quarterly) meetings works well. No changes were made to the rule in response to this comment.

*Comment:* One respondent commented that standard operating procedures should be clear that ''effectively utilizing State Technical Committees'' means using the expertise of its members, specifically scientists and other personnel of State and Federal agencies. Standard operating procedures should be clear that State Technical Committees are to assist the State Conservationist in targeting conservation program resources in a manner that ensures the programs are effective in helping producers produce significant environmental benefits for the public.

*Response:* Although no changes were made to the rule in response to this comment, the rule states, ''State Technical Committees are to provide information, analysis, and recommendations to appropriate officials of the Department of Agriculture who are charged with implementing and establishing priorities and criteria for natural resources conservation activities and programs under Title XII of the 1985 Act.'' NRCS believes that ''helping producers produce significant environmental benefits'' is embedded in the individual conservation program authorities, selection criteria, and other processes.

*Comment:* One respondent recommended NRCS issue a notice of proposed standard operating procedures and allow a 30-day public comment period.

*Response:* NRCS agrees with this comment. The agency published the standard operating procedures as a notice in the **Federal Register** on April 7, 2009. The notice provided a 60-day public comment period and requested public input on NRCS' updated policy, including standard operating procedures for State Technical Committees. No changes were made to the rule in response to this comment because this recommendation was implemented.

*Comment:* One respondent recommends that prior to NRCS drafting and publishing the standard operating procedures, NRCS should solicit from State Conservationists and State offices substantive input, suggestions, and recommendations for creating the standard operating procedures.

*Response:* NRCS agrees with this comment and followed this suggestion prior to publishing the standard operating procedures in the **Federal Register** on April 7, 2009.

*Comment:* One respondent requested NRCS add ''and the USDA agency will address the concerns of the State Technical Committee'' to the last sentence of § 610.24(b).

*Response:* The last sentence of § 610.24(b) of the interim final rule states, ''the implementing USDA agency will give strong consideration to the State Technical Committee recommendations.'' NRCS believes all State Technical Committee recommendations should be strongly considered; however, the USDA agencies may not be able to address or effect every recommendation. Therefore, no changes were made to the rule in response to this comment.

**List of Subjects in 7 CFR Part 610**

Soil conservation, State Technical Committee, Technical assistance, and Water resources.

■ For the reasons stated in the preamble, NRCS amends part 610 of Title 7 of the CFR as follows:

## PART 610—TECHNICAL ASSISTANCE

■ 1. The authority citation for part 610 continues to read as follows:

**Authority:** 16 U.S.C. 590a–f, 590q, 2005b, 3861, 3862.

■ 2. Subpart C is revised to read as follows:

**Subpart C—State Technical Committees**

Sec.



## Subpart C—State Technical Committees

### § 610.21 Purpose and scope.

This subpart sets forth the procedures for establishing and using the advice of State Technical Committees. The Natural Resources Conservation Service (NRCS) will establish in each State a Technical Committee to assist in making recommendations relating to the implementation and technical aspects of natural resource conservation activities and programs. The Department of Agriculture (USDA) will use State Technical Committees in an advisory capacity in the administration of certain conservation programs and initiatives. Pursuant to 16 U.S.C. 3862(d), these State Technical Committees and Local Working Groups are exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

### § 610.22 State Technical Committee membership.

(a) State Technical Committees will include agricultural producers, nonindustrial private forest land owners, and other professionals who represent a variety of disciplines in soil, water, wetlands, plant, and wildlife sciences. The State Conservationist in each State will serve as chairperson. The State Technical Committee for each State will include representatives from among the following, if willing to serve:

(1) NRCS, USDA;

(2) Farm Service Agency, USDA;

(3) State Farm Service Agency Committee, USDA;

(4) Forest Service, USDA;

(5) National Institute of Food and Agriculture, USDA;

(6) Each of the Federally recognized Indian Tribes in the State;

(7) State departments and agencies within the State, including the:

(i) Fish and wildlife agency;

(ii) Forestry agency;

(iii) Water resources agency;

(iv) Department of agriculture;

(v) Association of soil and water conservation districts; and

(vi) Soil and water conservation agency;

(8) Agricultural producers representing the variety of crops and livestock or poultry raised within the State;

(9) Owners of nonindustrial private forest land;

(10) Nonprofit organizations, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, with

demonstrable conservation expertise and experience working with agriculture producers in the State; and

(11) Agribusiness.

(b) The State Conservationist will invite other relevant Federal, State, and regional agencies, organizations, and persons knowledgeable about economic and environmental impacts of natural resource conservation techniques and programs to participate as needed.

(c) To ensure that recommendations of State Technical Committees take into account the needs of the diverse groups served by USDA, membership will include, to the extent practicable, individuals with demonstrated ability to represent the conservation and related technical concerns of particular historically underserved groups and individuals; i.e., minorities, women, persons with disabilities, socially and economically disadvantaged groups, and beginning farmers and ranchers.

(d) In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, it is the responsibility of the State Conservationist to seek a balanced representation of interests among the membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee within a specific State may submit a request to the State Conservationist that explains their interest and outlines their credentials which they believe are relevant to becoming a member. Decisions regarding membership are at the discretion of the State Conservationist. State Conservationist decisions on membership are final and not appealable to any other individual or group within USDA.

### § 610.23 State Technical Committee meetings.

(a) The State Conservationist, as Chairperson, schedules and conducts the meetings, although a meeting may be requested by any USDA agency or State Technical Committee member.

(b) NRCS will establish and maintain national standard operating procedures governing the operation of State Technical Committees and Local Working Groups in its directive system. The standard operating procedures will outline items such as: The best practice approach to establishing, organizing, and effectively utilizing State Technical Committees and Local Working Groups; direction on publication of State Technical Committee and Local Working Group meeting notices and agendas; State Technical Committee meeting summaries; how to provide feedback on State Conservationist decisions regarding State Technical Committee recommendations; and other items as determined by the Chief.

(c) In addition to the standard operating procedures established under paragraph (b) of this section, the State Conservationist will provide public notice and allow public attendance at State Technical Committee and Local Working Group meetings. The State Conservationist will publish a meeting notice no later than 14 calendar days prior to a State Technical Committee meeting. Notification may exceed this 14-day minimum where State open meeting laws exist and provide for a longer notification period. This minimum 14-day notice requirement may be waived in the case of exceptional conditions, as determined by the State Conservationist. The State Conservationist will publish this notice in at least one or more newspaper(s), including recommended Tribal publications, to attain statewide circulation.

### § 610.24 Responsibilities of State Technical Committees.

(a) Each State Technical Committee established under this subpart will meet on a regular basis, as determined by the State Conservationist, to provide information, analysis, and recommendations to appropriate officials of USDA who are charged with implementing and establishing priorities and criteria for natural resources conservation activities and programs under Title XII of the Food Security Act of 1985 including, but not limited to, the Conservation Reserve Program, Wetlands Reserve Program, Conservation Security Program, Conservation Stewardship Program, Farm and Ranch Lands Protection Program, Grassland Reserve Program, Environmental Quality Incentives Program, Conservation Innovation Grants, Cooperative Conservation Partnership Initiative, Agricultural Water Enhancement Program, Conservation of Private Grazing Land, Wildlife Habitat Incentive Program, Grassroots Source Water Protection Program, Great Lakes Basin Program, Chesapeake Bay Watershed Initiative, and the Voluntary Public Access and Habitat Incentive Program. The members of the State Technical Committee may also provide input on other natural resource conservation programs and issues as may be requested by the State Conservationist or other USDA agency heads at the State level as long as they are within the programs authorized by Title XII. Such recommendations may include, but are not limited to, recommendations on:

(1) The criteria to be used in prioritizing program applications;

(2) The State-specific application criteria;

(3) Priority natural resource concerns in the State;

(4) Emerging natural resource concerns and program needs; and

(5) Conservation practice standards and specifications.

(b) The role of the State Technical Committee is advisory in nature, and the committee will have no implementation or enforcement authority. The implementing agency reserves the authority to accept or reject the committee's recommendations. However, the implementing USDA agency will give strong consideration to the State Technical Committee's recommendations.

(c) State Technical Committees will review whether Local Working Groups are addressing State priorities.

### § 610.25 Subcommittees and Local Working Groups.

(a) *Subcommittees.* In some situations, specialized subcommittees, made up of State Technical Committee members, may be needed to analyze and examine specific issues. The State Conservationist may assemble certain members, including members of Local Working Groups and other knowledgeable individuals, to discuss, examine, and focus on a particular technical or programmatic topic. The subcommittee may seek public participation, but it is not required to do so. Nevertheless, recommendations resulting from these subcommittee sessions, other than sessions of Local Working Groups, will be made only in a general session of the State Technical Committee where the public is notified and invited to attend. Decisions resulting from recommendations of Local Working Groups will be communicated to NRCS in accordance with the standard operating procedures described in § 610.23(b).

(b) *Local Working Groups.* (1) Local Working Groups will be composed of conservation district officials, agricultural producers representing the variety of crops and livestock or poultry raised within the local area, nonindustrial private forest land owners, and other professionals representing relevant agricultural and conservation interests and a variety of disciplines in the soil, water, plant, wetland, and wildlife sciences who are familiar with private land agricultural and natural resource issues in the local community;

(2) Local Working Groups will provide recommendations on local

natural resource priorities and criteria for conservation activities and programs; and

(3) Local Working Groups will follow the standard operating procedures described in § 610.23(b).

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

**Dave White,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. E9–30055 Filed 12–16–09; 8:45 am]

**BILLING CODE 3410–16–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

**[Docket No. FDA–2009–N–0665]**

## New Animal Drugs for Use in Animal Feeds; Ractopamine; Tylosin

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for use of two-way combination Type B and C medicated swine feeds formulated with ractopamine hydrochloride and tylosin phosphate following use of tylosin tartrate medicated drinking water consistent with the sequential use approved for single-ingredient tylosin medicated swine feed.

**DATES:** This rule is effective December 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Timothy Schell, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8116, e-mail: *timothy.schell@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Elanco Animal Health, a Div. of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 141–172 for use of two-way combination Type B and C medicated swine feeds formulated with PAYLEAN (ractopamine hydrochloride) and TYLAN (tylosin phosphate) single-ingredient Type A medicated articles. The supplement provides use of two-way combination Type B and C medicated swine feeds formulated with ractopamine hydrochloride and tylosin phosphate following use of tylosin tartrate medicated drinking water consistent with the sequential use approved for single-ingredient tylosin medicated swine feed (73 FR 76946, December 18, 2008). The supplemental NADA is approved as of October 23, 2009, and the regulations in 21 CFR 558.500 are amended 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.

In addition, FDA has noticed that the tylosin levels for single-ingredient Type C medicated swine feed are not clearly described in 21 CFR 558.625. At this time, those regulations are being revised to clarify this use of levels. This action is being taken to improve the accuracy of the regulations.

FDA 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 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

■ 2. In § 558.500, revise the table in paragraphs (e)(1)(ii) and (e)(1)(iii); and add paragraph (e)(1)(iv) to read as follows:

**§ 558.500 Ractopamine.**

* * * * *

(e) * * *

(1) * * *

| Ractopamine in grams/ton | Combination in grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| * | * | * | * | * |
| (ii) 4.5 to 9 | Tylosin 40 or 100 | Finishing swine: As in paragraph (e)(1)(i) of this section; and for control of swine dysentery associated with *Brachyspira hyodysenteriae* and porcine proliferative enteropathies (PPE, ileitis) associated with *Lawsonia intracellularis*. | Feed 100 grams per tons (g/ton) continuously as sole ration for at least 3 weeks followed by 40 g/ton until market weight. | 000986 |
| (iii) 4.5 to 9 | Tylosin 100 | Finishing swine: As in paragraph (e)(1)(i) of this section; and for control of porcine proliferative enteropathies (PPE, ileitis) associated with *L. intracellularis*. | Feed continuously as sole ration for 21 days. | 000986 |

| Ractopamine in grams/ton | Combination in grams/ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (iv) 4.5 to 9 | Tylosin 40 to 100 | Finishing swine: As in paragraph (e)(1)(i) of this section; for treatment and control of swine dysentery associated with *B. hyodysenteriae* and for control of porcine proliferative enteropathies (PPE, ileitis) associated with *L. intracellularis*. | Feed continuously as sole ration for 2 to 6 weeks, immediately after treatment with tylosin tartrate in drinking water as in § 520.2640(d)(3) of this chapter. | 000986 |

* * * * *

**§ 558.625 [Amended]**

■ 3. In § 558.625, in paragraph (f)(1)(vi)(*b*), remove ''Tylosin, 40–100 grams.'' and in its place add ''Tylosin, 40 or 100 grams.''; and remove paragraph (f)(1)(vi)(*d*)(vi).

Dated: December 11, 2009.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. E9–29998 Filed 12–16–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[TD 9443]**

**RIN 1545–BG16**

## Postponement of Certain Tax-Related Deadlines by Reason of a Federally Declared Disaster or Terroristic or Military Action; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to final regulations (TD 9443) that were published in the **Federal Register** on Thursday, January 15, 2009 (74 FR 2370) relating to postponement of certain tax-related deadlines either due to service in a combat zone or due to a Federally declared disaster. The regulations reflect changes in the law made by the Victims of Terrorism Tax Relief Act of 2001, the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (TEAMTRA), and current IRS practice.

**DATES:** This correction is effective on December 17, 2009, and is applicable on January 15, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mary Ellen Keys, (202) 622–4570 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations (TD 9443) that are the subject of this document are under section 7508A of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations (TD 9443) contain errors that may prove to be misleading and are in need of clarification.

**List of Subjects in 26 CFR Part 301**

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

**Correction of Publication**

■ Accordingly, 26 CFR part 301 is corrected by making the following correcting amendments:

## PART 301—PROCEDURE AND ADMINISTRATION

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

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

■ **Par. 2.** Section 301.7508A–1(f) is amended by removing the existing *Example 8,* and redesignating *Example 9* as *Example 8.*

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. E9–29978 Filed 12–16–09; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[TD 9443]**

**RIN 1545–BG16**

## Postponement of Certain Tax-Related Deadlines by Reason of a Federally Declared Disaster or Terroristic or Military Action; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to final regulations (TD 9443) that were published in the **Federal Register** on Thursday, January 15, 2009 (74 FR 2370) relating to postponement of certain tax-related deadlines either due to service in a combat zone or due to a Federally declared disaster. The regulations reflect changes in the law made by the Victims of Terrorism Tax Relief Act of 2001, the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (TEAMTRA), and current IRS practice.

**DATES:** This correction is effective on December 17, 2009, and is applicable on January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mary Ellen Keys, (202) 622–4570 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations (TD 9443) that are the subject of this document are under section 7508A of the Internal Revenue Code.

**Need for Correction**

As published, the final regulations (TD 9443) contain an error that may prove to be misleading and is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the final regulations (TD 9443), which were the subject of FR Doc. E9–767, is corrected as follows:

On page 2370, column 3, in the preamble, under the paragraph heading ''Explanation of Revisions'', last paragraph of the column, third through twelfth lines, the language ''*Example 9. Example 9,* which reflects current IRS practice, explains the impact of disaster relief on installment agreement payments that become due during the postponement period. *Example 9* explains that the affected taxpayer's obligation to make installment agreement payments is suspended during the postponement period. *Example 9* further explains that,'' is corrected to read ''*Example 8. Example 8,* which reflects current IRS practice, explains the impact of disaster relief on installment agreement payments that become due during the postponement period. *Example 8* explains that the affected taxpayer's obligation to make installment agreement payments is suspended during the postponement period. *Example 8* further explains that,''.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. E9–29977 Filed 12–16–09; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[USCG–2009–1025]**

### Drawbridge Operation Regulations; Jamaica Bay, New York, NY, Maintenance

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Beach Channel Railroad Bridge at mile 6.7, across Jamaica Bay, at New York City, New York. Under this temporary deviation the Beach Channel Railroad Bridge may remain in the closed position for two weekends in December. This deviation is necessary to facilitate bridge maintenance repairs.

**DATES:** This deviation is effective from 12:15 a.m. on December 12, 2009 through 4:45 a.m. on December 21, 2009. It is necessary to repair the trunion pins immediately to ensure the safety of both the bridge and waterway users.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–1025 and are available online at *http://www.regulations.gov,* inserting USCG–2009–1025 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 668–7165, *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Beach Channel Railroad Bridge, across Jamaica Bay, mile 6.7, at New York, New York, has a vertical clearance in the closed position of 26 feet at mean high water and 31 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.795(c).

The waterway users consist of both commercial and recreational vessel traffic.

The owner of the bridge, New York City Transit Authority, requested a temporary deviation to facilitate maintenance repairs to the bridge trunnion pins.

Under this temporary deviation the Beach Channel Railroad Bridge will not open for the passage of vessel traffic from 12:15 a.m. on December 12, 2009 through 4:45 a.m. on December 14, 2009 and from 12:15 a.m. on December 19, 2009 through 4:45 a.m. on December 21, 2009.

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

Dated: December 7, 2009.

**Gary Kassof,**

*Bridge Program Manager, First Coast Guard District.*

[FR Doc. E9–29970 Filed 12–16–09; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2009–0359; FRL–8983–4]**

### Approval and Promulgation of Air Quality Implementation Plans; California; Monterey Bay Region 8-Hour Ozone Maintenance Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Monterey Bay Area portion of the California State Implementation Plan. Submitted by the California Air Resources Board on December 19, 2007, this plan revision consists of a maintenance plan prepared for the purpose of providing for continued attainment of the 8-hour ozone standard in Monterey Bay through the year 2014 and thereby satisfying the related requirements under Section 110(a)(1) of the Clean Air Act and EPA's phase 1 rule implementing the 8-hour ozone national ambient air quality standard. EPA is taking this action pursuant to those provisions of the Clean Air Act that obligate the Agency to take action on submittals of state implementation plans and plan revisions.

**DATES:** This rule is effective February 16, 2010 without further notice, unless EPA receives relevant adverse comment by January 19, 2010. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by [EPA–R09–OAR–2009–0359] by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* Sarvy Mahdavi at *mahdavi.sarvy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Sarvy Mahdavi, Planning Office (AIR–2), at fax number (415) 947–3579.
- *Mail or deliver:* Sarvy Mahdavi, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. Hand or courier deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Sarvy Mahdavi, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, telephone (415) 972–3173; fax (415) 947–3579; e-mail address *mahdavi.sarvy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA. This supplementary information is organized as follows:

**Table of Contents**



## I. Summary of Action

On December 19, 2007, the California Air Resources Board (CARB) submitted to EPA, for approval as a revision to the California State Implementation Plan (''SIP''), the 2007 Federal Maintenance Plan for Maintaining the National Ozone Standard in the Monterey Bay Region (''Monterey Maintenance Plan'' or ''Ozone Maintenance Plan''). The Monterey Maintenance Plan was developed by the Monterey Bay Unified Air Pollution Control District (''MBUAPCD'' or ''Monterey Bay'' or ''the District'') and adopted by the District on March 21, 2007. MBUAPCD prepared the plan to provide for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) through 2014 and to thereby satisfy the requirements of section 110(a)(1) of the Clean Air Act (''CAA'' or ''the Act'') and EPA's Phase 1 Rule for implementation of the 1997 8-hour ozone NAAQS (see 69 FR 23951), also known as ''the Phase 1 Implementation Rule.'' The December 19, 2007 SIP revision submittal includes the maintenance plan and related technical appendices, as well as documentation of notice, public hearing, and adoption by the District.

For the reasons set forth in this document, and pursuant to section 110(k) of the Act, we are approving the Ozone Maintenance Plan as a revision to the Monterey Bay portion of the California SIP.

In so doing, we find that the submitted ozone maintenance plan meets all of the applicable requirements of CAA section 110(a)(1) and our Phase 1 Implementation Rule.

## II. Background

### *A. Regulatory Context: Monterey Bay Designation, Classification, SIPs, and Attainment*

Under the Clean Air Act (CAA) as amended in 1970, EPA established national ambient air quality standards (NAAQS) for certain pervasive air pollutants, such as photochemical oxidant, carbon monoxide, and particulate matter. The NAAQS represent concentration levels below which public health and welfare are protected. The 1970 Act also required States to adopt and submit State Implementation Plans (SIPs) to implement, maintain, and enforce the NAAQS.

EPA approved the original California SIP in 1972 (see 37 FR 10850). SIP revisions are required from time-to-time to account for new or amended NAAQS or to meet other changed circumstances. The CAA was significantly amended in 1977, and under the 1977 Amendments, EPA promulgated attainment status designations for all areas of the country with respect to the NAAQS.

The CAA requires EPA to periodically review and revise the NAAQS, and in 1979, EPA established a new NAAQS of 0.12 ppm for ozone, averaged over 1 hour. This new NAAQS replaced the oxidant standard of 0.08 ppm. See 44 FR 8202 (February 8, 1979). Areas designated nonattainment for oxidant were considered to be nonattainment for ozone as well, but States could request redesignation to attainment if monitoring data showed that an area met the ozone NAAQS.

Congress significantly amended the CAA again in 1990. Under the 1990 Amendments, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including the Monterey Bay Area, was classified by operation of law as marginal, moderate, serious, severe, or extreme nonattainment depending on the severity of the area's air quality problem. The ozone nonattainment designation for the Monterey Bay Area continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990. Furthermore, the area was classified by operation of law as moderate for ozone under section 181(a)(1). *See* 40 CFR 81.305 and 56 FR 56694 (November 6, 1991).

On July 14, 1994, California requested redesignation of the Monterey Bay Area to attainment with respect to the 1-hour ozone NAAQS and submitted an ozone maintenance SIP for the area.

EPA promulgated the 8-hour ozone NAAQS in 1997 (*see* 62 FR 38894 (July 18, 1997), and designated and classified

areas for this standard in 2004 (*see* 69 FR 23857, April 30, 2004). On January 17, 1997, EPA redesignated the Monterey Bay Area from nonattainment to attainment for 1-hour ozone. EPA also approved the Monterey Bay Area Maintenance Plan, 1990 base year inventory, emission statement rule, volatile organic compound (VOC) reasonably available control technology (RACT) rule 419 and oxides of nitrogen ($NO_X$) RACT rule 431 as revisions to California's SIP for ozone. *See* 62 FR 2597 (January 17, 1997).

Effective June 15, 2004, EPA designated the Monterey Bay Area as unclassifiable/attainment for the 8-hour Ozone NAAQS. See 69 FR 23890 (April 30, 2004).

Effective June 15, 2005, EPA revoked the pre-existing 1-hour NAAQS. *See* 69 FR 23951 (April 30, 2004). As part of this rulemaking, EPA also established certain requirements to prevent backsliding in those areas that were designated as nonattainment for the 1-hour ozone standard (or that were redesignated to ''attainment'' but subject to a maintenance plan, as is the case for the Monterey Bay Area) at the time of designation for the 8-hour ozone standard. These requirements are codified at 40 CFR 51.905.

*B. Ambient Ozone Conditions*

Monterey Bay currently monitors ozone at nine locations: Pinnacles National Monument (NM), Hollister, Scotts Valley, Carmel Valley, Salinas, King City, Watsonville, Santa Cruz, and Davenport. The District operates seven of these stations located in populated areas. The National Parks Service operates the station at Pinnacles NM, while an industry consortium operates the King City station. All monitors are State and Local Air Monitoring Stations (SLAMS), with the exception of Pinnacles and Davenport, which are Special Purpose Monitors (SPMs).

The current ozone NAAQS is met at an ambient air quality monitoring site when the three-year average of the annual fourth-highest daily maximum 8-hour ozone concentration (also referred to as the ''design value'') is less than or equal to 0.08 ppm, and the standard is met within an air quality planning area when the standard is met at all of the monitoring sites.

A review of the data gathered at the various ozone monitoring sites in the Monterey Bay Area, and entered into AQS, confirms that the Monterey Bay Area is in attainment of the 8-hour ozone NAAQS. Since 1999, the highest design value at any of the ozone monitoring sites was 0.081 ppm, a value calculated for the Pinnacles NM monitor over the 2001–2003 period. The following table shows design values for EPA's 2001–2003 designation period for all nine stations in Monterey Bay monitoring network:

| Station | Design value (ppm) | Within standard? |
|---|---|---|
| Pinnacles | 0.081 | Yes. |
| Hollister | 0.073 | Yes. |
| Carmel Valley | 0.066 | Yes. |
| Scotts Valley | 0.065 | Yes. |
| King City | 0.062 | Yes. |
| Salinas | 0.059 | Yes. |
| Watsonville | 0.057 | Yes. |
| Santa Cruz | 0.056 | Yes. |
| Davenport | 0.052 | Yes. |

Based on the rounding convention in 40 CFR part 50, design values less than or equal to 0.084 ppm meet the ozone NAAQS. More recently, data through 2005 indicate that all stations continue to have design values within the standard.

**III. Evaluation of State's Submittal**

As noted above, EPA promulgated the 8-hour ozone NAAQS in 1997 and designated and classified areas for this standard in 2004. Additionally in 2004, as previously mentioned, EPA also published the Phase 1 Ozone Implementation Rule. See 40 CFR part 51, subpart X. Section 51.905(a)(3) and (4) established requirements for anti-backsliding purposes for areas designated unclassifiable/attainment for the 8-hour standard.

These provisions required States with such areas to submit 10-year maintenance plans under Section 110(a)(1) of the CAA if they were also nonattainment areas (or were attainment areas subject to a CAA section 175A maintenance plan) under the 1-hour ozone standard. Such plans were to be submitted as revisions to SIPs. MBUAPCD prepared this Ozone Maintenance Plan because it is an area designated unclassifiable/attainment for the 8-hour standard and an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. *See* 40 CFR 51.905(a)(4).

EPA provided guidance to States regarding section 110(a)(1) ozone maintenance plans in a memorandum from Lydia N. Wegman, Director, Air Quality Strategies and Standards Division, EPA Office of Air Quality Planning and Standards, entitled, ''Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of the Clean Air Act,'' dated May 20, 2005 (''Wegman Memorandum''). For the contingency plan element of section 110(a)(1) maintenance plans, the Wegman Memorandum cites an EPA policy memorandum from John Calcagni, entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' dated September 4, 1992 (''Calcagni Memorandum'').

*A. CAA Procedural Requirements*

Under Section 110 of the Act and EPA regulations (at 40 CFR Part 51, Subpart F), each State must provide reasonable notice and public hearing prior to adoption of SIPs and SIP revisions for subsequent submittal to EPA.

On March 13, 2007, the MBUAPCD published a public hearing announcement in the area's four largest newspapers. The public hearing was held at an MBUAPCD Board of Directors meeting on March 21, 2007. The Ozone Maintenance Plan was presented in the meeting as Agenda Item 17; there were no public comments and the plan was approved by unanimous vote of the Board.

*B. Evaluation of Ozone Maintenance Plan*

The 8-hour ozone 110(a)(1) maintenance plan must provide for continued maintenance of the 8-hour ozone NAAQS in the area for 10 years from the effective date of the area's designation as unclassifiable/attainment for the 8-hour ozone NAAQS. At a minimum, the maintenance plan for such areas must include the five following components: Attainment inventory, maintenance demonstration, ambient air quality monitoring, verification of continued attainment, and contingency plan. *See* Wegman Memorandum.

As explained below, we find that the Monterey Maintenance Plan includes all five required components of a maintenance plan, that each component is acceptable, and that the overall plan provides for continued maintenance of the 8-hour ozone NAAQS in the Monterey Bay Area through 2014 (*i.e.,* 10 years beyond 2004, the year of the area's designation for the 8-hour ozone NAAQS).

1. Attainment Inventory

The attainment inventory should be based on actual ''typical summer day'' emissions of Volatile Organic Compounds (VOCs) and Oxides of Nitrogen ($NO_X$). EPA's Phase 1 Implementation Rule provides that the 10-year maintenance period begins as of the effective date of the area's designation for the 8-hour ozone standard. For purposes of an attainment emissions inventory, the State may use one of any of the three years on which

the 8-hour attainment designation was based (*i.e.,* 2001, 2002, and 2003). The inventory should be consistent with EPA's most recent emissions inventory methods, models, and factors, and should be based on the latest planning assumptions regarding population, employment, and motor vehicle activity. See Wegman Memorandum at 4; Calcagni Memorandum at 8.

The Monterey Maintenance Plan includes an emissions inventory of VOCs and $NO_X$ for the years 1990 to 2030. The inventory was based on CARB's Version 1.06 8-hour Ozone SIP Emission Inventory Projections, which include CARB and District emissions inventory data for stationary and area sources. The mobile source emissions inventory was based on CARB's draft EMFAC 2007 Version 2.3 emission model for on-road motor vehicles and CARB's draft OFFROAD 2007 model for off-road sources.

Based on our review of the documentation submitted, EPA concludes that the attainment inventory has been developed for the appropriate season of an acceptable attainment year, is comprehensive and based on appropriate factors and methods, and is thus acceptable for the purposes of a section 110(a)(1) ozone maintenance plan.

2. Maintenance Demonstration

The key element of a section 110(a)(1) ozone maintenance plan is a demonstration of how the area will remain in compliance with the 8-hour ozone standard for the 10-year period following the effective date of designation as unclassifiable/attainment. The end projection year is 10 years from the effective date of the 8-hour attainment designation, which for the Monterey Bay Area was June 15, 2004. Therefore, this plan must demonstrate attainment through year 2014. *See* Wegman Memorandum at 4.

The typical method that areas have used in the past to demonstrate an area will maintain the 1-hour ozone standard has been to identify the level of ozone precursor emissions in the area which is sufficient to attain the NAAQS and to then show that future emissions of ozone precursors will not exceed the attainment levels. To perform this analysis, for the 8-hour maintenance plan, the State must develop emissions inventories for the attainment year and for the projection year. *See* Wegman Memorandum at 4.

Additionally, because the plan must demonstrate maintenance throughout the applicable 10-year period, not just in the projection year, the State must develop an emissions inventory for an interim year between the attainment inventory year and the projection inventory year to show a trend analysis for maintenance of the standard. *See* Wegman Memorandum at 5.

The Monterey Maintenance Plan includes emissions inventories of ozone precursors for interim years (every year from 2005 through 2014), and the projection year (2014). To develop the emissions projections for the future years, Monterey Bay continued the declining trend forward based on historical trends in the inventory. The reductions in emissions are attributed to stationary and mobile source measures adopted and implemented throughout the Monterey Bay Area and California. These measures include statewide mobile source measures and the District's prohibitory regulations for stationary source operations, such as solvents and coating operations and petroleum production and processing. *See* MBUAPCD Agency-wide SIP regulations at *http://yosemite.epa.gov/R9/r9sips.nsf/Agency?ReadForm&count=500&state=California&cat=Monterey+Bay+Unified+APCD-Agency-Wide+Provisions.*

As noted above, Monterey Bay's inventory is based on CARB's Version 1.06 8-hour Ozone SIP Emission Inventory Projections, which include CARB and District emissions inventory data for stationary and area sources. The mobile source emissions inventory was based on CARB's draft EMFAC 2007 Version 2.3 emission model for on-road motor vehicles and CARB's draft OFFROAD 2007 model for off-road sources. EPA has concluded that these inventory projections are comprehensive, based on appropriate factors and methods, and thus acceptable for the purposes of a section 110(a)(1) ozone maintenance plan.

3. Ambient Air Quality Monitoring

Generally, EPA determines whether an area's air quality is meeting the NAAQS based upon data gathered at established State and local air monitoring stations (SLAMS) and national air monitoring sites (NAMS) and entered into the Air Quality Systems (AQS) database. Data entered into AQS has been determined to meet Federal monitoring requirements (*see* 40 CFR part 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendices A and B) and may be used to determine the attainment status of areas. We also take into account data from other air monitoring stations, such as Special Purpose Monitors (SPMs), if the data is collected using a Federal reference method or Federal equivalent method, unless the air monitoring agency demonstrates that the data came from a particular period during which EPA requirements concerning quality assurance, methods, or siting criteria were not met in practice. *See* 71 FR 61236, at 61302 (October 17, 2006) and 40 CFR 58.20. EPA reviews all data to determine the area's air quality status in accordance with 40 CFR part 50, appendix I.

On May 5, 2008, EPA approved the District's Annual Network Plan submitted on July 1, 2007 for ozone monitoring stations, based on a determination that the MBUAPCD's ozone monitoring network met the applicable requirements of 40 CFR Part 58. *See* 2006 Ambient Air Monitoring Network Plan submitted on July 1, 2007, and Letter dated May 5, 2008, from EPA Region 9 (Sean Hogan) to MBUAPCD (Douglas Quetin) approving MBUAPCD's 2006 Ambient Air Monitoring Network Plan.

The State should continue to operate air quality monitors in accordance with 40 CFR part 58 to verify maintenance of the 8-hour ozone standard in the area. Monterey Bay currently monitors ozone at nine locations. In the Ozone Maintenance Plan, the District commits to continue operating an appropriate ozone monitoring network in accordance with the requirements of 40 CFR part 58 to verify the attainment status of the area. *See* Ozone Maintenance Plan at 6.

4. Verification of Continued Attainment

A Section 110(a)(1) ozone maintenance plan should indicate how the State will track the progress of the maintenance plan. This is necessary due to the fact that emissions projections made for the maintenance demonstration depend on assumptions of point, area, and mobile source activity and turn-over rates. One option for tracking the progress of the maintenance demonstration would be for the State to periodically update the emissions inventory. *See* Wegman Memorandum at 5.

To ensure continued attainment, the District commits to continue ambient monitoring and to periodically update the emissions inventory. More specifically, the stationary source emission inventory is updated annually; the mobile source inventory is updated every two years or as updates to the mobile source emissions models (EMFAC and OFFROAD) issued by CARB; and the entire inventory and forecasts, including stationary, area, and mobile categories, are updated by the CARB and District every three years. *See* Ozone Maintenance Plan at 11.

5. Contingency Plan

EPA's Phase 1 Implementation Rule requires section 110(a)(1) maintenance plans to include contingency provisions to promptly correct any violation of the ozone NAAQS that occurs. Generally, contingency plans should clearly identify measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the State. Also, the State should identify specific indicators or triggers, which will be used to determine when the contingency measures need to be implemented. See Calcagni Memorandum at 12, 13.

The Monterey Maintenance Plan includes a contingency plan that establishes two elements: Contingency triggers, which would be used to implement measures should air quality in the area approach the level of the Federal standard; and contingency measures, which are templates for adoption of future rules.

Monterey Bay's contingency triggers have two components: An inventory trigger and an ambient trigger, which can both be activated prior to the area violating the standard. The inventory trigger is designed to prevent emissions from exceeding the levels identified in the 2002 Maintenance Inventory. This trigger would be met if emissions are forecast to reach 95% of the levels in the Maintenance Inventory. Based on the current inventory, this threshold would be 90.4 tons per day for VOC and 79.1 tons per day for $NO_X$.

The second contingency trigger, the ambient trigger, was developed based on a review of historical air monitoring data. This trigger would be met if the average of the fourth highest annual concentration for the two most recent years of complete data from the highest station reached 0.085 ppm or higher. Implementation of the contingency plan would be discontinued if ambient air monitoring data for the third year indicated the area would not violate the standard.

Monterey has 16 contingency measures, 2 of which are based on locally adopted rules that would require rule revision, while the remaining 14 require adoption of new rules.

The following measures require revisions to locally adopted rules: (1) Fixed and Floating Roof Petroleum Storage Tanks (District Rule 417)—requires tight-fitting secondary seals on most floating-roof storage tanks which will exert a pressure of 30 psi on the wall of the tank. Estimated control efficiency is about 75% and the cost-effectiveness is $15,000 to $50,000 per ton reduced. (2) Metal Parts and Products (District Rule 434)—reduction of VOC emissions from coating of metal parts and products. Estimated control efficiency is 30% and cost effectiveness is $5,000 to $20,000 per ton reduced.

6. Conclusion

Based on our review of the submitted plan, we are approving the Monterey Maintenance Plan as a revision to the Monterey Bay portion of the California SIP. In so doing, we find that the Monterey Maintenance Plan, submitted to EPA by CARB on December 19, 2007, satisfies the requirements of CAA section 110(a)(1) and EPA's Phase 1 Implementation Rule.

## IV. Final Action and Request for Comment

Under section 110(k) of the Clean Air Act, EPA is approving a revision to the Monterey Bay portion of the California SIP that was submitted to EPA on December 19, 2007 and that consists of the 2007 Federal *Maintenance Plan for the Monterey Bay Region 8-Hour Ozone Attainment Area ''Monterey Maintenance Plan'' or ''Ozone Maintenance Plan''*. As described in more detail above, we are approving the Monterey Bay Ozone Maintenance Plan because we find that it provides for continued attainment of the 8-hour ozone standard in the Monterey Bay Area through the year 2015 and thereby satisfies the related requirements under section 110(a)(1) of the Clean Air Act and EPA's Phase 1 Implementation Rule. Our approval of the Monterey Maintenance Plan as a revision to the California SIP makes the commitments included therein, such as those related to ambient air quality monitoring, verification of continued attainment, and the contingency plan, Federally enforceable.

EPA is publishing this rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on February 16, 2010 without further notice unless we receive adverse comments by January 19, 2010. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: November 6, 2009.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(367) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(367) The following plan was submitted on December 19, 2007, by the Governor's Designee.

(i) [Reserved]

(ii) Additional material.

(A) Monterey Bay Unified Air Pollution Control District (MBUAPCD).

(*1*) 2007 Federal Maintenance Plan for Maintaining the National Ozone Standard in the Monterey Bay Region (Monterey Maintenance Plan), excluding Appendix A.

(*2*) MBUAPCD Board of Directors Certified Minutes and Resolution dated March 21, 2007, adopting the Monterey Maintenance Plan.

(*3*) Letter dated May 10, 2007, from Association of Monterey Bay Area Governments (AMBAG) to MBUAPCD, confirming AMBAG's approval of the Monterey Maintenance Plan on May 9, 2007.

(*4*) California Air Resources Board Executive Order # G–07–68, dated December 19, 2007, adopting the Monterey Maintenance Plan.

* * * * *

■ 3. Section 52.282 is amended by adding paragraph (b) to read as follows:

**§ 52.282 Control strategy and regulations: Ozone**

* * * * *

(b) *Approval.* On December 19, 2007, the California Air Resources Board submitted a maintenance plan for the 1997 8-hour ozone NAAQS for the Monterey Bay Area as required by section 110(a)(1) of the Clean Air Act, as amended in 1990, and 40 CFR 51.905(a)(4). Elements of the section 110(a)(1) maintenance plan for ozone include a base year (2002) attainment emissions inventory for ozone, a demonstration of maintenance of the ozone NAAQS with projected emissions inventories through the year 2014 for ozone, a plan to verify continued attainment, and a contingency plan. The maintenance plan meets the Federal requirements of Clean Air Act section 110(a)(1) and 40 CFR 51.905(a)(4) and is approved as a revision to the California State Implementation Plan for the above mentioned area.

[FR Doc. E9–29891 Filed 12–16–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 61, and 62

**[FRL–9093–5]**

### Change of Addresses for Submission of Certain Reports; Technical Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** EPA is correcting the addresses for both the EPA Region III office and the EPA Region III states in the General Provisions section of certain EPA air pollution control regulations. These regulations require submittal of notifications, reports, and other documents to EPA Regional Offices and States. This technical amendment updates and corrects the addresses for submitting such information to the EPA Region III Office and the affiliated States.

**DATES:** *Effective Date:* This document is effective December 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, Air Protection Division, Mail code 3AP00, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever ''we'' or ''our'' is used it means the EPA. We are correcting the address for EPA Region III office in the General Provisions of 40 CFR parts 60, 61, and 62. We are also correcting the address for the EPA Region III states—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia—in the General Provisions of 40 CFR parts 60 and 61. Certain provisions of 40 CFR parts 60, 61, and 62 regulations require the submittal of notifications, reports, and other documents to the EPA regional office. This technical amendment updates and corrects the address for submitting such

information to the EPA Region III office and these states.

Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting EPA Region III's address, as well as those of the EPA Region III States. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

**Statutory and Executive Order Reviews**

*General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48 (1995)). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This technical correction 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*Submission to Congress and the Comptroller General*

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of December 17, 2009. 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**. This series of corrections to the General Provisions of 40 CFR parts 60, 61, and 62 is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Parts 60, 61, and 62**

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: December 4, 2009.

**James W. Newsom,**

*Acting Regional Administrator, Region III.*

■ 40 CFR parts 60, 61, and 62 are amended as follows:

## PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart A—General Provisions

■ 2. Section 60.4 is amended by:

■ A. Revising the address for Region III in paragraph (a); and

■ B. Revising paragraphs (b)(I), (b)(J), (b)(V), (b)(NN), (b)(VV), and (b)(XX).

The amendments read as follows:

**§ 60.4 Address.**

(a) * * *

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Director, Air Protection Division, Mail Code 3AP00, 1650 Arch Street, Philadelphia, PA 19103–2029.

* * * * *

(b) * * *

(I) State of Delaware, Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

(J) District of Columbia, Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

* * * * *

(V) State of Maryland, Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

* * * * *

(NN)(i) City of Philadelphia, Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

(ii) Commonwealth of Pennsylvania, Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

(iii) Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

* * * * *

(VV) Commonwealth of Virginia, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

* * * * *

(XX) State of West Virginia, Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, West Virginia 25304.

* * * * *

## PART 61—[AMENDED]

■ 3. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart A—General Provisions

■ 4. Section 61.4 is amended by:

■ A. Revising the address for Region III in paragraph (a); and

■ B. Revising paragraphs (b)(I), (b)(J), (b)(V), (b)(NN), (b)(VV), and (b)(XX).

The amendments read as follows:

### § 61.04 Address.

(a) * * *

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Director, Air Protection Division, Mail Code 3AP00, 1650 Arch Street, Philadelphia, PA 19103–2029.

* * * * *

(b) * * *

(I) State of Delaware, Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

(J) District of Columbia, Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

* * * * *

(V) State of Maryland, Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

* * * * *

(NN)(i) City of Philadelphia, Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

(ii) Commonwealth of Pennsylvania, Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

(iii) Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

* * * * *

(VV) Commonwealth of Virginia, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

* * * * *

(XX) State of West Virginia, Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, West Virginia 25304.

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## PART 62—[AMENDED]

■ 5. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart A—General Provisions

■ 6. In § 62.10, the table is amended by revising the entry for Region III to read as follows:

### § 62.10 Submission to Administrator.

* * * * *

| Region and jurisdiction covered | Address |
|---|---|
| * * * * * * * | |
| III—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. | Air Protection Division, Mail Code 3AP00, 1650 Arch Street, Philadelphia, PA 19103–1129. |
| * * * * * * * | |

[FR Doc. E9–30042 Filed 12–16–09; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register
Vol. 74, No. 241
Thursday, December 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 TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–1180; Directorate Identifier 2009–CE–060–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate Previously Held by Raytheon Aircraft Company) Models B300 and B300C Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation (type certificate previously held by Raytheon Aircraft Company) Models B300 and B300C airplanes. This proposed AD would require you to inspect the terminal board on the circuit card rack assembly to determine if the correct bus bar is installed. This proposed AD would also require you to replace the bus bar if necessary and inspect the left and right pitot heat annunciators for proper operation. This proposed AD results from reports of the left and right pitot heat annunciators not illuminating for an inoperative pitot heat condition. We are proposing this AD to detect and correct installation of an incorrect bus bar, which could result in failure of the pitot heat annunciators to illuminate. This failure could lead to the pilot being unaware that moisture has frozen on the pitot tube(s) and cause erroneous flight instrument indication.

**DATES:** We must receive comments on this proposed AD by February 1, 2010.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

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

For service information identified in this proposed AD, contact Hawker Beechcraft Corporation, Attn: Airline Technical Support, P.O. Box 85, Wichita, Kansas 67201; telephone: (800) 429–5372; fax: (316) 676–8745; Internet: *http://www.hawkerbeechcraft.com.*

**FOR FURTHER INFORMATION CONTACT:** Kevin Schwemmer, Aerospace Engineer, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone: (316) 946–4174, fax: (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2009–1180; Directorate Identifier 2009–CE–060–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Discussion

We have received reports indicating that there was a discrepancy between the installation drawing and the wiring diagram for installing the bus bar for the pitot heat annunciators on Hawker Beechcraft Corporation Models B300 and B300C airplanes.

Installing the incorrect bus bar creates a condition where the left and right pitot heat annunciators may not illuminate for an inoperative pitot heat condition.

This condition, if not corrected, could result in failure of the pitot heat annunciators to illuminate. This failure could lead to moisture freezing on the pitot tube(s) and cause erroneous flight instrument indication.

### Relevant Service Information

We have reviewed Hawker Beechcraft Mandatory Service Bulletin SB 31–3948, Issued: April 2009.

The service information describes procedures for:

- Inspecting the left and right pitot heat annunciators for proper operation;
- Inspecting the terminal board on the circuit card rack assembly to determine if the correct bus bar is installed; and
- Replacing the bus bar if necessary.

### FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require inspecting the terminal board on the circuit card rack assembly to determine if the correct bus bar is installed. This proposed AD would also require replacing the bus bar if necessary and inspecting the left and right pitot heat annunciators for proper operation.

### Costs of Compliance

We estimate that this proposed AD would affect 131 airplanes in the U.S. registry.

We estimate the following costs to do the proposed operational check:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 work-hour × $80 per hour = $80 | Not applicable | $80 | $10,480 |

We estimate the following costs to do any necessary placard fabrication and installation that would be required based on the results of the proposed operational check. We have no way of determining the number of airplanes that may need the placard:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| .5 work-hour × $80 per hour = $40 | Not applicable | $40 |

We estimate the following costs to do the proposed inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 work-hour × $80 per hour = $80 | Not applicable | $80 | $10,480 |

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 3 work-hours × $80 per hour = $240 | $50 | $290 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

**Examining the AD Docket**

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Hawker Beechcraft Corporation (Type Certificate previously held by Raytheon Aircraft Company):** Docket No. FAA–2009–1180; Directorate Identifier 2009–CE–060–AD.

**Comments Due Date**

(a) We must receive comments on this airworthiness directive (AD) action by February 1, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

| Models | Serial Nos. |
|---|---|
| B300 ..... | FL–381, FL–383 through FL–530, FL–532, FL–534 through FL–596, FL–598, and FL–600. |
| B300C ..... | FM–12 through FM–25. |

**Subject**

(d) Air Transport Association of America (ATA) Code 31: Instruments.

**Unsafe Condition**

(e) This AD results from reports of the left and right pitot heat annunciators not illuminating for an inoperative pitot heat condition. We are issuing this AD to detect and correct the installation of an incorrect bus bar, which could result in failure of the pitot heat annunciators to illuminate. This failure could lead to moisture freezing on the pitot tube(s) and cause erroneous flight instrument indication.

**Compliance**

(f) To address this problem, you must do the following, unless already done:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Do an operational check of the left and right pitot heat annunciators for illumination. | Within the next 15 hours time-in-service (TIS) after the effective date of this AD or within the next 30 days after the effective date of this AD, whichever occurs first. If you may | Follow Hawker Beechcraft Mandatory Service Bulletin SB 31–3948, Issued: April 2009. |
| (2) If the left and/or right pitot heat annunciators do not illuminate, install a placard on the instrument panel within the pilot's clear view specifying the pitot heat annunciator(s) as inoperative. | Before further flight after the operational check required in paragraph (f)(1) of this AD. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 31–3948, Issued: April 2009. |
| (3) Inspect the terminal board on the circuit card rack assembly to determine if a five-hole bus bar is installed. | Within the next 50 hours TIS after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 31–3948, Issued: April 2009. |
| (4) If a five-hole bus bar is found installed during the inspection required in paragraph (f)(3) of this AD, perform an operational check. If the operational check detects anomalies, contact the manufacturer specified in paragraph (i) of this AD to obtain an FAA-approved repair scheme and incorporate the repair scheme. | Before further flight after the inspection required in paragraph (f)(3) of this AD. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 31–3948, Issued: April 2009. |
| (5) If a four-hole bus bar is found installed during the inspection required in paragraph (f)(3) of this AD, replace it with a five-hole bus bar and perform an operational check. If the operational check detects anomalies, contact the manufacturer specified in paragraph (i) of this AD to obtain an FAA-approved repair scheme and incorporate the repair scheme. | Before further flight after the inspection required in paragraph (f)(3) this AD. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 31–3948, Issued: April 2009. |
| (6) If proper operation of the left and right pitot heat annunciators are verified in paragraphs (f)(4) and (f)(5) of this AD, remove the placard that was installed in paragraph (f)(2) of this AD. | Before further flight after doing the operational check required in paragraphs (f)(4) and (f)(5) of this AD. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 31–3948, Issued: April 2009. |

**Note:** The operational check required in this AD is different from the pilot's pre-flight check. An FAA-approved licensed mechanic authorized to do maintenance is required to do the operational check.

(g) The inspection action of paragraph (f)(3) of this AD and the follow-on actions of paragraphs (f)(4) and (f)(5) of this AD may be done instead of the operational check and the placard requirements of paragraphs (f)(1) and (f)(2) of this AD provided the inspection is done within the next 15 hours TIS after the effective date of this AD.

**Alternative Methods of Compliance (AMOCs)**

(h) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kevin Schwemmer, Aerospace Engineer, ACE–118W, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209, telephone: (316) 946–4174, fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Related Information**

(i) To get copies of the service information referenced in this AD, contact Hawker Beechcraft, Attn: Airline Technical Support, P.O. Box 85, Wichita, Kansas 67201; telephone: (800) 429–5372; fax: (316) 676–8745; Internet: *http://www.hawkerbeechcraft.com.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Issued in Kansas City, Missouri, on December 8, 2009.

**Margaret Kline,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–29975 Filed 12–16–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–1186; Directorate Identifier 2009–CE–065–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company (Type Certificate Previously Held by Columbia Aircraft Manufacturing (Previously The Lancair Company)) Models LC40–550FG, LC41–550FG, and LC42–550FG Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2009–09–09, which applies to certain Cessna Aircraft Company (Cessna) (type certificate previously held by Columbia Aircraft Manufacturing (previously The Lancair Company)) Models LC40–550FG, LC41–550FG, and LC42–550FG airplanes. AD 2009–09–09 currently requires repetitive inspections of the rudder hinges and the rudder hinge brackets for damage, i.e., cracking, deformation, and discoloration. If damage is found during any inspection, AD 2009–09–09 also requires replacing the damaged rudder hinge and/or rudder hinge bracket. Since we issued AD 2009–09–09, Cessna has developed a modification that, when incorporated, would terminate the repetitive inspections required by AD 2009–09–09. The FAA has determined that long-term continued operational safety will be better assured by design changes that removed the source of the problem, rather than by repetitive inspections or other special procedures. Consequently, this proposed AD would retain the inspection requirements of AD 2009–09–09 and add a terminating action for the inspection requirements. We are proposing this AD to detect and correct damage in the rudder hinges and the rudder hinge brackets, which could result in failure of the rudder. This failure could lead to loss of control.

**DATES:** We must receive comments on this proposed AD by February 1, 2010.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

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

For service information identified in this proposed AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706; Wichita, Kansas 67277; *telephone:* (316) 517–5800; *fax:* (316) 942–9006; *Internet: www.cessna.com.*

**FOR FURTHER INFORMATION CONTACT:** Gary Park, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4123; *fax:* (316) 946–4107; *e-mail: gary.park@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2009–1186; Directorate Identifier 2009–CE–065–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Discussion

We received reports of a cracked lower rudder hinge bracket on two Cessna Model LC41–550FG airplanes that caused us to issue AD 2009–09–09, Amendment 39–15895 (74 FR 19873, April 30, 2009). AD 2009–09–09 currently requires the following on certain Cessna Models LC40–550FG, LC41–550FG, and LC42–550FG airplanes:

- Repetitively inspecting the rudder hinges and the rudder hinge brackets for damage; and
- Replacing the rudder hinge and/or rudder hinge bracket if damage is found.

Cessna developed a modification that, when incorporated, would eliminate the need for the repetitive inspections required by AD 2009–09–09. The FAA has determined that long-term continued operational safety will be better assured by design changes that removed the source of the problem, rather than by repetitive inspections or other special procedures.

This condition, if not corrected, could result in failure of the rudder. This failure could lead to loss of control.

### Relevant Service Information

We have reviewed Cessna Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009.

The service information describes procedures for repetitively inspecting the rudder hinges and the rudder hinge brackets for damage, i.e., cracking, deformation, and discoloration. The service information also describes procedures for incorporating a modification kit that will terminate the repetitive inspections.

### FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 2009–09–09 with a new AD that would retain the inspection requirements of AD 2009–09–09 and add a terminating action for the inspection requirements. This proposed AD would require you to use the service information described previously to perform these actions.

### Costs of Compliance

We estimate that this proposed AD would affect 535 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspections:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| *Inspection with rudder removed:* 1.2 work-hours × $80 per hour = $96 | Not applicable | $96 | $51,360 |

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| *Inspection without rudder removed:* .5 work-hour × $80 per hour = $40 | Not applicable | 40 | 21,400 |

We estimate the following costs to do the proposed modification:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| *For Models LC40–550FG and LC42–550FG airplanes:* 1 work-hour × $80 per hour = $80 | $743 | $823 |
| *For Model LC41–550FG airplanes:* 1 work-hour × $80 per hour = $80 | 803 | 883 |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

*For the reasons discussed above, I certify that the proposed regulation:*

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

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

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

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

**Examining the AD Docket**

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–09–09, Amendment 39–15895 (74 FR 19873, April 30, 2009), and adding the following new AD:

**Cessna Aircraft Company (Type Certificate Previously Held by Columbia Aircraft Manufacturing (Previously The Lancair Company)):** Docket No. FAA–2009–1186; Directorate Identifier 2009–CE–065–AD.

**Comments Due Date**

(a) We must receive comments on this airworthiness directive (AD) action by February 1, 2010.

**Affected ADs**

(b) This AD supersedes AD 2009–09–09, Amendment 39–15895.

**Applicability**

(c) This AD applies to the following airplane models and serial numbers that are certificated in any category:

| Model | Serial Nos. |
|---|---|
| LC40–550FG | 4001, 4002, and 40004 through 40079. |
| LC41–550FG | 41001 through 41569, 41571 through 41800, 411001 through 411087, 411089 through 411110, 411112 through 411138, 411140, 411142, and 411147. |
| LC42–550FG | 42001 through 42009, 42011 through 42558, 42560 through 42569, 421001 through 421013, 421015 through 421017, and 421019. |

**Subject**

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

**Unsafe Condition**

(e) This AD is the result of reports received of a cracked lower rudder hinge bracket on two of the affected airplanes. We are issuing this AD to detect and correct damage, i.e., cracking, deformation, and discoloration, in the rudder hinges and the rudder hinge brackets, which could result in failure of the rudder. This failure could lead to loss of control.

**Compliance**

(f) To address this problem, you must do the following actions, unless already done:

(1) Inspect the rudder hinges and rudder hinge brackets for damage, i.e., cracking, deformation, and discoloration, following Cessna Aircraft Company Single Engine

Service Bulletin SB09–27–01, dated April 13, 2009, or Cessna Aircraft Company Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009. Use the compliance times specified in the following table:

| Condition | Initial inspection | Repetitive inspection |
|---|---|---|
| (i) For airplanes with 25 hours time-in-service (TIS) or more as of May 11, 2009 (the effective date of AD 2009–09–09): | With the rudder removed and using 10X visual magnification, inspect all three rudder hinges and rudder hinge brackets at whichever of the following occurs first:<br>(A) Within the next 10 hours TIS after May 11, 2009 (the effective date of AD 2009–09–09); or<br>(B) Within the next 30 days after May 11, 2009 (the effective date of AD 2009–09–09). | Thereafter inspect as follows until the modification required in paragraph (f)(5) of this AD is done:<br>(A) Every 25 hours TIS or 3 months, whichever occurs first, without removing the rudder, visually inspect all three rudder hinges and rudder hinge brackets; and<br>(B) Every 50 hours TIS or 6 months, whichever occurs first, with the rudder removed and using 10X visual magnification, inspect all three rudder hinges and rudder hinge brackets. |
| (ii) For airplanes with less than 25 hours TIS as of May 11, 2009 (the effective date of AD 2009–09–09): | Without removing the rudder, visually inspect all three rudder hinges and rudder hinge brackets, at whichever of the following occurs later:<br>(A) Upon accumulating 25 hours TIS; or<br>(B) Within the next 10 hours TIS after May 11, 2009 (the effective date of AD 2009–09–09). | Thereafter inspect as follows until the modification required in paragraph (f)(5) of this AD is done:<br>(A) Every 25 hours TIS or 3 months, whichever occurs first, without removing the rudder, visually inspect all three rudder hinges and rudder hinge brackets; and<br>(B) Every 50 hours TIS or 6 months, whichever occurs first, with the rudder removed and using 10X visual magnification, inspect all three rudder hinges and rudder hinge brackets. |

(2) If damage is found on any of the rudder hinges and/or rudder hinge brackets during any inspection required in paragraphs (f)(1)(i) or (f)(1)(ii) of this AD, before further flight, incorporate Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009, as specified in Cessna Aircraft Company Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009. Incorporating Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009, terminates the repetitive inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(3) If the repetitive inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD become due at the same time, credit for both inspections will be given by doing the rudder removal and 10X visual inspection.

(4) Within the next 24 months after the effective date of this AD, incorporate Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009, as specified in Cessna Aircraft Company Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009.

(i) Incorporating Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009, terminates the repetitive inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(ii) At any time after the initial inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, you may incorporate Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009, to terminate the repetitive inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(5) For any affected airplane that has Cessna Aircraft Company Single Engine Service Bulletin SB09–27–01, Revision 1, dated August 31, 2009, incorporated, within the next 30 days after the effective date of this AD, inspect for proper rudder hinge and rudder bracket hardware thread engagement and inspect the rudder travel. Follow the Accomplishment Instructions in Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009, as specified in Cessna Aircraft Company Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009.

(i) During the inspection required in paragraph (f)(5) of this AD, if any discrepancies are found in the rudder hinge or rudder bracket hardware, before further flight replace the affected hardware. Do the replacement following the Accomplishment Instructions in Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009.

(ii) During the inspection required in paragraph (f)(5) of this AD, if the rudder travel is outside the limits specified in the Accomplishment Instructions in Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009, before further flight remove the rudder and reinstall it following the Accomplishment Instructions in Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009.

(iii) After the inspection and any necessary corrective actions required in paragraphs (f)(5), (f)(5)(i), and (f)(5)(ii) of this AD, incorporation of Cessna Aircraft Company Single Engine Service Bulletin SB09–27–01, Revision 1, dated August 31, 2009, terminates the repetitive inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(g) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Gary Park, Aerospace Engineer, ACE–118W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4123; *fax:* (316) 946–4107; *e-mail: gary.park@faa.gov*. Before using any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(h) AMOCs approved for AD 2009–09–09 are approved for this AD.

**Related Information**

(i) To get copies of the service information referenced in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706; Wichita, Kansas 67277; *telephone:* (316) 517–5800; *fax:* (316) 942–9006; *Internet: http://www.cessna.com*. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*.

Issued in Kansas City, Missouri, on December 10, 2009.

**Margaret Kline,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–29982 Filed 12–16–09; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2009–1176; Directorate Identifier 2009–CE–062–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Hawker Beechcraft Corporation Model G58 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Model G58 airplanes. This proposed AD would require inspecting the installation of stand-off hardware between the heater fuel line and the heater over-temperature sensor wires for minimum clearance and installing acceptable stand-off hardware if stand-off hardware is missing or inadequate. This proposed AD would also require inspecting the brake reservoir line and the fuel heater power wire for damage and minimum clearance, replacing any damaged wires and/or lines, and installing stand-off hardware if minimum clearance is not met. This proposed AD results from reports received of a power wire shorting out on the brake reservoir tube. We are proposing this AD to detect and correct inadequate clearance of the brake reservoir tubing and the heater fuel pump wiring, which could result in chafing and shorting out of the electrical wiring and chafing of the tubing carrying flammable fluids. This condition could lead to a fire in the nose wheel well.

**DATES:** We must receive comments on this proposed AD by February 1, 2010.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

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

For service information identified in this proposed AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: 1 (800) 429–5372 or (316) 676–3140; fax: (316) 676–3340; Internet: *http://hawkerbeechcraft.com.*

**FOR FURTHER INFORMATION CONTACT:** Kevin Schwemmer, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4174; fax: (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2009–1176; Directorate Identifier 2009–CE–062–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Discussion

We have received reports that on a Hawker Beechcraft Corporation Model G58 airplane a power wire shorted out on the brake reservoir tube, resulting in a fire in the nose wheel well. The 0.50-inch minimum clearance requirements may not have been met between the brake reservoir tube and the combustion heater fuel pump power wire below the left side of the nose baggage compartment.

This condition, if not corrected, could result in chafing and shorting out of the electrical wiring and chafing of the tubing carrying flammable fluids, which could lead to a fire in the nose wheel well.

### Relevant Service Information

We have reviewed Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008.

The service information describes procedures for:

- Inspecting the installation of stand-off hardware between the heater fuel line and the heater over-temperature sensor wires for minimum clearance;
- Installing acceptable stand-off hardware if stand-off hardware is missing or inadequate;
- Inspecting the brake reservoir line and the fuel heater power wire for damage and minimum clearance;
- Replacing any damaged wires and/or lines; and
- Installing stand-off hardware between the brake reservoir line and the fuel heater power wire if minimum clearance is not met.

### FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require inspecting the installation of stand-off hardware between the heater fuel line and the heater over-temperature sensor wires for minimum clearance and installing acceptable stand-off hardware if stand-off hardware is missing or inadequate. This proposed AD would also require inspecting the brake reservoir line and the fuel heater power wire for damage and minimum clearance, replacing any damaged wires and/or lines, and installing stand-off hardware if minimum clearance is not met.

### Costs of Compliance

We estimate that this proposed AD would affect 71 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection of the heater fuel line, the heater over-temperature sensor wires, the brake reservoir line, and the fuel heater power wire:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 work-hour × $80 per hour = $80 | Not applicable | $80 | $5,680 |

We estimate the following costs to do any necessary stand-off hardware installation that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this installation:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| .5 work-hour × $80 per hour = $40 | $50 | $90 |

We estimate the following costs to do any necessary replacement of the brake line that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this installation:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 6 work-hours × $80 per hour = $480 | $100 | $580 |

Hawker Beechcraft Corporation will allow warranty credit as specified in Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

**Examining the AD Docket**

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Hawker Beechcraft Corporation:** Docket No. FAA–2009–1176; Directorate Identifier 2009–CE–062–AD.

**Comments Due Date**

(a) We must receive comments on this airworthiness directive (AD) action by February 1, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Model G58 airplanes, serial numbers TH–2125 through TH–2172 and TH–2174 through TH–2220, that are certificated in any category.

**Subject**

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

**Unsafe Condition**

(e) This AD results from reports received of a power wire shorting out on the brake reservoir tube. We are issuing this AD to detect and correct inadequate clearance of the brake reservoir tubing and the heater fuel pump wiring, which could result in chafing and shorting out of the electrical wiring and chafing of the tubing carrying flammable fluids. This condition could lead to a fire in the nose wheel well.

**Compliance**

(f) To address this problem, you must do the following, unless already done:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Inspect the installation of the stand-off hardware between the heater fuel line and heater over-temperature sensor wires for minimum clearance. | Within the next 50 hours time-in-service (TIS) after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008. |
| (2) If, during the inspection required in paragraph (f)(1) of this AD, the stand-off hardware is not installed or it does not maintain the minimum clearance, install stand-off hardware as specified in the service information. | Before further flight after the inspection where the missing stand-off hardware and/or inadequate clearance was found. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008. |
| (3) Inspect the brake reservoir line and the fuel heater power wire for damage. | Within the next 50 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008. |
| (4) If, during the inspection required in paragraph (f)(3) of this AD, damage is found, repair or replace damaged tubing and/or wiring found. | Before further flight after the inspection where damaged tubing and/or wiring was found. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008. |
| (5) Inspect the installation of the stand-off hardware between the brake reservoir line and the fuel heater power wire for minimum clearance. | Within the next 50 hours TIS after the effective date of this AD or within the next 12 months after the effective date of this AD, whichever occurs first. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008. |
| (6) If, during the inspection required in paragraph (f)(5) of this AD, the stand-off hardware is not installed or it does not maintain the minimum clearance, install stand-off hardware as specified in the service information. | Before further flight after the inspection where the missing stand-off hardware and/or inadequate clearance was found. | Follow Hawker Beechcraft Mandatory Service Bulletin SB 32–3898, dated November 2008. |

**Alternative Methods of Compliance (AMOCs)**

(g) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kevin Schwemmer, Aerospace Engineer, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4174; fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Related Information**

(h) To get copies of the service information referenced in this AD, contact Hawker Beechcraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: 1 (800) 429–5372 or (316) 676–3140; fax: (316) 676–3340; Internet: *http://hawkerbeechcraft.com.* To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov*.

Issued in Kansas City, Missouri on December 8, 2009.

**Margaret Kline,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–29984 Filed 12–16–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

## U.S. Customs and Border Protection

## 19 CFR Parts 123 and 142

**[Docket No.: USCBP–2006–0132]**

**RIN 1651–AA68**

## Land Border Carrier Initiative Program

**AGENCY:** Customs and Border Protection, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend U.S. Customs and Border Protection (CBP) regulations by removing the provisions pertaining to the Land Border Carrier Initiative Program (LBCIP). The LBCIP is a voluntary industry partnership program under which participating land and rail commercial carriers agree to enhance the security of their facilities and conveyances to prevent controlled substances from being smuggled into the United States.

Since the promulgation of the LBCIP regulations, CBP has developed a more comprehensive voluntary industry partnership program known as the Customs-Trade Partnership Against Terrorism (''C–TPAT.'') C–TPAT builds upon the best practices of the LBCIP, while providing greater border and supply chain security with expanded benefits to approved participants. For this reason, CBP intends to terminate the LBCIP and focus its partnership efforts on the further development of C–TPAT. Current LBCIP members may participate in the program until a final rule terminating the LBCIP is published in the **Federal Register** and goes into effect.

An LBCIP participant may apply for participation in C–TPAT at any time and, if accepted, will receive the expanded benefits offered under that program. For a more detailed description of C–TPAT, and information regarding eligibility, application criteria, and benefits, CBP directs current LBCIP participants and all other interested parties to the CBP Internet Web site located at *http://www.cbp.gov.*

**DATES:** Comments must be received on or before February 16, 2010.

**ADDRESSES:** You may submit comments, identified by *docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP 2006–0132.
- *Mail:* Border Security Regulations Branch, Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

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

**SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Border Security Regulations Branch, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Glenn Woodley, Jr., Office of Field Operations, (202) 344–2725.

**SUPPLEMENTARY INFORMATION:**

## Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

## Background

The Land Border Carrier Initiative Program (LBCIP) is a CBP-industry partnership regulatory program that enlists the voluntary cooperation of commercial conveyance entities as part of CBP's effort to prevent the smuggling of controlled substances into the United States.

Under the LBCIP regulations set forth in title 19 of the Code of Federal Regulations (19 CFR 123.71–76), land and rail commercial carrier participants may enter into a written agreement with CBP that specifies methods by which the carrier will enhance the security of its facilities and conveyances. LBCIP participants also agree to identify and report suspected smuggling attempts to CBP. In exchange for this cooperation, CBP provides training to carrier personnel in the areas of cargo and personnel security, document review techniques, drug awareness, and conveyance searches. If a controlled substance is found aboard a conveyance owned or operated by a participating carrier, CBP agrees to follow special administrative procedures relating to the assessment and mitigation of drug-related penalties. It is also noted that only LBCIP participants may be approved for Line Release entry processing at certain high-risk border locations.[1] *See* 19 CFR 142.41.

In 2001, CBP introduced the Customs-Trade Partnership Against Terrorism (C–TPAT) program. C–TPAT is a voluntary industry partnership initiative that meets the objectives of the LBCIP while providing a more comprehensive approach to border and supply chain security. The program entails CBP's ongoing participation in a joint effort with importers, carriers, brokers, warehouse operators, manufacturers, and other industry sectors to develop a seamless security-conscious environment from manufacturing through transportation and importation to ultimate distribution. In addition to providing greater security for both government and business, C–TPAT provides its members with the same privileges accorded to LBCIP participants, as well as additional benefits such as priority processing for CBP inspections, reduced number of CBP inspections, assignment of a C–TPAT Supply Chain Security Specialist who will work with the company to validate and enhance security throughout the company's international supply chain, and eligibility to attend C–TPAT supply chain security training seminars. (For a detailed explanation of C–TPAT benefits, visit *http://www.cbp.gov,* and click on the link to C–TPAT).

C–TPAT builds upon the best practices of existing CBP-industry partnership programs and offers more comprehensive supply chain security measures for both government and industry than does LBCIP. For this reason, and in light of the fact that LBCIP is not an active program and CBP has not received an application to participate in LBCIP for several years, CBP proposes to terminate LBCIP and focus its partnership efforts in the C–TPAT arena. Accordingly, CBP encourages any existing LBCIP participants to apply for C–TPAT membership. Information on the C–TPAT application process is available on the CBP Web site (*http://www.cbp.gov*). Any existing LBCIP members in good standing remain eligible for LBCIP privileges until a final rule adopting the proposals set forth in this document is published in the **Federal Register** and becomes effective.

[1] Line Release provides for advance cargo screening and expedited release at land border ports.

As a result of these proposed changes, CBP also proposes to replace references to the LBCIP in 19 CFR 142.41 (Line Release) and 142.47 (examinations of Line Release transactions) with references to ''CBP-approved industry partnership programs.''

Lastly, this proposed rule would replace the word ''Customs'' where it appears in the regulations affected by these proposed changes with the acronym ''CBP'' to reflect the change in name resulting from the transfer of the legacy U.S. Customs Service of the Department of Treasury to the Department of Homeland Security.

## Explanation of Amendments

For the reasons set forth above, CBP proposes to remove §§ 123.71, 123.72, 123.73. 123.74, 123.75, and 123.76 from 19 CFR, and amend 19 CFR 142.41 and 142.47.

## Regulatory Flexibility Act

In Treasury Directive (T.D.) 99–2 (64 FR 27, January 4, 1999), it was certified that pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the LBCIP regulations set forth at 19 CFR 123.71–76 would not have a significant economic impact on a substantial number of small entities, because the LBCIP is a voluntary partnership program that confers benefits to the trade community. Accordingly, the LBCIP regulations were not subject to regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Similarly, as this proposed rule would remove the voluntary LBCIP from the regulations and would not impose any direct costs on small entities, and as CBP encourages any existing LBCIP members to continue their partnership endeavors and benefits by applying for membership in C–TPAT, it is certified that pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. CBP invites comments from small entities regarding any direct costs commenters believe this rulemaking would impose.

## Executive Order 12866

This proposed rule does not meet the criteria for a ''significant regulatory action'' under Executive Order 12866. As such, the Office of Management and Budget (OMB) has not reviewed this proposed rule.

## Paperwork Reduction Act

The collections of information affected by this proposed rulemaking

were previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1651–0077. There are no new collections of information proposed in this document.

Part 178 of the CBP regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB, will be amended accordingly if this proposal is adopted

**Signing Authority**

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(1) of the Homeland Security Act of 2002 and that such regulations are signed by the Secretary of Homeland Security.

**List of Subjects**

*19 CFR Part 123*

Administrative Practice and Procedure, Canada, Common carriers, Customs duties and inspection, Entry of merchandise, Freight, Imports, International traffic, Mexico, Motor carriers, Penalties, Railroads, Reporting and recordkeeping requirements, Vehicles.

*19 CFR Part 142*

Administrative Practice and Procedure, Canada, Computer technology (Line release), Common carriers (Carrier initiative program), Customs duties and inspection, Entry of merchandise (Line release), Forms, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

For the reasons stated above, CBP proposes to amend parts 123 and 142 of title 19 of the CFR as set forth below:

## PART 123—CBP RELATIONS WITH CANADA AND MEXICO

1. Revise the Part heading to read as set forth above.

2. The general authority citation for part 123 continues to read as follows, and the specific authority citation for §§ 123.71–123.76 is removed.

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

**Subpart H—[Removed and Reserved]**

3. Subpart H is removed and reserved consisting of §§ 123.71 through 123.76.

## PART 142—ENTRY PROCESS

4. The authority citation for part 142 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1448, 1484, 1624.

5. Section 142.41 is amended by removing the word ''Customs'' where it appears and adding in each place the term ''CBP'' and, in the last sentence, by removing the language, ''the Land Border Carrier Initiative Program (*see,* subpart H of part 123 of this chapter)'' and adding in its place the language, ''a CBP-approved industry partnership program''.

6. In § 142.47:

(a) Paragraph (a) is amended by removing the word ''Customs'' where it appears and adding in each place the term ''CBP''; and

(b) Paragraph (b) is amended by removing the word ''Customs'' where it appears and adding in each place the term ''CBP'', by removing the language ''the Land Border Carrier Initiative Program (LBCIP)'' in the first sentence and adding in its place the language ''a CBP-approved industry partnership program'' and, in the second sentence, by removing the word ''shall'' and adding in its place the word ''must''.

Dated: December 11, 2009.

**Janet Napolitano,**

*Secretary.*

[FR Doc. E9–29954 Filed 12–16–09; 8:45 am]

**BILLING CODE 9111–14–P**

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[EPA–R09–OAR–2009–0359; FRL–8983–3]**

## Approval and Promulgation of Air Quality Implementation Plans; California; Monterey Bay Region 8-Hour Ozone Maintenance Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On December 19, 2007, the State of California submitted an 8-hour ozone maintenance plan for the Monterey Bay Unified Air Pollution Control District and requested that EPA approve the plan as a revision to the California State Implementation Plan (SIP). In this action, EPA is proposing to approve the maintenance plan. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's request for approval of the maintenance plan as a direct final rule without prior proposal because the Agency views the maintenance plan and SIP revision as non-controversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by January 19, 2010.

**ADDRESSES:** Submit your comments, identified by [EPA–R09–OAR–2009–0359] by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *E-mail:* Sarvy Mahdavi at *mahdavi.sarvy@epa.gov*. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Sarvy Mahdavi, Planning Office (AIR–2), at fax number (415) 947–3579.
- *Mail or deliver:* Sarvy Mahdavi, Air Planning Office, (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. Hand or courier deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://*

*www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Sarvy Mahdavi, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, telephone (415) 972–3173; fax (415) 947–3579; e-mail address *mahdavi.sarvy@epa.gov*.

**SUPPLEMENTARY INFORMATION:** For further information see the direct final rule, of the same day, published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: November 6, 2009.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E9–29890 Filed 12–16–09; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 84

**[Docket Number NIOSH–0137]**

**RIN 0920–AA33**

## Total Inward Leakage Requirements for Respirators

**AGENCY:** Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) is extending to March 29, 2010, the comment period for the notice of proposed rulemaking by the National Institute for Occupational Safety and Health (NIOSH) of CDC, entitled ''Total Inward Leakage Requirements for Respirators,'' published in the **Federal Register** on Friday, October 30, 2009 (74 FR 56141). In the notice of proposed rulemaking, CDC requested comments by December 29, 2009. The Agency is taking this action in response to requests for an extension to allow interested parties additional time to submit comments.

**DATES:** *Comments:* The public comment period is extended by 90 days, from December 29, 2009, as established in the proposed rule of October 30, 2009 (74 FR 56141). All written comments must be received on or before March 29, 2010.

**ADDRESSES:** You may submit comments, identified by RIN: 0920–AA33, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: niocindocket@cdc.gov.* Include ''RIN: 0920–AA33'' and ''42 CFR Part 84'' in the subject line of the message.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

*Instructions:* All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking, RIN: 0920–AA33. All comments received will be posted without change to *http://www.cdc.gov/niosh/docket,* including any personal information provided.

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

**FOR FURTHER INFORMATION CONTACT:** Jonathan V. Szalajda, NIOSH, National Personal Protective Technology Laboratory (NPPTL), Post Office Box 18070, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236, telephone (412) 386–5200, facsimile (412) 386–4089, e-mail *zfx1@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** The Department of Health and Human Services published a proposed rule entitled ''Total Inward Leakage Requirements for Respirators,'' on Friday, October 30, 2009 (74 FR 56141). A public meeting was held on December 3, 2009.

The proposed rule would establish total inward leakage (TIL) requirements for half-mask air-purifying particulate respirators approved by NIOSH. The proposed new requirements specify TIL minimum performance requirements and testing to be conducted by NIOSH and respirator manufacturers to demonstrate that these respirators, when selected and used correctly, provide effective respiratory protection to intended users against toxic dusts, mists, fumes, fibers, and biological and infectious aerosols (*e.g.* influenza A(H5N1), severe acute respiratory syndrome (SARS) coronavirus, and *Mycobacterium tuberculosis*).

CDC received a written request to extend the comment period for 90 days beyond the December 3, 2009 public meeting on this proposed rule. CDC also received notice during presentations at the December 3, 2009 public meeting that two stakeholders intend to submit written requests for 90-day extensions from the original December 29 deadline. One of these stakeholders indicated that additional time is necessary in order to conduct laboratory research and collect and analyze data on the potential impact of the proposed rule. CDC has considered the requests and is extending the comment period for an additional 90 days past the original deadline of December 29, 2009, such that all written comments must now be received on or before March 29, 2010. The proposed rule contains only one performance requirement and uses criteria and a test method which are already required by the Occupational Safety and Health Administration (OSHA) for the use of this type of respirator. This extended deadline will have provided commenters with a full 90 days for comment on the proposed rule while preserving the Agency's ability to make timely progress on this occupational health priority.

Dated: December 10, 2009.

**Kathleen Sebelius,**

*Secretary.*

[FR Doc. E9–29959 Filed 12–16–09; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 565**

**[Docket No. NHTSA 2008–0022]**

## Vehicle Identification Number Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Denial of petitions for reconsideration.

**SUMMARY:** This document denies two petitions for reconsideration of an April 30, 2008, final rule that made certain modifications to 49 CFR part 565, Vehicle Identification Number Requirements, to enable the 17 character vehicle identification number (VIN) system that has been in place for nearly 30 years to continue to function for at least another 30 years. One of the petitions for reconsideration involved the effective date, which NHTSA believes was resolved by the publication of a correction notice on May 16, 2008. The second petition asked for changes to the VIN system so that, among other things, a person looking at the VIN of a motorcycle will be able to tell whether the vehicle was manufactured in the 30 year period beginning with the 1980 model year or in the 30 year period beginning with the 2010 model year. The agency is denying the petition because the issues it raises were outside of the scope of the rulemaking.

**FOR FURTHER INFORMATION CONTACT:** For technical and policy questions: Kenneth O. Hardie, Office of Crash Avoidance Standards, NHTSA, W43–458, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–6987) (Fax: 202–366–7002).

*For legal questions:* Deirdre Fujita, Office of Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–2992)(Fax: 202–366–3820).

## I. Background

On April 30, 2008, NHTSA published a final rule [1] that modified 49 CFR Part 565, ''Vehicle Identification Number Requirements,'' so that the current 17 character vehicle identification number (VIN) system, which has been in place for almost 30 years, can continue in use for at least another 30 years. The final rule revised the requirements for where certain information must be communicated in a VIN and added to the characters that may be used in some of the 17 positions of the VIN for passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating (GVWR) of 4536 kilograms (kg) (10,000 pounds (lb) or less. There were no changes in the characters allowed in various VIN positions for vehicles other than passenger cars, multipurpose passenger vehicles, and trucks with a GVWR of 4536 kg (10,000 lb) or less since the restrictions on the use of characters that had applied to vehicles less than 10,000 lb GVWR have not applied to other vehicles.[2]

The principal amendments adopted in the April 30, 2008, final rule were:

- The current 30 year period during which the VINs of any two vehicles subject to Part 565 may not be identical has been extended to 60 years.
- A vehicle's ''make'' must now be communicated in, and decipherable from, the second section of the VIN (positions 4–8), rather than being included in the first three characters of the VIN, which represent the manufacturer identifier.
- For passenger cars, multipurpose passenger vehicles, and trucks with a GVWR of 4536 kg. (10,000 lb) or less, positions 4, 5, and 6 may now be—3—either alphabetic or numeric. Positions 4 and 5 were previously limited to alphabetic characters. Position 6 was limited to numeric characters.
- For passenger cars, multipurpose passenger vehicles, and trucks with a GVWR of 4536 kg (10,000 lb) or less, VIN position 7 must now be alphabetic. It has previously been limited to numeric characters. Numeric or alphabetic characters continue to be permitted in position 7 for all other vehicles.
- The ''Year Codes for VIN'' table in Part 565 has been revised to include model year character designations for years up to, and including 2039 to account for the expanded period of time during which the current VIN system will remain in existence under the final rule.
- Part 565 now expressly applies to Low Speed Vehicles (LSVs).
- Vehicle attributes that now must be communicated in, and decipherable from, the VINs of LSVs have been added to Part 565.
- The VINs of LSVs must be in the same location as VINs for passenger cars, multipurpose passenger vehicles and trucks with a GVWR of 4536 kg (10,000 lb) or less.
- The vehicles to which Part 565.5, ''Motor vehicles imported into the United States,'' applies have been expanded from ''passenger cars'' to ''passenger cars, multipurpose passenger vehicles, low speed vehicles and trucks of 4536 kg or less GVWR.''
- Language has been added to Part 565 to indicate that the number ''9'' in the third VIN position means that the vehicle is produced in sufficiently small quantities that a low-volume manufacturer identifier applies and that positions 12–14 are therefore part of the manufacturer identifier.
- A table and an explanatory note have been added to Part 565 that specifically indicates the digit that should appear in the ninth position of the VIN.
- New definitions have been added for ''low-volume manufacturer,'' ''high-volume manufacturer,'' and ''manufacturer identifier.''
- The dividing line between high-volume and low-volume manufacturers, which determines whether a three character or six character manufacturer identifier is required, has been set at 1,000 vehicles, with those manufacturers manufacturing 1,000 or more vehicles considered to be high-volume manufacturers.
- The contact details in Part 565 for the SAE International, NHTSA's contractor that administers the VIN system, have been revised.

## II. Petitions for Reconsideration and NHTSA's Response

NHTSA received two petitions for reconsideration in response to the VIN final rule and a comment that raised the same basic issue that was raised in one of the petitions.

### *A. Effective Date*

Vehicle Services Consulting, Inc. (VSC) submitted a petition for reconsideration that was received on May 15, 2008, the day before NHTSA published a correction notice [3] that, among other things, clarified the effective date of the final rule. The

[1] 73 FR 23367, Docket No. 2008–0022; corrected 73 FR 28370, May 16, 2008, Docket No. 2008–0022.

[2] The original petition for rulemaking was developed by a committee of SAE International. That committee, known as the SAE Vehicle Identification Number/World Manufacturer Identifier Technical Committee, consisted of representatives from General Motors, International Truck and Engine Corporation, RL Polk & Company, The Hill Group, Freightliner Truck Division, American Association of Motor Vehicle Administrators, American Suzuki Motor Corporation, Harley Davidson Motor Company, Motorcycle Industry Council, Ford Motor Company, Transport Canada, National Insurance Crime Bureau (NICB), and Daimler Chrysler Corporation. In addition, a representative from NHTSA attended all meetings, most of which were conducted by conference call. Also, representatives from Clifford Thomas IMS in the United Kingdom, the Highway Loss Data Institute, and Caterpillar, Inc. also participated in the process.

[3] *See* 73 FR 28370.

effective date of the final rule was the focus of VSC's petition.

In its petition, VSC asserted that the effect of the language relating to the effective date of the new regulation, as originally published on April 30, 2008, would ''force manufacturers to start their MY 2010 no later than with April 30, 2009 production.'' VSC indicated that manufacturers need flexibility to decide when to change over from MY 2009 production to MY 2010 production. VSC suggested detailed changes to the regulatory language originally published.

The agency believes that the May 16, 2008 correction notice adequately addressed the issues raised by VSC. The corrections make clear that model year 2010 and 2011 vehicles manufactured on or after October 27, 2008 must comply with the new rule. The agency believes the October 27, 2008 effective date provided sufficient lead time for manufacturers to plan for the manufacture of model year 2010 vehicles. It is the agency's intent that all model year 2010 vehicles comply with the new VIN rule.

The May 16, 2008 corrections also make clear that ''all motor vehicles identified as model year 2009 or earlier vehicles by their manufacturer'' must comply with the current 49 CFR Part 565, which is included in the final rule as Subpart C.

Because the May 16, 2008 correction notice addresses VSC's concerns, the agency is denying this petition for reconsideration.

*B. Time Period Identifiers for Other Types of Vehicles*

The April 30, 2008 final rule included a change in the 17 character VIN system for passenger cars, multipurpose passenger vehicles, and trucks with GVWRs of 10,000 lb (4,536 kg) or less, that effectively indicates whether the vehicle is from the first 30 year or second 30 year period of the VIN system's life. In its petition for reconsideration, the Highway Loss Data Institute (HLDI), an affiliate of the Insurance Institute for Highway Safety (IIHS), asked that changes be made to the VIN final rule so that the 30 year period in which motorcycles and pickup trucks greater than 10,000 lb GVWR were manufactured can be identified.

While not submitted as a petition for reconsideration, NHTSA also received a comment from Penton Media expressing a concern similar to HLDI's but relating to all vehicles other than passenger cars, multipurpose passenger vehicles, and trucks with a GVWR of 4536 kg (10,000 lb) or *less,* including trucks with a GVWR *greater than* 4536 kg (10,000 lb), buses, motorcycles, trailers, and low speed-vehicles.

For motorcycles, HLDI suggested two options for allowing one to determine the 30 year period in which a motorcycle was manufactured. The first would require motorcycles to use prescribed alphabetic characters in position 9 of the VIN as check digits, as opposed to the numeric characters now required for all vehicles including motorcycles. The second option would allow motorcycles to use an alphabetic character not now permitted to be used in VINs, specifically I, O, or Q, in VIN positions 4–8 to indicate that the motorcycle is a model year in the range 2010–39.

With regard to pickups, HLDI cited four different makes/series that include versions with GVWRs both above and below 10,000 lb. HLDI asked that manufacturers of ''any make/series with GVWRs both above and below the 10,000 pound threshold follow the new rules for all vehicles of that make/series—that is, to use alphabetic characters in VIN position 7 to indicate model years 2010–2039 and ensure the uniqueness of VINs for this group of vehicles.'' HLDI said its analysis of the VINs of the four makes/series of pickups it cited indicated that alphabetic characters have not been used in position 7 of the VINs of these vehicles.

While HLDI and Penton Media have identified a difference in the way vehicles under 10,000 lb GVWR and motorcycles and vehicles over 10,000 lb GVWR are treated in the final rule, the agency does not believe that it has a sufficient basis to change Part 565 per the petitioner's request. The issues raised were not raised in the rulemaking and are therefore outside the scope of the rulemaking and cannot be addressed in response to a petition for reconsideration. As such, we are denying HLDI's petition for reconsideration.

Our decision-making on the issues raised by HLDI would benefit from public comments on the issues. The agency believes that the changes suggested by HLDI could have a substantial impact on data systems that utilize VINs. Furthermore, it seems likely that some users of data systems may not derive any benefit from the changes they would be forced to make. The changes to the VIN system HLDI proposes would likely benefit HLDI's research activities, but we are uncertain as to what adverse effects making these changes might have on others with data systems that rely on the VIN. Any changes of the sort suggested by HLDI would benefit from notice and comment rulemaking to assure, among other things, that these changes would not have an adverse impact on manufacturers of the vehicles involved as well as on the many data systems that utilize the VIN, such as those maintained by State motor vehicle departments, insurance companies, and others. NHTSA believes that any proposed change to longstanding operating principles of the VIN system, such as allowing the use of the characters I, O, and Q, must be carefully and thoroughly reviewed to make sure that a solution in one context does not create problems in another. Again, public comments on the change would be beneficial.

With respect to HLDI's concern that certain makes and models of pickup trucks have vehicle versions that are above 10,000 lb GVWR and below 10,000 lb and might therefore use two different approaches to assigning VINs to these vehicles, NHTSA believes that for the vehicles mentioned by HLDI, the problem, at least for now, does not exist. NHTSA contacted the manufacturers of the pickups cited by HLDI. Each indicated that in the case of the pickup makes and models cited by HLDI, the manufacturer applies the VIN character scheme required of vehicles less than 10,000 lb GVWR to all versions of the vehicles.

Therefore, for the aforementioned reasons, we decline to make the changes suggested by HLDI. We note that we are continuing efforts to review the VIN system, so the suggested changes could be pursued if further revisions to the VIN system are proposed at a later time.

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

Issued: December 11, 2009.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. E9–30030 Filed 12–16–09; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[FWS-R6-ES-2008-0122]**
**[92210-1111-0000-B2]**

### Endangered and Threatened Wildlife and Plants; 12-month Finding on a Petition To Change the Final Listing of the Distinct Population Segment of the Canada Lynx To Include New Mexico

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12–month finding on a petition to expand the listing of the Canada lynx (*Lynx canadensis*) to include the State of New Mexico, under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we find that the petition to change the boundary of the listing of Canada lynx is warranted but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. We have determined that Canada lynx are regularly and frequently crossing the State boundary between Colorado and New Mexico. When lynx cross the boundary, their status under the Act changes, leaving lynx in New Mexico without Federal protection. Upon publication of this 12–month petition finding, we will add lynx in New Mexico to our candidate species list with a listing priority number of 12. We will develop a proposed rule to amend the listing of lynx in the lower 48 States as our priorities allow (see section of Preclusion and Expeditious Progress).

**DATES:** This finding was made on December 17, 2009.

**ADDRESSES:** This finding is available on the Internet at *http://www.regulations.gov* at Docket Number [FWS-R6-ES-2008-0122]. Supporting documentation we used to prepare this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, MT 59601; telephone (406) 449-5225. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

**FOR FURTHER INFORMATION CONTACT:** Mark Wilson, Field Supervisor, U.S. Fish and Wildlife Service, Montana Field Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition containing substantial scientific or commercial information indicating that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but that immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12–month findings in the **Federal Register**.

## Previous Federal Action

In the final listing rule for the Canada lynx, dated March 24, 2000, the Service defined a contiguous DPS of the Canada lynx based on the international boundary with Canada and State boundaries (65 FR 16052). The final rule included all States in the historic and current range of lynx, along with areas that lynx dispersed to frequently but had no history of reproduction or population maintenance. New Mexico was not included in the listed area due to a lack of any historic record of lynx in the State and lack of sufficient lynx habitat and prey. The 2000 listing of lynx contained a discussion of lynx dispersal behavior and our prediction that lynx would continue to disperse outside of currently occupied habitat and the current listed area. We determined that these attempted dispersal events would not constitute an expansion of lynx range or recolonization of previously occupied habitat. Subsequent to publication of the final rule in 2000, lynx dispersed out of the Southern Rockies reintroduction area with relatively high frequency (Shenk 2007, p. 16) to other States including New Mexico.

In 2003, we published a clarification of the 2000 listing rule in which we determined that lynx were not endangered throughout a significant portion of their range (68 FR 40076). We also determined that lynx in the contiguous United States exist either as resident populations or as dispersers, and that due to their proclivity for moving long distances, lynx are often found repeatedly in habitats that cannot sustain breeding populations. This repeated dispersal into habitats that ultimately cannot support the species (''sink'' habitats) often leads to confusion among scientists and the public about where lynx populations may be viable. At the time of the clarification, we considered sink habitats (those with lynx habitat characteristics but without the requisite habitat scale or prey densities to support reproducing populations of lynx) to be within the range of lynx, as a conservative approach to conservation. We believed that in sink habitats, there existed the possibility that lynx could establish small local or ephemeral populations, and contribute to the persistence of the DPS, although there was admittedly no evidence that this was the case.

In 2007, we published a Clarification of Findings for the 2000 listing rule in which we determined that the significant portion of the range of lynx in the contiguous States is the northern Rocky Mountains and the North Cascades (72 FR 1186); however, the listed entity (the 14-State DPS) did not change. This clarification also determined that much of the range of lynx consists of marginal habitat that cannot and never could support resident lynx populations, and so is not biologically significant to the conservation of the DPS.

On August 8, 2007, we received a petition from Forest Guardians, Sinapu, Center for Native Ecosystems, Animal Protection Institute, Animal Protection of New Mexico, Carson Forest Watch, and Sierra Club, Rio Grande Chapter, requesting that we amend the final listing rule for the lynx DPS to include New Mexico as part of the range of the listed entity. Included in the petition was supporting information regarding our interpretation of the Act, our DPS policy, and inconsistency with the preamble to the March 2000 listing rule, as well as scientific information the petitioners deemed important to the petitioned action. We acknowledged the receipt of the petition in a letter to Matthew K. Bishop, Western Environmental Law Center, dated August 24, 2007. In that letter we also stated that due to staff and budget limitations we anticipated beginning work on the finding in Fiscal Year (FY) 2009 and that we would process a finding on the petition as soon as funds became available. An evaluation of emergency listing was conducted. Based on the population status and alleged threats described in the petition, we found no evidence to support emergency listing in New Mexico at that time.

On April 17, 2008, we received a complaint for failure to complete a 90–day petition finding. A settlement agreement was finalized, in which we agreed to submit a 90–day finding by December 15, 2008. On December 18, 2008, we published a 90–day finding in which we determined that the

petitioners presented substantial information indicating that changing the listing rule to include New Mexico may be warranted (73 FR 76990). This notice constitutes the 12–month finding on the August 8, 2007, petition to amend the final listing rule for the lynx DPS to include New Mexico.

We published a final rule designating critical habitat for lynx in the **Federal Register** on November 9, 2006 (71 FR 66007). On July 20, 2007, we announced that we would review the November 9, 2006, final critical habitat rule after questions were raised about the integrity of scientific information used and whether the decision made was consistent with the appropriate legal standards. Based on our review of the previous final critical habitat designation, we determined that the critical habitat designation may not comport with the best available scientific and commercial information. On January 15, 2008, the U.S. District Court for the District of Columbia issued an order stating the Service's deadlines for a proposed rule for revised critical habitat by February 15, 2008, and a final rule for revised critical habitat by February 15, 2009. Consequently, our proposed rule was signed on February 13, 2008, and submitted to the **Federal Register**. The proposed rule was subsequently published in the **Federal Register** on February 28, 2008 (73 FR 10860), and a final rule was published in the **Federal Register** on February 25, 2009 (74 FR 8616).

**Species Information**

*Biology*

The biology of the species is comprehensively covered in the Previous Federal Actions, including the final rule listing the species (65 FR 16052), the two clarifications of that final rule (68 FR 40076; 72 FR 1186) and the 2009 final critical habitat rule (74 FR 8616).

Here, we provide a short summary of the relevant species biology. Canada lynx are medium-sized cats, generally measuring 30 to 35 inches (75 to 90 centimeters) long and weighing 18 to 23 pounds (8 to 10.5 kilograms) (Quinn and Parker 1987, Table 1). They have large, well-furred feet and long legs for traversing snow; tufts on the ears; and short, black-tipped tails. Lynx are specialized predators of snowshoe hare (*Lepus americanus*) (McCord and Cardoza 1982, p. 744; Quinn and Parker 1987, pp. 684-685; Aubry *et al.* 2000, pp. 375-378). Lynx are dependent on snowshoe hare populations for survival, so lynx habitat suitability is strongly correlated with snowshoe hare habitat quality. We consider adequate snowshoe hare densities to be the most important habitat component for lynx.

Lynx and snowshoe hares are strongly associated with what is broadly described as boreal forest (Bittner and Rongstad 1982, p. 154; McCord and Cardoza 1982, p. 743; Quinn and Parker 1987, p. 684; Agee 2000, p. 39; Aubry *et al.* 2000, pp. 378-382; Hodges 2000a, pp. 136-140 and 2000b, pp. 183-191; McKelvey *et al.* 2000a, pp. 211-232). The predominant vegetation of boreal forest is conifer trees, primarily species of spruce (*Picea* spp.) and fir (*Abies* spp.) (Elliot-Fisk 1988, pp. 34-35, 37-42). In the contiguous United States, the boreal forest types transition to deciduous temperate forest in the Northeast and Great Lakes and to subalpine forest in the west (Agee 2000, pp. 40-41). Lynx habitat can generally be described as moist boreal forests that have cold, snowy winters and a high-density snowshoe hare prey base (Quinn and Parker 1987, pp. 684-685; Agee 2000, pp. 39-47; Aubry *et al.* 2000, pp. 373-375; Buskirk *et al.* 2000a, pp. 397-405; Ruggiero *et al.* 2000, pp. 445-447).

In mountainous areas, the boreal forests that lynx use are characterized by scattered moist forest types with high hare densities in a matrix of other habitats (e.g., hardwoods, dry forest, non-forest) with low hare densities. In these areas, lynx incorporate the matrix habitat (non-boreal forest habitat elements) into their home ranges and use it for traveling between patches of boreal forest that support high hare densities where most foraging occurs. In areas like the northern and southern Rockies where high-density hare habitat is fragmented by other habitat types, hare density must remain high at the landscape scale (i.e., averaged over all habitat types) for lynx to maintain residency and reproduction.

Snow conditions also determine the distribution of lynx (Ruggiero *et al.* 2000, pp. 445-449). Lynx are morphologically and physiologically adapted for hunting in deep snow and surviving in areas that have cold winters with deep, fluffy snow for extended periods. These adaptations provide lynx a competitive advantage over potential competitors, such as bobcats (*Lynx rufus*) or coyotes (*Canis latrans*) (McCord and Cardoza 1982, p. 748; Buskirk *et al.* 2000b, pp. 86-95; Ruediger *et al.* 2000, pp. 1-11; Ruggiero *et al.* 2000, pp. 445, 450). Bobcats and coyotes have a higher foot load (more weight per surface area of foot), which causes them to sink into the snow more than lynx. Therefore, bobcats and coyotes cannot efficiently hunt in fluffy or deep snow and are at a competitive disadvantage to lynx. Long-term snow conditions presumably limit the winter distribution of potential lynx competitors such as bobcats (McCord and Cardoza 1982, p. 748) or coyotes.

*Lynx Habitat Requirements*

Because of the patchy and temporal nature of high-quality snowshoe hare habitat, lynx populations require large boreal forest landscapes to ensure that sufficient high- quality snowshoe hare habitat is available and to ensure that lynx may move freely among patches of suitable habitat and among subpopulations of lynx. Populations that are composed of a number of discrete subpopulations, connected by dispersal, are called metapopulations (McKelvey *et al.* 2000b, p. 25). Individual lynx maintain large home ranges (reported as generally ranging between 12 to 83 square miles ($mi^2$) (31 to 216 square kilometers ($km^2$)) (Koehler 1990, p. 847; Aubry *et al.* 2000, pp. 382-386; Squires and Laurion 2000, pp. 342-347; Squires *et al.* 2004, pp. 13-16, Table 6; Vashon *et al.* 2005, pp. 7-11; Shenk 2009a, pp. 6-7). The size of lynx home ranges varies depending on abundance of prey, the animal's gender and age, the season, and the density of lynx populations (Koehler 1990, p. 849; Poole 1994, pp. 612-616; Slough and Mowat 1996, pp. 951, 956; Aubry *et al.* 2000, pp. 382-386; Mowat *et al.* 2000, pp. 276-280; Vashon *et al.* 2005, pp. 9-10). When densities of snowshoe hares decline, for example, lynx enlarge their home ranges to obtain sufficient amounts of food to survive and reproduce, or seek new habitats in which to establish a home range through dispersal.

In the contiguous United States, the boreal forest landscape is naturally patchy and transitional because it is the southern edge of the distributional range of boreal forest. This patchiness generally limits snowshoe hare populations in the contiguous United States from achieving densities similar to those of the expansive northern boreal forest in Canada (Wolff 1980, pp. 123-128; Buehler and Keith 1982, pp. 24, 28; Koehler 1990, p. 849; Koehler and Aubry 1994, p. 84). Additionally, the presence of more snowshoe hare predators and competitors at southern latitudes may inhibit the potential for high-density hare populations (Wolff 1980, p. 128). As a result, lynx generally occur at relatively low densities in the contiguous United States compared to the high lynx densities that occur in the northern boreal forest of Canada (Aubry *et al.* 2000, pp. 375, 393-394) or to the densities of species such as the bobcat, which is a habitat and prey generalist.

Lynx are highly mobile and often move long distances (greater than 60 miles (mi) (100 kilometers (km))) during dispersal attempts (Aubry *et al.* 2000, pp. 386-387; Mowat *et al.* 2000, pp. 290-294). Lynx disperse primarily when snowshoe hare populations decline (Ward and Krebs 1985, pp. 2821-2823; O'Donoghue *et al.* 1997, pp. 156, 159; Poole 1997, pp. 499-503). Sub-adult lynx disperse even when prey is abundant (Poole 1997, pp. 502-503) because local home ranges with abundant hares are generally occupied by established adult lynx and sub-adults must look elsewhere to establish new home ranges. Lynx also make exploratory movements outside their home ranges (Aubry *et al.* 2000, p. 386; Squires *et al.* 2001, pp. 18-26).

The boreal forest landscape is naturally dynamic. Forest stands within the landscape change as they undergo succession after natural or human-caused disturbances such as fire, insect epidemics, wind, ice, disease, and forest management (Elliot-Fisk 1988, pp. 47-48; Agee 2000, pp. 47-69). As a result, lynx habitat within the boreal forest landscape is typically patchy because the boreal forest contains stands of differing ages and conditions, some of which are suitable as lynx foraging or denning habitat (or will become suitable in the future due to forest succession) and some of which serve as travel routes for lynx moving between foraging and denning habitat (McKelvey *et al.* 2000c, pp. 427-434; Hoving *et al.* 2004, pp. 290-292).

Snowshoe hares comprise a majority of the lynx diet (Nellis *et al.* 1972, pp. 323-325; Brand *et al.* 1976, pp. 422-425; Koehler 1990, p. 848; Apps 2000, pp. 358-359, 363; Aubry *et al.* 2000, pp. 375-378; Mowat *et al.* 2000, pp. 267-268; von Kienast 2003, pp. 37-38; Squires *et al.* 2004, p. 15, Table 8). When snowshoe hare populations are low, female lynx produce few or no kittens that survive to independence (Nellis *et al.* 1972, pp. 326-328; Brand *et al.* 1976, pp. 420, 427; Brand and Keith 1979, pp. 837-838, 847; Poole 1994, pp. 612-616; Slough and Mowat 1996, pp. 953-958; O'Donoghue *et al.* 1997, pp. 158-159; Aubry *et al.* 2000, pp. 388-389; Mowat *et al.* 2000, pp. 285-287). Lynx prey opportunistically on other small mammals and birds, particularly during lows in snowshoe hare populations, but alternate prey species may not sufficiently compensate for low availability of snowshoe hares, resulting in reduced reproductive success and reduced lynx populations (Brand *et al.* 1976, pp. 422-425; Brand and Keith 1979, pp. 833-834; Koehler 1990, pp. 848-849; Mowat *et al.* 2000, pp. 267-268).

In northern Canada, lynx populations fluctuate in response to the cycling of snowshoe hare populations (Hodges 2000a, pp. 118-123; Mowat *et al.* 2000, pp. 270-272). Although snowshoe hare populations in the northern portion of their range show strong, regular population cycles, these fluctuations are generally much less pronounced in the southern portion of their range in the contiguous United States (Hodges 2000b, pp. 165-173). In the contiguous United States, the degree to which regional local lynx population fluctuations are influenced by local snowshoe hare population dynamics is unclear. However, researchers anticipated that, because of natural fluctuations in snowshoe hare populations, there will be periods when lynx densities are extremely low.

Because lynx population dynamics, survival, and reproduction are closely tied to snowshoe hare availability, lynx habitat suitability is directly tied to hare habitat quality. Lynx generally concentrate their foraging and hunting activities in habitat patches where snowshoe hare populations are high (Koehler *et al.* 1979, p. 442; Ward and Krebs 1985, pp. 2821-2823; Murray *et al.* 1994, p. 1450; O'Donoghue *et al.* 1997, pp. 155, 159-160 and 1998, pp. 178-181). Snowshoe hares are most abundant in forest stands with dense understories that provide forage, cover to escape from predators, and protection during extreme weather (Wolfe *et al.* 1982, pp. 665-669; Litvaitis *et al.* 1985, pp. 869-872; Hodges 2000a, pp. 136-140 and 2000b, pp. 183-195). Generally, hare densities are higher in regenerating, earlier successional forest stages because they have greater understory structure than mature forests (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, pp. 665-669; Koehler 1990, pp. 847-848; Hodges 2000b, pp. 183-195; Homyack 2003, pp. 63, 141; Griffin 2004, pp. 84-88). However, snowshoe hares can be abundant in mature forests with dense understories (multi-storied stands) especially in the Rocky Mountains (Griffin 2004, pp. 53-54, Squires *et al.* 2006, p. 15).

Within the boreal forest, lynx den sites are located where coarse woody debris, such as downed logs and windfalls, provides security and thermal cover for lynx kittens (McCord and Cardoza 1982, pp. 743-744; Koehler 1990, pp. 847-849; Slough 1999, p. 607; Squires and Laurion 2000, pp. 346-347; Squires *et al.* 2008, p. 1503; Organ 2001). The amount of structure (e.g., downed, large, woody debris) appears to be more important than the age of the forest stand for lynx denning habitat (Mowat *et al.* 2000, pp. 10-11); however, proximity to forest stands with high horizontal cover (and presumably high snowshoe hare density) does contribute to overall suitability of denning sites (Squires *et al.* 2008, p. 1503).

*The 14-State Canada Lynx DPS*

The Service listed lynx in 2000 within what we determined to be the contiguous United States DPS, which included the known current and historical range of the lynx (68 FR 40080). In specifying where lynx was listed, we used State boundaries to circumscribe the outer limits in which the DPS was found at the time, using the best science available. This range included portions of the States of Colorado, Idaho, Maine, Minnesota, Montana, Washington, and Wyoming, and also areas that could support dispersers – portions of the above States along with portions of Michigan, New Hampshire, New York, Oregon, Utah, Vermont, and Wisconsin (68 FR 40099). We did not consider other areas outside of boreal forest, where dispersing lynx had only been sporadically documented in the past, to be within the range of the lynx, because we deemed these areas to be currently incapable of supporting dispersing lynx. These areas included Connecticut, Indiana, Iowa, Massachusetts, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, South Dakota, and Virginia (68 FR 40099).

We did not include New Mexico in this list of States because no lynx occurred there, and we had no information to indicate that lynx had ever been documented there, even sporadically. Therefore, we determined that the boundaries delineating the range of lynx did not include New Mexico because it was not within the current or historical range of the species (68 FR 40083). In addition, no review of potential habitat in New Mexico was conducted. We did not consider lynx recently released into Colorado that strayed into New Mexico as sufficient reason to include New Mexico within the range of lynx because there was no evidence that habitat in New Mexico historically supported lynx, or that lynx moving into New Mexico would support maintenance of the lynx DPS (68 FR 40083).

In 1998, when the Service proposed to list the lynx in the United States, no wild (or reintroduced) lynx were known to exist in Colorado, which represented the extreme southern edge of the species' range (65 FR 16059). Boreal forest habitat in Colorado and southeastern Wyoming, the Southern Rocky Mountain Region, is isolated

from boreal forest in Utah and northwestern Wyoming by intervening grassland and shrubland habitats, and is naturally highly fragmented (65 FR 16059).

It was uncertain whether lynx records from Colorado represented a small self-sustaining lynx population, or whether historical records represented dispersers that arrived during high population cycles of lynx and subsequently died out. Under the scenario whereby lynx in Colorado were not a self-sustaining population, some of the dispersers may have remained for a period of years if hare populations were high enough to support residents and reproduction, but eventually succumbed to a lack of consistent, high-quality habitat and food sources. We believe that this is the most likely historical scenario in the southern Rockies based on the small number of historic lynx records (McKelvey *et al.* 2000a, pp. 229-231), low snowshoe hare densities (Andersen *et al.* 1980, Table 5; Dolbeer and Clark 1975, p. 539; Hodges 2000b, Table 7.5; Malaney 2003, pp. 65, 87, 90; Zahratka and Shenk 2008, Table 4), and overall low reproductive output of the reintroduced population (Shenk 2007, pp. 11-13).

In 1999, the Colorado Division of Wildlife (CDOW) reintroduced 22 wild lynx from Canada and Alaska into southwestern Colorado (Shenk 2007, p. 20). By 2003, when we clarified the listing rule (68 FR 40076, July 3, 2003), no data indicated that the lynx released could be supported by the habitat available in Colorado. In their 2007 Wildlife Research Report, CDOW continued to conclude that ''what is yet to be determined is whether current conditions in Colorado can support the recruitment necessary to offset annual mortality in order to sustain the population'' (Shenk 2007, p. 18). Colorado was included in the 14-State DPS in 2000, because records indicated that lynx were documented there historically; however, it was not known whether the habitat occurred in the requisite quantity and quality to sustain lynx populations. Therefore, the 2000 listing represented a conservative approach, which included areas in the range of the species when evidence of long-term persistence was lacking, but enough evidence existed that it could not be discounted.

In 2000, when the final listing rule was published, we were not aware of any information to indicate that lynx existed in New Mexico, that it was ever occupied historically, or that it could sustain lynx. As a consequence, we did not include New Mexico in the listing rule or special rule concerning lynx in the contiguous 14-State DPS. We now have documentation that lynx reintroduced in Colorado have attempted to disperse in many directions, primarily into New Mexico, Utah, and Wyoming, but also into eight other States (Shenk 2007, pp. 6, 9). No reproduction has been documented in New Mexico or Utah, but one den was found in Wyoming (Shenk 2007, p. 15), and one den was found within 5.6 mi (9 km) of the Colorado-New Mexico State boundary (Shenk 2009b, entire).

We also point out that lynx dispersal away from the reintroduction area in southern Colorado is what would be predicted if lynx were reintroduced into an area that consisted mostly of unsuitable habitat, and dispersing animals were searching for habitats with the requisite prey densities that could support resident animals. Our review of the evidence indicates that this habitat is most likely found north of the southern Rockies.

We included an analysis in the final lynx listing rule (68 FR 40081) on whether lynx were both discrete and significant in each of the four regions of the contiguous United States where it exists (the Northeast, Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades). We determined that none of the regions individually constitute significantly unique or unusual ecological settings and, therefore, did not individually meet the DPS criteria. Therefore, the lynx was listed as a single contiguous United States DPS defined by 14 States.

*Lynx in the Southern Rockies*

Lynx reintroduction into the southern Rocky Mountains in southern Colorado occurred between 1999 and 2006 with a total of 218 animals released (Shenk 2008, p. 1). Reintroduced lynx were captured from the wild in Alaska and Canada. Also in 1999, the CDOW began a post-release monitoring program that tracked reintroduced animals (and, opportunistically, their wild-born progeny). The purpose of the monitoring program was to determine whether the reintroduced population was reproducing and to collect habitat use and other ecological data. Prior to beginning reintroductions, CDOW reviewed the historic evidence of lynx occupation and concluded that the Southern Rockies in Colorado represent the extreme southern edge of the range of lynx. At that time, lynx were either extirpated or at such low densities that the extant population was no longer viable (Seidel *et al.* 1998, p. 4). Throughout the post-release monitoring program, CDOW has maintained that the reintroduction is experimental in nature and that it remains to be determined whether the southern Rockies can support enough lynx reproduction to offset mortality (Shenk 2007, p. 18)

At the time of the lynx listing in 2000, the CDOW reintroduction program was in its beginning stages and without post-release data or analysis to evaluate its effectiveness. Consequently, when lynx were listed, lynx released into Colorado, prior to and after the listing, received the full protection of the Act as a threatened species. At that time, it was our determination that habitat in Colorado represented the southernmost extension of lynx range (65 FR 16052, p. 16059), based on the lack of historic lynx records in New Mexico. Therefore, when the line demarcating the range of lynx (and consequently the regulatory reach of the final listing rule) was placed at the border of Colorado and New Mexico, it was thought that this boundary placement conservatively encompassed all of the lynx range in the southern Rocky Mountains, and that while lynx may occasionally wander south of that line, such occurrences would be rare (68 FR 40076, p. 40077).

Habitat in New Mexico that may support all or a portion of lynx life-history needs is limited to the San Juan and Sangre de Cristo mountains in the northern part of the State. Both of these ranges are contiguous with mountains in Colorado where reintroduced lynx are residing and have reproduced. Both of these mountain ranges have snowshoe hares (Malaney and Frey 2006, p. 879); however, densities at the landscape scale (i.e., the scale of a lynx home range) are low (0.13 hares/ha (0.32 hares/ac) before seasonal recruitment) and are likely not high enough to support resident lynx (Malaney 2003, pp. 65, 87, 90).

Most of the habitat in question is managed by the Carson and Santa Fe National Forests of the U.S. Forest Service (USFS). Approximately 596,000 ac (241,193 ha) of spruce-fir forest types lie within this area, 440,000 ac of which are on National Forest system lands (USFS 2009, pp. 5-6). On the Carson and Santa Fe National Forests, approximately 536,400 ac (217,073 ha) have characteristics of potential lynx habitat (spruce fir and other cold, wet conifer forest types), about 45 percent of which occurs in designated wilderness (USFS 2009, p. 7). As a reference, in the reintroduced Colorado lynx population the average lynx home range size is 108,109 ac (43,750 ha) (calculated from data in Shenk 2007, p. 11). Other small patches of isolated spruce-fir and mixed conifer habitats occur in northern New Mexico, but due to their small size, they are not considered to have any value as lynx habitats (USFS 2009, p. 7). In their

information submitted for this finding, the USFS concluded that due to the lack of historic record, lack of reproduction in reintroduced lynx, low prey densities, high densities of competitor species and relatively low snow levels for this area, New Mexico is likely to function as a ''sink'' habitat for the reintroduced lynx population in the southern Rockies meaning that mortality would exceed recruitment in this area (USFS 2009, p. 17).

As explained in our 2007 clarification of the 2000 listing rule (72 FR 1186, p. 1189), the presence of snowshoe hares at high population densities is a prerequisite for lynx residency in any area. However, neither the presence of snowshoe hare populations nor contiguity with a lynx population are sufficient to assure that lynx will reside in an area that lacks a high density of snowshoe hares at a scale large enough to support a lynx home range (landscape scale). Snowshoe hare habitat is of varying quality, and in the lower-48 States only the highest quality habitat (i.e., that with the highest snowshoe hare densities) is capable of supporting lynx populations and contributing to the maintenance of the DPS. Since long-term studies of snowshoe hare densities across the range of the DPS have not occurred, we believe that historic and recent data about where lynx have or do reside and reproduce, provide the best available scientific data concerning which areas have the requisite high hare densities and amount of habitat required to support lynx.

The best source of lynx presence data for the historic period is McKelvey *et al.* (2000b entire). McKelvey *et al.* (2000b, entire) focus on the use of ''verifiable records'' as the most appropriate locality records for lynx. Verifiable records are those for which there is verifiable evidence that the animal in question was a lynx, such as a museum specimen, a diagnostic photograph, or an expert that had the animal ''in hand'' at the time of identification. We believe that the need for accurate identification of lynx necessitates that only verifiable records be used, and we refer readers to McKelvey *et al.* (2008, entire) for a discussion of evidentiary standards. Others have attempted to determine the historic range of lynx through the use of other types of evidence. Frey (2006, entire) used a combination of habitat associations, biogeography, and habitat contiguity with known populations to infer lynx historic range to areas without historic records.

While this method may point to areas that were potentially in the range of the species, it presumes that we understand the species' life-history needs and the habitat condition well enough to know if the habitat in question would support the species. In the case of lynx, we know that lynx are dependent on high-density snowshoe hare populations, in the sense that we know of no lynx population that occurs in an area without a high density of hares. Conversely, we do know of habitats with low-density hare populations that have no lynx populations, such as the Olympic Peninsula in Washington, southwestern Montana/central Idaho, and much of Appalachia (Hall 1981, p. 317). We do not know what the threshold landscape-scale hare density is that will allow lynx to persist, or precisely what habitat characteristics allow persistence of reproducing populations.

Many depictions of lynx geographic range simply draw lines around peripheral occurrence records without reference to habitat (e.g., Hall 1981). These depictions are likely to overestimate the extent of lynx range due to the animal's tendency to move long distances across unsuitable habitats while attempting to disperse. Attempted dispersal forays also bring lynx into human-dominated landscapes where they are disproportionately likely to experience mortality in a way that leads to discovery by humans and thus these animals are disproportionately likely to become locality records. We believe that the best available scientific information to inform determinations about historic range is verifiable occurrence records due to their high level of reliability. Verifiable species records, put in the context of suitable habitat distribution, are crucial to determining what the historic distribution of a species was, especially when there is some doubt about the habitat characteristics that are sufficient to support the species. By using verifiable occurrence records, we essentially give lynx a vote in the process, where scientific uncertainty does not permit us to determine precisely where suitable habitat exists. For these reasons, we believe that lynx geographic range is best depicted through a combination of reliable occurrence records and suitable habitat. Because lynx have a tendency to move long distances during unsuccessful dispersal attempts, the actual range of the species is much smaller than what is depicted on range maps that simply draw lines around peripheral occurrence records and do not consider habitat type and quality. For examples of analyses that use both occurrence records and suitable habitat to determine where a species may have occurred in the past, see McKelvey *et al.* (2000b, entire) and Aubry *et al.* (2007, entire).

In our 2007 clarification of the 2000 listing rule, we further determined that the northern Rockies and North Cascades formed a significant portion of the DPS' range because this geographic area and its constituents (e.g., habitat) was the primary region necessary to support the long-term existence of the contiguous U.S. DPS (72 FR 1186, p. 1189). This finding was based on the remaining portions of the DPS range being composed of marginal habitat where lynx presence was tied more directly to immigration of lynx from Canada. In that document we emphasized that, just because habitat is marginal, it does not mean that lynx can no longer live there. Instead, marginal habitat means that such areas cannot and may never have supported resident lynx populations (72 FR 1186, p. 1188).

Data collected by CDOW during their post-release monitoring also are valuable in determining where lynx may find snowshoe hare densities that may (at least occasionally) support reproduction. Between September 1999 and March 2007, 60 individual lynx (37 females, 23 males) crossed into New Mexico (Shenk 2007, p. 10). Many of these lynx passed back into Colorado after short forays into New Mexico, 14 mortalities occurred, and some lynx may have resided in New Mexico year-round, although that has not been documented (Shenk 2007, pp. 10-26). From September 1999 through March 2007, CDOW found no evidence that any of the 37 female lynx that have moved into New Mexico reproduced or attempted to reproduce (Shenk 2007, p. 15). However, CDOW does not monitor lynx that leave the State of Colorado as intensively as it does in Colorado. Based on the large number of female lynx that have moved into New Mexico over the period of the reintroduction program without evidence of any reproduction, we cannot conclude that New Mexico lynx habitat is of high enough quality to support a resident population. Indeed, we share CDOW's concern that the southern Rockies in their entirety may not be able to sustain a lynx population.

Lynx suffer proportionally higher mortality in New Mexico than in other States (Shenk 2001, p. 14). However, statistical tests to determine whether this difference was significantly different than what might be expected by chance were not reported. In addition, lynx mortality due to deliberate killing (shooting) was higher as a proportion of all mortalities in Colorado (53.8 percent) (where all lynx are protected by the Act) than they were outside Colorado (46.2 percent) (where

lynx have Act protections in some States but not New Mexico and others) (Shenk 2007, Table 9). Therefore, the evidence presented by Shenk does not indicate that lack of the Act's protections in New Mexico is a significant contributor to lynx mortality. Rather, lynx mortality is high for lynx that disperse outside of high-quality lynx habitat whether they remain under the protection of the Act or not. This result is to be expected, because dispersal outside of quality habitat is usually only done under stress, such as inability to find food or displacement by another lynx. Dispersal outside of lynx habitat is likely to place lynx in human-dominated landscapes such as agricultural areas, settlements, and transportation corridors, where lynx mortalities are more likely to occur.

It is our determination, based on the historic lack of evidence of lynx occurrence in New Mexico (McKelvey *et al.* 2000a, Table 8.1) and the recent evidence of lynx dispersal attempts into northern New Mexico (Shenk 2007, pp. 29-31), that lynx in New Mexico represent attempted dispersers, rather than lynx establishing residency in suitable habitat as defined in our clarification of findings (68 FR 40076, p. 40077). We also believe that the habitat in New Mexico is a population ''sink'', in that it is unlikely to support lynx reproduction to the extent that recruitment will ever be able to offset population mortality, even absent any human-caused mortality. However, as we stated in 2003, at the time of listing we considered lynx found in population sinks such as New Mexico to be dispersers but we included these areas within the range of lynx (68 FR 40076, p. 40080).

**Finding**

We have carefully assessed the information in the petition along with the best scientific and commercial data available. This 12–month finding reflects and incorporates information that we received during the public comment period or that we obtained through consultation, literature research, and field visits.

On the basis of this review, we have determined that revising the boundaries of the DPS as identified in the 2000 final listing rule for Canada lynx to include New Mexico is warranted. This finding is based on the fact that the information that we used to describe the southern boundary of the DPS at the time of listing is out of date. Lynx that attempt to disperse outside of areas that support populations should be protected from direct or indirect mortality that may occur due to the lack of protections under the Act.

We are assigning a listing priority number (LPN) of 12 to amending the listing of lynx to include New Mexico in the listed DPS. We assign an LPN of 1 to 12 (higher number being of lower priority), depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, DPS, or significant portion of the range)). We are assigning an LPN of 12 based on nonimminent threats of a low magnitude to the lynx DPS occurring from human-caused mortality to lynx dispersing to New Mexico and the lack of protection under the Act for these lynx. Human-caused mortality is a factor affecting lynx in New Mexico; however, this impact does not occur at a level such that it creates a significant threat to lynx in the contiguous United States and to the DPS as a whole. The magnitude of threats to the lynx DPS, inclusive of those lynx in New Mexico, is low. The threats occur infrequently and are nonimminent. Furthermore, as described above, the amount of suitable habitat for lynx in New Mexico is considered negligible relative to the amount of habitat within the listed range. Potential impacts to the habitat have not been documented to threaten lynx, either in New Mexico or outside of it. The majority of lynx and its habitats within the DPS are already protected by the Act. Because lynx in the lower 48 States are listed as a DPS, the appropriate LPN for this level of magnitude and immediacy of threats is a 12.

**Emergency Listing**

We may list a species effective immediately under Section 4 of the Act if there is any emergency posing a significant risk to the well-being of the species. Because threats identified to lynx in New Mexico are determined to be nonimminent and of low magnitude for the species in the lower 48 States (DPS) as a whole, the Secretary has determined not to exercise his discretion to invoke the provisions to immediately put the protections of the Act in place for the Canada lynx in New Mexico.

**Importance of Habitat in New Mexico for the Lynx DPS**

The information gathered in the process of preparing this finding does not indicate that New Mexico can support reproducing lynx. We still find no evidence that New Mexico can support a lynx population or that habitat in New Mexico may play a supporting role in conservation of the DPS. We believe that the only role that habitat in New Mexico may play in lynx conservation is to allow individuals to survive long enough to move north back into more suitable habitat. Managing to increase habitat suitability for lynx in New Mexico would be counter-productive to this end, because it is unlikely that habitat in New Mexico can be made to support lynx, and the important goal is that lynx return to the population further north. Therefore, we do not recommend that habitat in New Mexico be managed to support residency and reproduction, as are habitats further north in Colorado and the northern Rockies. For example, we do not think it would be appropriate for the USFS to implement management based on the Lynx Conservation Assessment and Strategy such as that found in the Southern Rocky Mountain Lynx Amendment (USFS 2008).

**Significant Portion of the Range**

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered in a significant portion of its range. Because this 12–month finding to amend the listing of the Canada lynx DPS is warranted but precluded, we do not need to perform a ''significant portion of the range'' analysis for the species at this time.

**Preclusion and Expeditious Progress**

Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given FY, multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted but precluded by higher-priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90–day and 12–month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior ''warranted but precluded'' petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and

final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. For example, during the past several years, the cost (excluding publication costs) for preparing a 12–month finding, without a proposed rule, has ranged from approximately $11,000 for one species with a restricted range and involving a relatively uncomplicated analysis, to $305,000 for another species that is wide-ranging and involved a complex analysis.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. § 1341(a)(1)(A)). In addition, in FY 1998 and for each FY since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that FY. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002, and has retained it each subsequent year to ensure that some funds are available for other work in the Listing Program: ''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107-103, 107th Congress, 1st Session, June 19, 2001). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat. Consequently, none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In FY 2008 and 2009, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations, so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. In FY 2010, we anticipate being able to do the same.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already-listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress also recognized that the availability of resources was the key element in deciding, when making a 12–month petition finding, whether we would prepare and issue a listing proposal or instead make a ''warranted but precluded'' finding for a given species. The Conference Report accompanying Public Law 97-304, which established the current statutory deadlines for listing and the warranted-but-precluded finding requirements that are currently contained in the Act, states (in a discussion on 90–day petition findings that by its own terms also covers 12–month findings) that the deadlines were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [i.e., for a lower-ranking species] unwise.''

In FY 2010, expeditious progress is that amount of work that can be achieved with $10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $10,471,000 will be used to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. The allocations for each specific listing action are identified in the Service's FY 2009 Allocation Table (part of our administrative record). For FY 2010, Congress recently passed an appropriations bill. We are working on finalizing our allocation of money for specific listing actions.

In FY 2007, we had more than 120 species with an LPN of 2, based on our September 21, 1983, guidance for assigning an LPN for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high vs. moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, DPS, or significant portion of the range)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Because of the large number of high-priority species, we further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, comprised a group of approximately 40 candidate species (''Top 40''). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for these 40

candidates, we are applying the ranking criteria to the next group of candidates with LPNs of 2 and 3 to determine the next set of highest priority candidate species. In FY 2008-2009, we funded work on proposed listing determinations for 61 candidate species, most of which have an LPN of 2, although these have not been published to date. There are currently 56 candidate species with an LPN of 2 that nave not received funding for preparation of proposed listing rules.

To be more efficient in our listing process, as we work on proposed rules for these species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, available staff resources also are a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, since as listed species, they are already afforded the protection of the Act and implementing regulations.

Our decision that a proposed rule to revise the boundaries of the Canada lynx DPS under the Act is warranted but precluded is based on the low magnitude and non-imminence of threats to the Canada lynx in the lower 48-contiguous States (i.e., the DPS). As we have already determined that the potential threats are of low magnitude and are not imminent, we conclude that this action should receive the lowest listing priority. We consider the priority for amending the Canada lynx DPS to be lower than for other candidate species in need of protection under the Act. As described in the ''Finding'' section above, we have assigned an LPN of 12 to this amendment. In accordance with guidance we published on September 21, 1983, we assign an LPN to each candidate species (48 FR 43098). Such a priority ranking guidance system is required under section 4(h)(3) of the Act (16 U.S.C. 1533(h)(3)). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, imminence of threats, and taxonomic status; the lower the listing priority number, the higher the listing priority, i.e., a species with an LPN of 1 would have the highest listing priority. We currently have 56 species with an LPN of 2 that have not received funding yet (see Table 1 of the November 9, 2009, Notice of Review; 74 FR 57866). For the next 2 years, we have funded proposed listings for several species with an LPN of 2. We consider amending the Canada lynx DPS to be precluded by these high-priority candidate species.

As explained above, a determination that listing is warranted but precluded also must demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we also are making expeditious progress in removing species from the list under the Recovery Program, which is funded by a separate line item in the budget of the Endangered Species Program. As explained above in our description of the statutory cap on Listing Program funds, the Recovery Program funds and actions supported by them cannot be considered in determining expeditious progress made in the Listing Program.) As with our ''precluded'' finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we made progress in FY 2009 in the Listing Program and will continue to make progress in FY 2010. This progress included preparing and publishing the following determinations:

FISCAL YEAR 2009 AND FISCAL YEAR 2010 COMPLETED LISTING ACTIONS

| Publication Date | Title | Actions | FR Pages |
|---|---|---|---|
| 10/15/2008 | 90-Day Finding on a Petition To List the Least Chub | Notice of 90–day Petition Finding, Substantial | 73 FR 61007 61015 |
| 10/21/2008 | Listing 48 Species on Kauai as Endangered & Designating Critical Habitat | Proposed Listing, Endangered; Proposed Critical Habitat | 73 FR 62591 62742 |
| 10/24/2008 | 90-Day Finding on a Petition to List the Sacramento Valley Tiger Beetle as Endangered | Notice of 90–day Petition Finding, Not substantial | 73 FR 63421 63424 |
| 10/28/2008 | 90-Day Finding on a Petition To List the Dusky Tree Vole *(Arborimus longicaudus silvicola)* as Threatened or Endangered | Notice of 90–day Petition Finding, Substantial | 73 FR 63919 63926 |
| 11/25/2008 | 12-Month Finding on a Petition To List the Northern Mexican Gartersnake *(Thamnophis eques megalops)* as Threatened or Endangered With Critical Habitat | Notice of 12–month petition finding, Warranted but precluded | 73 FR 71787 71826 |
| 12/02/2008 | 90-Day Finding on a Petition To List the Black-tailed Prairie Dog as Threatened or Endangered | Notice of 90–day Petition Finding, Substantial | 73 FR 73211 73219 |
| 12/05/2008 | 90-Day Finding on a Petition To List the Sacramento Mountains Checkerspot Butterfly *(Euphydryas anicia cloudcrofti)* as Endangered with Critical Habitat | Notice of 90–day Petition Finding, Substantial | 73 FR 74123 74129 |

FISCAL YEAR 2009 AND FISCAL YEAR 2010 COMPLETED LISTING ACTIONS—Continued

| Publication Date | Title | Actions | FR Pages |
|---|---|---|---|
| 12/18/2008 | 90-Day Finding on a Petition to Change the Listing Status of the Canada Lynx | Notice of 90–day Petition Finding, Substantial | 73 FR 76990 76994 |
| 01/06/2009 | Partial 90-Day Finding on a Petition To List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat | Notice of 90–day Petition Finding, Not substantial | 74 FR 419 427 |
| 02/05/2009 | Partial 90-Day Finding on a Petition To List 206 Species in the Midwest & Western United States as Threatened or Endangered With Critical Habitat | Notice of 90–day Petition Finding, Not substantial | 74 FR 6122 6128 |
| 02/10/2009 | 90-Day Finding on a Petition To List the Wyoming Pocket Gopher as Threatened or Endangered With Critical Habitat | Notice of 90–day Petition Finding, Substantial | 74 FR 6558 6563 |
| 03/17/2009 | Listing *Phyllostegiahispida* (No Common Name) as Endangered Throughout Its Range | Final Listing Endangered | 74 FR 11319 11327 |
| 03/25/2009 | 12-Month Finding on a Petition to List the Yellow-Billed Loon as Threatened or Endangered | Notice of 12–month petition finding, Warranted but precluded | 74 FR 12931 12968 |
| 04/09/2009 | 12-Month Finding on a Petition to List the San Francisco Bay-Delta Population of the Longfin Smelt *(Spirinchus thaleichthys*) as Endangered | Notice of 12–month petition finding, Not warranted | 74 FR 16169 16175 |
| 04/22/2009 | 90-Day Finding on a Petition To List the Tehachapi Slender Salamander *(Batrachosepsstebbinsi)* as Threatened or Endangered | Notice of 90–day Petition Finding, Substantial | 74 FR 18336 18341 |
| 05/07/2009 | 90-Day Finding on a Petition To List the American Pika as Threatened or Endangered with Critical Habitat | Notice of 90–day Petition Finding, Substantial | 74 FR 21301 21310 |
| 05/19/2009 | 12-Month Finding on a Petition to List the Coaster Brook Trout as Endangered | Notice of 12–month petition finding, Not warranted | 74 FR 23376 23388 |
| 06/09/2009 | 90-Day Finding on a Petition To List *Oenothera acutissima* (Narrowleaf Evening-primrose) as Threatened or Endangered | Notice of 90–day Petition Finding, Not substantial | 74 FR 27266 27271 |
| 06/29/2009 | Proposed Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, & Rough Hornsnail with Critical Habitat | Proposed Listing, Endangered; Proposed Critical Habitat | 74 FR 31113 31151 |
| 07/01/2009 | 90-Day Finding on a Petition to List the Northern Leopard Frog *(Lithobates* [=Rana] *pipiens*) in the Western United States as Threatened | Notice of 90–day Petition Finding, Substantial | 74 FR 31389 31401 |
| 07/07/2009 | 12-Month Finding on a Petition To List a Distinct Population Segment of the Roundtail Chub *(Gila robusta*) in the Lower Colorado River Basin | Notice of 12–month petition finding, Warranted but precluded | 74 FR 32351 32387 |
| 07/08/2009 | 90-Day Finding on a Petition to List the Coqui Llanero *(Eleutherodactylus juanariveroi*) as Endangered | Notice of 90–day Petition Finding, Substantial | 74 FR 32510 32513 |

FISCAL YEAR 2009 AND FISCAL YEAR 2010 COMPLETED LISTING ACTIONS—Continued

| Publication Date | Title | Actions | FR Pages |
|---|---|---|---|
| 07/08/2009 | 90-Day Finding on a Petition to List the Susan's purse-making caddisfly *(Ochrotrichia susanae*) as Threatened or Endangered | Notice of 90–day Petition Finding, Substantial | 74 FR 32514 32521 |
| 07/08/2009 | Proposed Endangered Status for Flying Earwig Hawaiian Damselfly *(Megalagrion nesiotes*) & Pacific Hawaiian Damselfly *(M. pacificum*) Throughout Their Ranges | Proposed Listing, Endangered | 74 FR 32490 32510 |
| 07/09/2009 | Listing Casey's June Beetle *(Dinacoma caseyi*) as Endangered & Designation of Critical Habitat | Proposed Listing, Endangered; Proposed Critical Habitat | 74 FR 32857 32875 |
| 07/22/2009 | 90-Day Finding on a Petition To List the White-Sided Jackrabbit *(Lepus callotis)* as Threatened or Endangered | Notice of 90–day Petition Finding, Substantial | 74 FR 36152 36158 |
| 08/06/2009 | Initiation of Status Review for Mountain Whitefish *(Prosopium williamsoni)* in the Big Lost River, Idaho | Notice of Status Review | 74 FR 39268 39269 |
| 08/11/2009 | 90-Day Finding on a Petition To List the Jemez Mountains Salamander *(Plethodon neomexicanus*) as Threatened or Endangered With Critical Habitat | Notice of 90–day Petition Finding, Substantial | 74 FR 40132 40138 |
| 08/18/2009 | Partial 90-Day Finding on a Petition To List 206 Species in the Midwest & Western United States as Threatened or Endangered with Critical Habitat | Notice of 90–day Petition Finding, Not substantial (9 species); Notice of 90–day Petition Finding, Substantial (29 species) | 74 FR 41649 41662 |
| 08/19/2009 | 12-Month Finding on a Petition To List the Ashy Storm-Petrel as Threatened or Endangered | Notice of 12–month petition finding, Not warranted | 74 FR 41832 41860 |
| 08/28/2009 | 90-Day Finding on a Petition To List the Sonoran Population of Desert Tortoise *(Gopherus agasizzii*) as a Distinct Population Segment With Critical Habitat | Notice of 90–day Petition Finding, Substantial | 74 FR 44335 44344 |
| 09/02/2009 | 12-Month Finding on a Petition To List the Sacramento Mountains Checkerspot Butterfly as Endangered with Critical Habitat | Notice of 12–month petition finding, Not warranted | 74 FR 45396 45411 |
| 09/09/2009 | 90-Day Finding on a Petition to List the Eastern Population of the Gopher Tortoise *(Gopherus polyphemus*) as Threatened | Notice of 90–day Petition Finding, Substantial | 74 FR 46401 46406 |
| 09/10/2009 | 12-Month Finding on a Petition to List *Astragalus anserinus* (Goose Creek milkvetch) as Threatened or Endangered | Notice of 12 month petition finding, Warranted but precluded | 74 FR 46521 46542 |
| 09/10/2009 | 90-Day Finding on a Petition to List *Cirsium wrightii* (Wright's marsh thistle) as Threatened or Endangered with Critical Habitat | Notice of 90–day Petition Finding, Substantial | 74 FR 46542 46547 |
| 09/10/2009 | Endangered & Threatened Wildlife & Plants; 90-Day Finding on a Petition to List the Amargosa Toad *(Bufo nelsoni*) as Threatened or Endangered | Notice of 90–day Petition Finding, Substantial | 74 FR 46551 46557 |

FISCAL YEAR 2009 AND FISCAL YEAR 2010 COMPLETED LISTING ACTIONS—Continued

| Publication Date | Title | Actions | FR Pages |
|---|---|---|---|
| 09/10/2009 | 90-Day Finding on a Petition to List the Pacific Walrus as Threatened or Endangered | Notice of 90–day Petition Finding, Substantial | 74 FR 46548 46551 |
| 10/08/2009 | Listing *Lepidium papilliferum* (Slickspot Peppergrass) as a Threatened Species Throughout Its Range | Final Listing-Threatened | 74 FR 52013 52064 |
| 10/27/2009 | 90-day Finding on a Petition To List the American Dipper in the Black Hills of South Dakota as Threatened or Endangered | Notice of 90–day Petition Finding, Not substantial | 74 FR 55177 55180 |
| 10-28-2009 | Status Review of Arctic Grayling (*Thymallus arcticus*) in the Upper Missouri River System | Notice of Intent to Conduct Status Review | 74 FR 55524 55525 |

Our expeditious progress also included work on listing actions that we funded in FY 2009 but have not yet completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, as compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FISCAL YEAR 2009 BUT NOT YET COMPLETED

| SPECIES | ACTION |
|---|---|
| Actions Subject to Court Order/Settlement Agreement | |
| Coastal cutthroat trout | Final listing determination |
| Mono basin sage-grouse | 12–month petition finding |
| Greater sage grouse | 12–month petition finding |
| Southwest bald eagle population | 12–month petition finding |
| White-tailed prairie dog | 12–month petition finding |
| American pika | 12–month petition finding |
| Hermes copper butterfly | 90–day petition finding |
| Thorne's hairstreak butterfly | 90–day petition finding |
| Actions with Statutory Deadlines | |
| 48 Kauai species | Final listing determination |
| Black-footed albatross | 12–month petition finding |
| Mount Charleston blue butterfly | 12–month petition finding |
| Mojave fringe-toed lizard[1] | 12–month petition finding |
| Pygmy rabbit (rangewide)[1] | 12–month petition finding |
| Kokanee – Lake Sammamish population[1] | 12–month petition finding |
| Delta smelt (uplisting) | 12–month petition finding |
| Cactus ferruginous pygmy-owl[1] | 12–month petition finding |
| Tucson shovel-nosed snake[1] | 12–month petition finding |

ACTIONS FUNDED IN FISCAL YEAR 2009 BUT NOT YET COMPLETED—Continued

| SPECIES | ACTION |
|---|---|
| Northern leopard frog | 12–month petition finding |
| Tehachapi slender salamander | 12–month petition finding |
| Coqui Llanero | 12–month petition finding |
| Susan's purse-making caddisfly | 12–month petition finding |
| White-sided jackrabbit | 12–month petition finding |
| Jemez Mountains salamander | 12–month petition finding |
| 29 of 206 species | 12–month petition finding |
| Desert tortoise – Sonoran population | 12–month petition finding |
| Gopher tortoise – eastern population | 12–month petition finding |
| Wrights marsh thistle | 12–month petition finding |
| Southeastern population of snowy plover & wintering population of piping plover | 90–day petition finding |
| Berry Cave salamander[1] | 90–day petition finding |
| Ozark chinquapin[1] | 90–day petition finding |
| Smooth-billed ani | 90–day petition finding |
| Bay Springs salamander[1] | 90–day petition finding |
| Mojave ground squirrel[1] | 90–day petition finding |
| 32 species of snails and slugs | 90–day petition finding |
| *Calopogon oklahomensis* | 90–day petition finding |
| Striped newt | 90–day petition finding |
| Sprague's pipit | 90–day petition finding |
| Southern hickorynut | 90–day petition finding |
| 5 Southwest mussel species | 90–day petition finding |
| Chihuahua scarfpea | 90–day petition finding |
| White-bark pine | 90–day petition finding |
| Puerto Rico harlequin | 90–day petition finding |
| Fisher – Northern Rocky Mtns. population | 90–day petition finding |
| 42 snail species (Nevada & Utah) | 90–day petition finding |
| Hawaii yellow-faced bees | 90–day petition finding |
| 475 Southwestern species (partially completed) | 90–day petition finding |
| High Priority Listing Actions[3] | |
| 19 Oahu candidate species (16 plants, 3 damselflies) (15 with LPN = 2, 3 with LPN = 3, 1 with LPN =9) | Proposed listing |
| 17 Maui-Nui candidate species (14 plants, 3 tree snails) (12 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8) | Proposed listing |
| Sand dune lizard (LPN = 2) | Proposed listing |
| 2 Arizona springsnails *(Pyrgulopsis bernadina* (LPN = 2), *Pyrgulopsis trivialis* (LPN = 2)) | Proposed listing |
| 2 New Mexico springsnails *(Pyrgulopsis chupaderae* (LPN = 2), *Pyrgulopsis thermalis* (LPN = 11)) | Proposed listing |

ACTIONS FUNDED IN FISCAL YEAR 2009 BUT NOT YET COMPLETED—Continued

| SPECIES | ACTION |
|---|---|
| 2 mussels (rayed bean (LPN = 2), snuffbox No LPN) | Proposed listing |
| 2 mussels (sheepnose (LPN = 2), spectaclecase (LPN = 4), | Proposed listing |
| Ozark hellbender[2] (LPN = 3) | Proposed listing |
| Altamaha spinymussel (LPN = 2) | Proposed listing |
| 5 southeast fish (rush darter (LPN = 2), chucky madtom (LPN = 2), yellowcheek darter (LPN = 2), Cumberland darter (LPN = 5), laurel dace (LPN = 5)) | Proposed listing |
| 8 southeast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)) | Proposed listing |
| 3 Colorado plants (Pagosa skyrocket *(Ipomopsis polyantha*) (LPN = 2), Parchute beardtongue *(Penstemon debilis*) (LPN = 2), Debeque phacelia *(Phacelia submutica*) (LPN = 8)) | Proposed listing |

[1] Funds for listing actions for these species were provided in previous FYs.
[2] We funded a proposed rule for this subspecies with an LPN of 3 ahead of other species with LPN of 2, because the threats to the species were so imminent and of a high magnitude that we considered emergency listing if we were unable to fund work on a proposed listing rule in FY 2008.
[3] Funds for these high-priority listing actions were provided in FY 2008 and FY 2009.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant laws and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, the actions described above collectively constitute expeditious progress.

We will revise the boundaries of the Canada lynx DPS in the contiguous United States when funding is available for discretionary listing actions. At such time that funding becomes available to develop a proposed rule, we will develop revised boundaries for the listed DPS based on the biology of the species. We will continue to monitor the status of this DPS as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend any amendment to this listing to be as accurate as possible. Therefore, we will continue to accept additional information and comments on the status of and threats to this DPS from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

## References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Supervisor, at the U.S. Fish and Wildlife Service, Montana Field Office (see **ADDRESSES**).

## Author

The primary author of this document is staff of the Mountain-Prairie Region of the U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 645, Lakewood, Colorado 80228 (also see **ADDRESSES**).

## Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 25, 2009

**Daniel M. Ashe,**

*Acting Director, U.S. Fish and Wildlife Service*

[FR Doc. E9–29960 Filed 12–16–09; 8:45 am]

**BILLING CODE 4310–55–S**

# Notices

Federal Register
Vol. 74, No. 241
Thursday, December 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

### Black Hills National Forest Advisory Board Public Meeting Dates Announced

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meetings.

**SUMMARY:** The Black Hills National Forest Advisory Board (NFAB) has announced its meeting dates for 2010. These meetings are open to the public, and public comment is accepted at any time in writing and at the pleasure of the chairperson of the Board at each meeting for verbal comments. Persons wishing to speak may be given three minutes to address the Board, for not more than 15 minutes of public comments except at the pleasure of the chair.

Meeting dates are the third Wednesday of each month unless otherwise indicated:

January 6.
February 17.
March 17.
April 21.
May 19.
June 16.
July (No Meeting).
August 18 (Summer Field Trip—TBA).
September 15.
October 20.
November 17.
December (No Meeting).
January 5, 2011 (Tentative).

**ADDRESSES:** Meetings will begin at 1 p.m. and end no later than 5 p.m. at the Forest Service Center, 8221 S. Highway 16, Rapid City, SD 57702.

*Agendas:* The Board will consider a variety of issues related to national forest management. Agendas will be announced in advance but principally concern implementing phase two of the forest land and resource management plan and travel plan. The Board will consider such topics as integrated vegetation management (wild and prescribed fire, fuels reduction, controlling insect epidemics, invasive species), travel management (off highway vehicles, the new OHV rule, and related topics), and forest fragmentation, among others.

**FOR FURTHER INFORMATION CONTACT:** Frank Carroll, Committee Management Officer, Black Hills National Forest, 25041 North Highway 16, Custer, SD 57730, (605) 673–9200.

Dated: December 1, 2009.

**Dennis Jaeger,**

*Deputy Forest Supervisor.*

[FR Doc. E9–29929 Filed 12–16–09; 8:45 am]

**BILLING CODE 3410–11–M**

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Bureau for Democracy, Conflict and Humanitarian Assistance, Office of Food for Peace

### Announcement of Guidance for FY2010 Title II Proposals for Emergency Relief and Recovery Activities in Zimbabwe; Notice

Pursuant to the Food for Peace Act of 2008, notice is hereby given that the Guidance for FY2010 Title II Proposals for Emergency Relief and Recovery Activities in Zimbabwe will be available to interested parties for general viewing.

For individuals who wish to review, the Guidance for FY2010 Title II Proposals for Emergency Relief and Recovery Activities in Zimbabwe will be available via the Food for Peace Web site: *http://www.usaid.gov/our_work/humanitarian_assistance/ffp/countryspec.html* on or about December 10, 2009. Interested parties can also receive a copy of the Guidance for FY2010 Title II Proposals for Emergency Relief and Recovery Activities in Zimbabwe by contacting the Office of Food for Peace, U.S. Agency for International Development, RRB 7.06–152, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600.

**Juli Majernik,**

*Grants Manager, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.*

[FR Doc. E9–30028 Filed 12–16–09; 8:45 am]

**BILLING CODE P**

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Meetings

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meetings.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, January 11–13, 2010, at the times and location noted below.

**DATES:** The schedule of events is as follows:

**Monday, January 11, 2010**

11–Noon Budget Committee.
1:30–3:30 p.m. Ad Hoc Committees (Closed to Public).
3:30–5 Planning and Evaluation Committee.

**Tuesday, January 12, 2010**

9:30–11:30 a.m. Committee of the Whole; Reauthorization of the Rehabilitation Act.
1:30–4 p.m. Technical Programs Committee.

**Wednesday, January 13, 2010**

9:30–11 a.m. U.S. Postal Service Presentation on Accessibility Program.
1:30–3 p.m. Board Meeting.

**ADDRESSES:** All meetings will be held at the Embassy Suites DC Convention Center Hotel, 900 10th Street, NW., Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice) and (202) 272–0082 (TTY).

**SUPPLEMENTARY INFORMATION:** At the Board meeting scheduled on Wednesday, January 13, the Access Board will consider the following agenda items:

- Approval of the draft September 11, 2009 meeting minutes.
- Budget Committee Report.
- Planning and Evaluation Committee Report.
- Technical Programs Committee Report.
- Committee of the Whole Report.
- Ad Hoc Committee Reports.

• Executive Director's Report.
• ADA and ABA Guidelines; Federal Agency Updates.

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meeting. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (*see http://www.access-board.gov/about/policies/fragrance.htm* for more information).

**David M. Capozzi,**

*Executive Director.*

[FR Doc. E9–29992 Filed 12–16–09; 8:45 am]

**BILLING CODE 8150–01–P**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Limitation of Duty-free Imports of Apparel Articles Assembled in Haiti under the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act (HOPE)

December 14, 2009.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notification of Annual Quantitative Limit on Certain Apparel under HOPE.

**EFFECTIVE DATE:** December 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

**SUPPLEMENTARY INFORMATION:**

**Authority:** The Caribbean Basin Recovery Act (''CBERA''), as amended by the Haitian Hemispheric Opportunity Through Partnership for Encouragement Act of 2006 (collectively, ''HOPE''), Title V of the Tax Relief and Health Care Act of 2006 and the Food, Conservation, and Energy Act of 2008 (''HOPE II''); and Presidential Proclamation No. 8114, 72 Fed. Reg. 13655, 13659 (March 22, 2007) (''Proclamation'').

HOPE provides for duty-free treatment for certain apparel articles imported directly from Haiti. Section 213A (b)(1)(B) of HOPE outlines the requirements for certain apparel articles to qualify for duty-free treatment under a ''value-added'' program. In order to qualify for duty-free treatment, apparel articles must be wholly assembled, or knit-to-shape, in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, as long as the sum of the cost or value of materials produced in Haiti or one or more countries, as described in HOPE, or any combination thereof, plus the direct costs of processing operations performed in Haiti or one or more countries, as described in HOPE, or any combination thereof, is not less than an applicable percentage of the declared customs value of such apparel articles. For the period December 20, 2009 through December 19, 2010, the applicable percentage is 55 percent.

For every twelve month period following the effective date of HOPE, duty-free treatment under the value-added program is subject to a quantitative limitation. HOPE provides that the quantitative limitation will be recalculated for each subsequent 12-month period. Section 213A (b)(1)(C) of HOPE, as amended by HOPE II, requires that, for the twelve-month period beginning on December 20, 2009, the quantitative limitation for qualifying apparel imported from Haiti under the value-added program will be an amount equivalent to 1.25 percent of the aggregate square meter equivalent of all apparel articles imported into the United States in the most recent 12-month period for which data are available.

For purposes of this notice, the most recent 12-month period for which data are available as of December 20, 2009 is the 12-month period ending on October 31, 2009. Therefore, for the one-year period beginning on December 20, 2009 and extending through December 19, 2010, the quantity of imports eligible for preferential treatment under the value-added program is 284,904,116 square meters equivalent. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meters equivalent of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (''ATC''), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

**Kimberly Glas,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E9–30142 Filed 12–15–09; 4:15 pm]

**BILLING CODE 3510–DS**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–904]**

### Certain Activated Carbon from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** December 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Robert Palmer, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–9068.

**SUPPLEMENTARY INFORMATION:**

**ADMENDMENT TO THE FINAL RESULTS:**

In accordance with sections 751(h) and 777(i)(1) of the Tariff Act of 1930, as amended, (''Act''), on November 10, 2009, the Department of Commerce (''Department'') published[1] the final results of the administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'') covering the period October 11, 2006, through March 31, 2008. *See First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 57995 (November 10, 2009) (''*Final Results*'').

On November 12, 2009, Petitioner Norit Americas, voluntary respondent Ningxia Guanghua Activated Carbon Co., Ltd. (''Cherishmet''),[2] mandatory respondent Jacobi,[3] importer Albemarle,[4] and separate rate company Hebei Foreign Trade & Advertising Corp. (''Hebei Foreign'') filed timely ministerial allegations pursuant to 19 CFR 351.224(c)(1) that the Department made various ministerial errors in the *Final Results* and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors in the Final Results and the ''Administrative Review of Certain

[1] The Department publicly announced the final results on November 3, 2009.

[2] Consisting of Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (''GHC''), Beijing Pacific Activated Carbon Products Co., Ltd. (''Beijing Pacific''), and Cherishmet Inc.

[3] Consisting of Jacobi Carbons AB, Tianjin Jacobi Iternational Trading Co., Ltd., and Jacobi Carbons, Inc.

[4] Consisting of Albemarle Sorbent Technologies Corp. and Albemarle Corporation.

Activated Carbon from the People's Republic of China: Issues and Decisions Memorandum for the Final Results,'' dated November 10, 2009 (''*Decision Memo*''). On November 17, 2009, Petitioners[5] filed timely rebuttal comments with respect to certain ministerial errors alleged by Cherishmet and Hebei Foreign. No other party in this proceeding submitted ministerial error comments or rebuttals on the Department's *Final Results*.

A ministerial error is defined as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the {Secretary} considers ministerial.'' *See* section 751(h) of the Act; *see also* 19 CFR 351.224(f).

After analyzing all interested party comments and rebuttals, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made certain ministerial errors in the *Final Results*. With regard to Jacobi, Calgon Carbon (Tianjin) Co., Ltd. (''CCT''), and Cherishmet, we transposed digits in the surrogate value for bituminous coal used in valuing coking coal. With regard to Cherishmet, the Department made ministerial errors pertaining to the calculation of international freight and copying of surrogate values. For a detailed discussion of these ministerial errors, as well as the Department's analysis of these errors and other allegations raised, *see* Memorandum to James C. Doyle, Director, Office 9, through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Case Analyst, Office 9: Certain Activated Carbon From the People's Republic of China: Allegation of Ministerial Errors in the Final Results of the First Administrative Review, (December 3, 2009) (''Ministerial Error Memo'').

Additionally, in the *Final Results*, we determined that several companies qualified for a separate rate. *See Final Results*, 74 FR at 57998. The separate rate was based on the calculated margins for CCT and Jacobi, the two mandatory respondents in this review. The margins for CCT and Jacobi changed following the correction of the ministerial errors and subsequent revisions made to the *Final Results*. Accordingly, the Department revised the calculated all others rate for the companies that qualified for a separate rate. We note that the errors did not affect the PRC–wide entity rate, and thus that rate will not be revised. Additionally, the margin for Cherishmet, the voluntary respondent, changed following the revisions made to the *Final Results*.

Therefore, in accordance with section 751(h) of the Act, we are amending the *Final Results* in the antidumping duty administrative review of certain activated carbon from the PRC.

After correcting these ministerial errors, the final weight–averaged dumping margins results are as follows:

CERTAIN ACTIVATED CARBON FROM THE PEOPLE'S REPUBLIC OF CHINA

| Manufacturer/Exporter | Weighted Average Margin (Percent) |
|---|---|
| Calgon Carbon (Tianjin) Co., Ltd. | 14.51 % |
| Jacobi Carbons AB[6] | 18.19 % |
| Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.[7] | 16.84 % |
| Datong Municipal Yunguang Activated Carbon Co., Ltd. | 16.35 % |
| Ningxia Huahui Activated Carbon Co., Ltd. | 16.35 % |
| Ningxia Lingzhou Foreign Trade Co., Ltd. | 16.35 % |
| Tangshan Solid Carbon Co., Ltd. | 16.35 % |
| Tianjin Maijin Industries Co., Ltd. | 16.35 % |
| PRC–Wide Rate[8] | 228.11 % |

[6] Consisting of Jacobi Carbons AB, Tianjin Jacobi International Trading Co., Ltd. and Jacobi Carbons, Inc.

[7] Ningxia Guanghua Cherishment Activated Carbon Co., Ltd. and the following companies have been determined to be a single entity: Beijing Pacific Activated Carbon Products Co., Ltd., Ningxia Guanghua Activated Carbon Company, and Company A. Thus, the calculated margin applies to the single entity.

[8] The PRC-Wide entity includes Hebei Foreign Trade Advertisement Company, Ningxia Mineral & Chemical Limited, Jilin Bright Future Chemicals Company, Ltd. and its affiliate, Jilin Province Bright Future Industry and Commerce Co., Ltd.

**Assessment Rate**

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries based on the amended final results. For details on the assessment of antidumping duties on all appropriate entries, *see Final Results*. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the amended final results of the administrative review.

**Cash Deposit Requirements**

The following deposit rates will be effective retroactively on any entries made on or after November 10, 2009, the date of publication of the *Final Results*, for all shipments of certain activated carbon from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be established in these amended final results of review (except, if the rate is zero or *de minimis, i.e.*, less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 228.11 percent; and (4) for all non–PRC exporters of the subject merchandise which have not received their own rate, the cash deposit rate will be at the rate applicable to the PRC exporters that supplied that non–PRC exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

**Notification of Interested Parties**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries

[5] Consisting of Calgon Carbon Corporation and Norit Americas.

during the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

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

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

Dated: December 10, 2009.

**Carole A. Showers,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E9–30052 Filed 12–16–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–916]**

### Laminated Woven Sacks from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review

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

**EFFECTIVE DATE:** December 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4114 or (202) 482–0679, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 7, 2008, the Department of Commerce (the ''Department'') published in the **Federal Register** the antidumping duty order on laminated woven sacks (''LWS'') from the People's Republic of China (''PRC''). *See Notice of Antidumping Duty Order: Laminated Woven Sacks From the People's Republic of China*, 73 FR 45941 (August 7, 2008) (''*LWS Order*''). On August 3, 2009, the Department published a notice of opportunity to request an administrative review of the *LWS Order. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 38397 (August 3, 2009).

The Department received a timely request for an administrative review of the *LWS Order* from Zibo Aifudi Plastic Packaging Co., Ltd. (''Zibo Aifudi'') and Changshu Xinsheng Bags Producing Company, Ltd. (''Changshu Xinsheng Bags'') on August 26, 2009 and August 31, 2009, respectively, in accordance with section 751(a) of Tariff Act of 1930, as amended (the ''Act''). On September 22, 2009, the Department published in the **Federal Register** a notice of the initiation of an administrative review of the *LWS Order. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 48224 (September 22, 2009) (''*Initiation Notice*''). The review was initiated with respect to both companies and covers the period from January 31, 2008, through July 31, 2009. On November 6, 2009, Changshu Xinsheng Bags submitted to the Department a timely letter requesting a withdrawal from the ongoing administrative review.

#### Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Because Changshu Xinsheng Bags withdrew its request for an administrative review within 90 days of the date of publication of the notice of initiation, and no other interested party requested a review of this company, the Department is rescinding this review with respect to Changshu Xinsheng Bags, in accordance with 19 CFR 351.213(d)(1). The review will continue with respect to Zibo Aifudi which is identified in the *Initiation Notice*.

#### Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Since the company for which this review has been rescinded does not have a separate rate at this time, the Department will issue assessment instructions for this company upon completion of the instant administrative review.

#### Notification to Importers

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

#### Notification Regarding Administrative Protective Orders (''APOs'')

This notice also serves as a reminder to parties subject to APOs of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: December 11, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–30051 Filed 12–16–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–954, A–201–837]**

### Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Postponement of Preliminary Determinations of Antidumping Duty Investigation

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

**EFFECTIVE DATE:** December 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Paul Walker (the People's Republic of China) or David Goldberger (Mexico), AD/CVD Operations, Offices 9 and 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 482–0413 or (202) 482–4136, respectively.

**SUPPLEMENTARY INFORMATION:**

**Postponement of Preliminary Determinations**

On August 18, 2009, the Department of Commerce (the Department) initiated the antidumping investigations of Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico. *See Certain Magnesia Carbon Bricks from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 42852 (August 25, 2009).

The notice of initiation stated that unless postponed the Department would issue the preliminary determinations for these investigations no later than 140 days after the date of initiation, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act). The preliminary determinations are currently due no later than January 5, 2010.

On December 8, 2009, the petitioner, Resco Products Inc., made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e) for a 50-day postponement of the preliminary determinations. The petitioner requested postponement of the preliminary determinations in order to ensure that the Department has ample time to thoroughly analyze the complex issues involved in these investigations.

Because there are no compelling reasons to deny the request, the Department is postponing the deadline for the preliminary determinations pursuant to section 733(c)(1)(A) of the Act to February 24, 2010, the 190th day from the date of initiation. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations, unless postponed.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: December 11, 2009.

**Carole A. Showers,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. E9–30049 Filed 12–16–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

**[Docket No. PTO–P–2009–0055]**

### Revised Procedure for Public Key Infrastructure Certificates

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) published a notice on Legal Framework for Electronic Filing System–Web (EFS–Web) to set forth the current policy and procedure for using EFS–Web and to permit a holder of a public key infrastructure (PKI) certificate to designate a single employee of a contractor who may use the PKI certificate under the direction and control of the holder. The USPTO received many suggestions and inquiries from users of EFS–Web and the Patent Application Information Retrieval (PAIR) system. In response to the suggestions, the USPTO is expanding the procedure for PKI certificates to permit a holder of a PKI certificate to designate more than one employee to use the PKI certificate under the direction and control of the holder in accordance with the revised PKI subscriber agreement and the rules and policies of the USPTO.

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

**FOR FURTHER INFORMATION CONTACT:** Joni Y. Chang, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at 571–272–7720, or by mail addressed to: Mail Stop Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

Inquiries regarding EFS–Web and other USPTO information technology (IT) systems may be directed to the Patent Electronic Business Center (Patent EBC), by telephone: 1–866–217–9197 (toll-free) and 571–272–4100, or by e-mail: *ebc@uspto.gov*.

Inquiries regarding IT policy for U.S. national patent applications may be directed to Mark Polutta (571–272–7709), Senior Legal Advisor, Office of Patent Legal Administration.

Inquiries regarding IT policy for international patent applications may be directed to Tamara Graysay (571–272–6728), Special Program Examiner, Office of Patent Cooperation Treaty (PCT) Legal Administration.

**SUPPLEMENTARY INFORMATION:** Since October of 2000, the USPTO has been providing users of the USPTO electronic systems with PKI certificates free of charge to *pro se* inventors, registered patent practitioners and limited recognition practitioners who signed an agreement with the USPTO and have been approved for use of the systems. A PKI certificate holder enjoys many benefits including having the ability to file patent applications and follow-on documents in applications electronically via EFS–Web as a registered user, and retrieving e-Office actions and checking the status of an application electronically via Private PAIR. The USPTO published a notice on the Legal Framework for EFS–Web to set forth the current policy and procedure for using EFS–Web and to permit a holder of a PKI certificate to designate a single employee of the holder's organization, or a single employee of a contractor, who may use the PKI certificate under the direction and control of the holder. *See Legal Framework for Electronic Filing System–Web (EFS–Web)*, 74 FR 55200 (October 27, 2009) (notice). The USPTO received many suggestions and inquiries from users of EFS–Web and PAIR on the usage of PKI certificates. In response to the suggestions, the USPTO is expanding the procedure for PKI certificates to permit a holder of a PKI certificate to designate more than one employee to use the PKI certificate under the direction and control of the holder in accordance with the revised PKI subscriber agreement and the rules and policies of the USPTO including the Legal Framework for EFS–Web. The designated employees should be paralegals or support staff of the certificate holder. Each designated employee must be either an employee of the holder's organization or an employee of a contractor. The PKI certificate holder and the designated employees may use the holder's PKI certificate concurrently. For example, a registered patent practitioner may file a patent application electronically via EFS–Web using his or her PKI certificate at the same time when one of the practitioner's paralegals files a follow-on document in another application electronically via EFS–Web, and another paralegal of the practitioner retrieves an e-Office action via Private PAIR, using the practitioner's PKI certificate under the direction and control of the practitioner. The revised procedure for PKI certificates will provide users more flexibility and meet users' needs for multiple concurrent usage of the USPTO electronic systems.

The revised procedure for PKI certificates is effective immediately upon the publication of this notice. The PKI subscriber agreement has been revised to permit a holder of a PKI certificate to designate more than one employee to use the PKI certificate under the direction and control of the holder in accordance with the PKI subscriber agreement and the rules and policies of the USPTO including the Legal Framework for EFS–Web. The

revised PKI subscriber agreement (provided in section II of this notice and to be posted on the USPTO Web site) will apply to new PKI certificate holders who receive their PKI certificates on or after the publication date of this notice and current PKI certificate holders that continue to use their PKI certificates (includes any PKI certificate usage by their designated employees). The Legal Framework for EFS–Web published in the **Federal Register** (74 FR 55200) on October 27, 2009, will be revised in accordance with this notice and the revised version will also be posted on the USPTO Web site.

I. *New Frequently Asked Questions Regarding PKI Certificates:* The following are provided for further clarification of the procedure for PKI certificates and to address the inquiries that the USPTO has received:

1. *Can current PKI certificate holders designate more than one employee without applying for a new PKI certificate or filing a newly signed certificate action form (PTO–2042)*?

*Answer:* Yes, a new request for PKI certificate is not needed. Continued use of a PKI certificate after the publication of this notice will constitute agreement to the revised PKI subscriber agreement by the current PKI certificate holder. *See* section 9 of the PKI subscriber agreement. Therefore, a current PKI certificate holder may designate more than one employee immediately to use the holder's PKI certificate under the direction and control of the holder in accordance with the revised PKI subscriber agreement and the rules and policies of the USPTO including the Legal Framework for EFS–Web.

2. *What is the maximum number of employees that a PKI certificate holder may designate*?

*Answer:* PKI certificate holders may only designate a reasonable number of employees for which he or she can maintain proper control. The PKI certificate holder is responsible for the usage by the designated employees who can only use the PKI certificate under the direction and control of the holder in accordance with the revised PKI subscriber agreement and the rules and policies of the USPTO including the Legal Framework for EFS–Web. The holder must take reasonable steps to ensure compliance with the requirements in the revised PKI subscriber agreement and the rules and policies of the USPTO. When a PKI certificate holder or one of the holder's designated employees electronically transmits a submission to the USPTO via EFS–Web using the holder's PKI certificate, the PKI certificate holder is presenting the information in the submission to the USPTO and making the certification under 37 CFR 11.18(b). Furthermore, the PKI certificate holder is not permitted to designate a person who is not an employee, and designated employees are not permitted to share the certificate with anyone else (*e.g.*, a designated employee cannot designate another employee).

3. *Can a PKI certificate holder designate employees of more than one contractor*?

*Answer:* Yes, a PKI certificate holder may designate employees of more than one contractor as long as the PKI certificate holder maintains control of the PKI certificate usage and can ensure that the employees of the contractors are using the PKI certificate in accordance with the revised PKI subscriber agreement and the rules and policies of the USPTO including the Legal Framework for EFS–Web.

4. *Can multiple PKI certificate holders designate the same employee to use their certificates*?

*Answer:* Yes, multiple PKI certificate holders may designate the same employee if the PKI certificate holders and the designated employee take reasonable steps to ensure that the designated employee uses the proper PKI certificate for each task in accordance with the revised PKI subscriber agreement and the rules and policies of the USPTO including the Legal Framework for EFS–Web. For example, if Holder Smith asked the designated employee to electronically submit a patent application via EFS–Web, the designated employee must use the PKI certificate of Holder Smith to submit the patent application, rather than a certificate of another holder who did not give the designated employee the direction to file the patent application.

5. *Can a PKI certificate holder designate an employee that is not located in the same location*?

*Answer:* Yes, a PKI certificate holder may designate an employee that is not located in the same location as long as the designated employee uses the PKI certificate under the direction and control of the holder in accordance with the revised PKI subscriber agreement and the rules and policies of the USPTO including the Legal Framework for EFS–Web.

6. *What should a PKI certificate holder do if one of his or her designated employees is leaving the holder's organization or the contractor's organization*?

*Answer:* The PKI certificate holder must take reasonable steps to ensure that the employee does not continue to use the PKI certificate when the employee leaves the holder's organization or the contractor's organization or when the contractor is no longer a contractor to the holder.

7. *Can a pro se inventor use his or her PKI certificate to file an application or document for another person or retrieve information regarding another person's application*?

*Answer:* No, a *pro se* inventor cannot use (or permit someone else to use) his or her PKI certificate to file an application or document for another person, or retrieve information (*e.g.*, an e-Office action or the status) regarding another person's application. A *pro se* inventor may use his or her PKI certificate to file his or her application or follow-on documents in his or her application that does not contain a power of attorney.

8. *Can a PKI certificate holder designate a company that offers paralegal services to use the PKI certificate*?

*Answer:* No, a PKI certificate holder cannot designate a company. A PKI certificate holder may only designate more than one employee of a contractor (or the organization of the holder) to use his or her certificate under the holder's direction and control in accordance with the revised PKI subscriber agreement and the rules and policies of the USPTO including the Legal Framework for EFS–Web.

9. *Can a PKI certificate holder designate an invention promotion company or an invention promoter to use the PKI certificate*?

*Answer:* No, a PKI certificate holder is not permitted to designate an invention promotion company or an invention promoter to use the PKI certificate. A PKI certificate holder may only designate more than one employee of a contractor (or the organization of the holder) to use his or her certificate under the holder's direction and control in accordance with the revised PKI subscriber agreement and the rules and policies of the USPTO including the Legal Framework for EFS–Web. The designated employees should be paralegals or support staff of the holder's organization (or a contractor's organization). A PKI certificate holder must take reasonable steps to ensure that the PKI certificate is not being used in connection with the unauthorized practice before the USPTO in patent matters. *See* section 3 of the PKI subscriber agreement.

10. *Can a registered patent practitioner who is a PKI certificate holder designate his or her client or a ''foreign associate'' (e.g., an attorney in another law firm) to use the PKI certificate*?

*Answer:* No, a PKI certificate holder cannot designate his or her client, and cannot designate a ''foreign associate'' (*e.g.*, an attorney in another law firm) who is not an employee of the certificate holder's organization and is not an employee of a contractor. A PKI certificate holder may only designate more than one employee of a contractor (or the organization of the holder) to use his or her certificate under the holder's direction and control in accordance with the revised PKI subscriber agreement and the rules and policies of the USPTO including the Legal Framework for EFS–Web. The designated employees should be paralegals or support staff of the certificate holder. Furthermore, if the ''foreign associate'' is located outside of the United States, it would be difficult for the holder to maintain control of the PKI certificate usage and ensure compliance with the rules and policies of the USPTO by a person located outside of the United States. In addition, accessing an application before the applicant has received a foreign filing license by a person located outside of the United States, or by a foreign national inside the United States, constitutes an export. The holder cannot permit the use of the PKI certificate in a manner that would violate or circumvent the Export Administration Regulations. *See* section 6 of the PKI subscriber agreement for more information.

11. *Can a PKI certificate holder or a designated employee file a third party submission or a protest via EFS–Web using the PKI certificate*?

*Answer:* No, the EFS–Web Legal Framework (section B2) specifically prohibits the filing of third party submissions and protests in patent applications via EFS–Web. The USPTO has a special screening procedure to ensure such documents are filed in compliance with 37 CFR 1.99 or 1.291 (in paper) before being entered into the application. *See* also 35 U.S.C. 122(c) and Manual of Patent Examining Procedure (MPEP) §§ 1134, 1134.01 and 1901.05. Filing such documents electronically via EFS–Web would be circumventing these rules and procedures and be a violation of the Legal Framework for EFS–Web and the revised PKI subscriber agreement. Such violation may cause the USPTO to revoke the PKI certificate and/or refer the PKI certificate holder to the Office of Enrollment and Discipline for appropriate action. Therefore, PKI certificate holders should take reasonable steps to ensure that their designated employees do not file third party submissions and protests via EFS–Web.

12. *Can a designated employee continue to use the PKI certificate of a deceased holder*?

*Answer:* No, all of the designated employees must stop using the PKI certificate of a deceased holder because designated employees only have the authority to use the PKI certificate under the direction and control of the holder. The USPTO will revoke the PKI certificate once the USPTO becomes aware that the holder is deceased.

13. *Can a PKI certificate holder or his or her designated employees continue to use the PKI certificate after the holder is suspended from practice before the USPTO*?

*Answer:* No, the PKI certificate holder and all of his or her designated employees must stop using the PKI certificate once the holder is suspended from practice before the USPTO. The USPTO will revoke the PKI certificate once the appropriate official in the USPTO becomes aware of the suspension.

*II. Revised PKI Subscriber Agreement (November 2009): The following is the PKI Subscriber Agreement in effect as of December 17, 2009:*

I request that the United States Patent and Trademark Office (USPTO) issue me a set of public key certificates (a digital signing certificate and an encryption) in accordance with conditions stated herein and as explained and governed by the EFS–Web Legal Framework. *See e.g., Legal Framework for Electronic Filing System–Web (EFS–Web)*, 74 FR 55200 (October 27, 2009) (notice)). I have read and signed the Certificate Action Form [PTO Form–2042] requesting issuance of public key certificates to me for doing business with the USPTO.

I agree that my use and reliance on the USPTO public key certificates is subject to the terms and conditions set out below. By signing the Certificate Action Form [PTO Form–2042], I agree to the terms of this Subscriber Agreement and to the rules and policies of the USPTO including the EFS–Web Legal Framework.

1. *Identification Information:* I warrant that the information I submit, as corrected or updated by me periodically, is true and complete.

If any of the information contained in the Certificate Action Form [PTO Form–2042], changes, I agree to update my information within 10 working days via written communication sent to Mail Stop EBC, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450. This includes loss of right to access a given customer number.

2. *Protection of Keys:* The USPTO will not have a copy of my private key corresponding to the public key contained in the digital signing certificate. I understand that the password I establish in the client software is my responsibility and that the password is unknown to the USPTO. Further, there is no mechanism for the USPTO to find the password. In the event of a lost password, as in the event of the loss of my private key, the USPTO can, at my request, recover only the private key corresponding to the public key contained in the confidentiality certificate and authorize the generation of a new digital signing public/private key pair.

(a) I agree to keep my password and private key confidential, and to take all reasonable measures to prevent the loss, unauthorized disclosure, modification or use of my password, and private key. I agree that I will be responsible for these items and that no unauthorized person will have access to them.

(b) I agree and acknowledge that, when the USPTO issues me the information permitting me to generate a certificate, the USPTO will keep a copy of my private key corresponding to the public key of my confidentiality certificate, and the USPTO will not disclose this key except with my consent, or where required by law.

(c) I agree to promptly notify the USPTO if my password or private key is lost, compromised or rendered insecure, or if the information contained in my certificate request, including address, e-mail address, or telephone number, has changed, or becomes otherwise incorrect or incomplete.

Each public key certificate includes the public key of a public/private key pair. The digital signing key pair is generated by the subscriber's personal computer when completing a certificate creation or recovery action via the Digital Certificate Management Web site and the public key becomes part of the digital signing certificate. Only the subscriber holds the private key corresponding to the public key contained in the digital signing certificate. Both the public and private keys of the confidentiality certificate will be generated by the USPTO Certificate Authority and sent via a secure channel to the subscriber. The USPTO Certificate Authority will hold a copy of the subscriber's private key corresponding to the public key contained in the confidentiality certificate in order to provide key recovery capability.

3. *Acceptable Use or Reliance/Designation of Supervised Employee:* I will use my USPTO certificates only for electronic communication with the USPTO (*e.g.*, Private Patent Application Information Retrieval (Private PAIR) status inquiry, electronic filing, etc.) in compliance with the rules and policies of the USPTO (*e.g.*, EFS–Web Legal Framework). I will use or rely on USPTO certificates only for securing communication with the USPTO, and will not encourage or permit anyone to use or rely on the certificates (other than the USPTO).

I may designate more than one employee to use my USPTO certificates under my direction and control in accordance with this subscriber agreement and the rules and policies of the USPTO including the EFS–Web Legal Framework. Each designated employee must only be either an employee of my organization or an employee of a contractor. Each designated employee will use or rely on granted USPTO certificates only for communication with the USPTO in

compliance with the rules and policies of the USPTO and will not encourage or permit anyone to use or rely on the certificates (other than the USPTO).

I understand that I am responsible for each designated employee's use of the USPTO certificates. I will take reasonable steps to ensure compliance of the requirements set forth in this agreement by each designated employee, including the restrictions on the software use in section 5 and the restrictions on the export (including deemed export) of technology and software included in patent applications in section 6. If a designated employee is not a U.S. citizen, I understand that the designated employee's access to the technology and software constitutes an export. *See* section 6 of this agreement.

I agree not to use or permit the use of my USPTO certificates in connection with the unauthorized practice of law. For example, I will not grant permission to an invention promotion company or an invention promoter to use my USPTO certificates. I also understand that if I am a practitioner, violations of the USPTO ethics rules set forth in Parts 10 and 11 of 37 CFR may subject me to disciplinary action. If I have been granted limited recognition by the Office, I agree not to use the digital certificate beyond the limits of the rights I have been granted.

I understand that my USPTO certificates will be used to access records and systems on a U.S. Government computer system and that unauthorized use or use beyond the purpose authorized may subject me to criminal penalties under U.S. Law and/or disciplinary action.

4. *Revocation of Certificates:* The USPTO may revoke my certificates at any time without prior notice if:

(a) Any of the information I supply in my certificate request changes;

(b) The USPTO knows or suspects that my private key has been compromised;

(c) The private key of the issuing USPTO Certificate Authority has been compromised;

(d) The signing certificate of the issuing USPTO Certificate Authority is revoked;

(e) I fail to comply with my obligations under this Agreement or the rules or policies of the USPTO, including the EFS–Web Legal Framework; or

(f) For any other reason the USPTO deems necessary.

The USPTO will promptly notify me of the revocation. Such revocation does not affect the authenticity of a transmission made or a message I digitally signed before certificate revocation.

I may surrender my certificates at any time by written submission to the USPTO at:

Certificate Services Request, U.S. Patent and Trademark Office, Mail Stop EBC, PO Box 1450, Alexandria, VA 22313–1450.

5. *Software use:* I agree to honor (and to make sure that each designated employee will honor) any applicable copyright, patent, or license agreements with respect to any software provided to me by the USPTO, and will not (and will make sure that each designated employee will not) tamper with, alter, destroy, modify, reverse engineer, or decompile such software in any way. I agree not to use (and agree to make sure that each designated employee will not use) the software for any purpose other than communication with the USPTO.

6. *Restrictions on the Export (Including Deemed Export) of Technology and Software Included in Patent Applications:* I understand that technology and software included in unpublished patent applications may be subject to export controls set out in the Export Administration Regulations (15 CFR parts 730–774). Access to such technology and software by any person located outside the United States or by a foreign national inside the United States constitutes an export that may require a license from the U.S. Commerce Department's Bureau of Industry and Security (''BIS''). I agree not to use (and to make sure that each designated employee will not use) or permit the use of the USPTO certificate in a manner that would violate or circumvent the Export Administration Regulations.

Information regarding U.S. export controls and their application to technology and software included in patent applications is available from BIS. Please see BIS's Web site, available at *http://www.bis.doc.gov*, or contact BIS's Office of Exporter Services at 202–482–4811.

7. *Availability:* I understand that the USPTO does not warrant or represent 100% availability of the USPTO Public Key Infrastructure services due to system maintenance, repair, or events outside the control of the USPTO. Information regarding scheduled downtime, if known, will appear on the USPTO Electronic Business Center Web site. Any delays caused by downtime must be addressed through the ordinary petition process.

8. *Term of Agreement:* This Agreement may be terminated by either party upon proper notice. In the case of a termination by the USPTO, notice may be provided by any reasonable means, including a posting on the USPTO Web site.

9. *General:* If any provision of this Agreement is declared by a court to be invalid, illegal, or unenforceable, all other provisions shall remain in full force and effect.

The USPTO reserves the right to refuse to issue certificates. The USPTO reserves the right to cancel this program at any time. Modifications to this agreement will be posted on the USPTO Web site at *http://www.uspto.gov/ebc/efs*. Continued use of the system after posting will constitute agreement to the updated terms.

10. *Requests:* Requests for issuance of certificates, revocation of certificates or key recovery shall be sent to the USPTO Registration Authority at:

Certificate Services Request, U.S. Patent and Trademark Office, Mail Stop EBC, PO Box 1450, Alexandria, VA 22313–1450.

11. *Dispute Resolution and Governing Law:* This Agreement shall be governed by and construed in accordance with the laws of the United States of America.

III. *Additional Information:* The USPTO appreciates the suggestions and inquiries from users. The USPTO will continue to provide clarifications, answers to frequently asked questions, and other helpful information on the USPTO Web site. Users are encouraged to check the USPTO Web site for more information and contact the Patent Electronic Business Center for questions related to the usage of PKI certificates or USPTO electronic systems.

Dated: December 11, 2009.

**David J. Kappos,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. E9–30026 Filed 12–16–09; 8:45 am]

**BILLING CODE 3510–16–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Wednesday, December 16, 2009, 9 a.m.–12 noon.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Commission Meeting—Open to the Public.

**MATTERS TO BE CONSIDERED:** 1. Pending Decisional Matters:

(a) Interim Enforcement Policy on Component Testing and Certification (of Lead Paint and Content);

(b) Commission Action on Existing Stay of Testing and Certification;

(c) Final Rule Registration Cards.

2. Lead in Electronic Devices—Final Rule.

3. Mandatory Recall Notice—Final Rule.

A live Webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast/index.html*. For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: December 9, 2009.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. E9–29942 Filed 12–16–09; 8:45 am]

**BILLING CODE 6355–01–M**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Wednesday, December 16, 2009, 2–4 p.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the public.

**MATTER TO BE CONSIDERED:**

Compliance Weekly/Monthly Report—Commission Briefing:

The staff will brief the Commission on various compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: December 9, 2009.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. E9–29944 Filed 12–16–09; 8:45 am]

**BILLING CODE 6355–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Military Leadership Diversity Commission (MLDC); Meeting

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Meeting notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, DoD announces that the Military Leadership Diversity Commission (MLDC or Commission) will meet on January 14 and 15, 2010, to address congressional concerns as outlined in the Commission's charter. Subject to the availability of space, the meeting will be open to the public.

**DATES:** The meeting will be held January 14 (from 8 a.m. to 6 p.m.) and January 15, 2010 (from 8 a.m. to 1:15 p.m.).

**ADDRESSES:** The meeting will be held at the Hilton Palacio del Rio, 200 S. Alamo Street, San Antonio, TX 78205.

**FOR FURTHER INFORMATION CONTACT:** Committee's Designated Federal Officer or Point of Contact: Master Chief Steven A. Hady, Designated Federal Officer, MLDC, at (703) 602–0838 or (571) 882–0140, 1851 South Bell Street, Suite 532, Arlington, VA. E-mail *Steven.Hady@wso.whs.mil.*

**SUPPLEMENTARY INFORMATION:**

**Agenda**

The commissioners of the MLDC will meet to continue their efforts to address congressional concerns as outlined in the commission charter.

*January 14, 2010*

8 a.m.–11:45 p.m.
- DFO opens the meeting
- Commission Chairman opening remarks
- MG Joe Robles (ret) briefs the commission
- BG Alfred Valenzuela (ret) briefs the commission
- Briefings from Service representatives from organizations responsible for promotion

11:45 p.m.
- DFO recesses the meeting

12:45 p.m.–5:45 p.m.
- DFO opens meeting
- Briefings from Service representatives from organizations responsible for promotion

5:45 p.m.
- Commission Chairman closing remarks
- DFO adjourns the meeting

*January 15, 2010*

8 a.m.–1:15 p.m.
- DFO opens the meeting
- Commission Chairman opening remarks
- Open discussion on career development: branching and assignments
- Open discussion on outreach and recruiting
- Open discussion on career development: diversity management and training
- Open discussion on legal implications of diversity management

1:15 p.m.
- Commission Chairman closing remarks
- DFO adjourns the meeting

**Public's Accessibility to the Meeting**

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the meeting will be open to the public. Please note that the availability of seating is on a first-come basis.

**Written Statements**

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the MLDC about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Commission.

All written statements shall be submitted to the Designated Federal Officer for the Military Leadership Diversity Commission, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer (*see* **FOR FURTHER INFORMATION CONTACT**) at least five calendar days prior the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Commission until its next meeting.

The Designated Federal Officer will review all timely submissions with the MLDC Chairperson and ensure they are provided to all members of the Commission before the meeting that is the subject of this notice.

Dated: December 14, 2009.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. E9–29999 Filed 12–16–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2009–OS–0182]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The Office of the Secretary of Defense proposes to add a system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action would be effective without further notice on January 19, 2010 unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these

submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard at (703) 588–6830.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from (*see* **FOR FURTHER INFORMATION CONTACT**).

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 10, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 14, 2009.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DUSDA 14**

**SYSTEM NAME:**

Science, Mathematics, and Research Transformation Information Management System.

**SYSTEM LOCATION:**

Defense Technical Information Center (DTIC), Directorate of User Services, Marketing and Registration Division, *Attn:* DTIC–BC (Registration), 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, VA 22060–6218.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Applicants and recipients of the Science, Mathematics and Research for Transformation (SMART) Scholarship for Service Program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Applicants and participants periodically update personal information including, full name and any alias, Social Security Number (SSN), home and school address; home and mobile phone number; and school and alternate e-mail addresses.

Additional information collected in this system include Science, Mathematics and Research for Transformation Program identification number, resumes and/or curriculum vitae, publications, U.S. Citizenship and Selective Service registration status, state of residency, employment status, date, state, and country of birth; demographics, veterans preference. Information on academic background and program information such as, academic status, assessment test scores, copies of transcripts, projected and actual graduation date, and other related information.

Science, Mathematics and Research for Transformation Program employees enter other program information unique to each participant that include projected and actual service commitment start and end dates and projected and actual award amounts.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 3304, Competitive Service, *et seq.;* 20 U.S.C. 17, National Defense Education Program, as amended; 10 U.S.C. 2192a, Science, Mathematics, and Research for Transformation (SMART) Defense Education Program; and E.O. 9397 (SSN), as amended.

**PURPOSE(S):**

To enable Science, Mathematics and Research for Transformation officials to select qualified applicants to be awarded Science, Mathematics and Research for Transformation scholarships and monitor participant progress and status through the program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the Department of Defense as a routine use pursuant to 552a(b)(3) as follows:

The Department of Defense 'Blanket Routine Uses' set forth at the beginning of Office of the Secretary of Defense's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records will be stored in a secure office space and protected by guards, locks and administrative procedures. Electronic records will be stored and accessed through a secure server.

**RETRIEVABILITY:**

Electronic and paper records are retrieved by name and/or Science, Mathematics and Research for Transformation Program Identification number.

**SAFEGUARDS:**

Automated records are maintained in controlled areas accessible only to authorized personnel. These areas are restricted to personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of a cipher lock. Back-up data is stored in a locked room. The system complies with the DoD Information Assurance Certification and Accreditation Process. Access to records is restricted to individuals who require the data in the performance of official duties.

**RETENTION AND DISPOSAL:**

Disposition pending approval of records disposition schedule by the National Records and Administration Agency.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Program Manager, Science, Mathematics and Research for Transformation Scholarship for Service Program, Naval Postgraduate School, 1 University Circle, Herrmann Hall Room 061, Monterey, CA 93943–5098.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves may address their inquiries to the Deputy Program Manager, Science, Mathematics and Research for Transformation Scholarship for Service Program, Naval Postgraduate School, 1 University Circle, Herrmann Hall Room 061, Monterey, CA 93943–5098.

Requests should contain the individual's full name and Science, Mathematics and Research for Transformation Program identification number associated with the record including the name and number of this system of records notice and be signed.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, Office of the Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Requests should contain the individual's full name and Science, Mathematics and Research for Transformation Program identification number associated with the record including the name and number of this system of records notice and be signed.

**CONTESTING RECORD PROCEDURES:**

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Information is received from individuals and Science, Mathematics and Research for Transformation Program employees.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9–29996 Filed 12–16–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

**[Docket ID: USN–2009–0022]**

## U.S. Marine Corps; Privacy Act of 1974; System of Records

**AGENCY:** U.S. Marine Corps, DoD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The U.S. Marine Corps is proposing to add a system of records to its inventory of records system subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on January 19, 2010 unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tracy Ross at (703) 614–4008.

**SUPPLEMENTARY INFORMATION:** The U.S. Marine Corps system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from (*see* **FOR FURTHER INFORMATION CONTACT**).

The proposed system report, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, was submitted on December 10, 2009, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 14, 2009.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**M01080–3**

**SYSTEM NAME:**

Total Force Historical Data Warehouse.

**SYSTEM LOCATION:**

Manpower Information (MI), Manpower and Reserve Affairs (M&RA) at the James Wesley Marsh Center, 3280 Russell Rd., Marine Corps Base (MCB) Quantico, VA 22134–5103.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active Duty, Reserve, and Retired Marines and Sailors.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Historical personnel data that include full name, rank, grade, Social Security Number (SSN), current address/contact information, duty status, unit, component code, gender, security investigation date/type, enlistment contract details, end of active service (EAS), end of current contract (ECC), and end of obligated service (EOS), training information to include military occupational specialties (MOS), military schools attended, college courses and degrees and other related data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C., 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; MCO 5311.1C, Total Force Structure Process; MCO P1080.39B, Administrative Instructions for Manpower Management System of Headquarters Marine Corps and E.O. 9397 (SSN), as amended.

**PURPOSE(S):**

Total Force Historical Data Warehouse is a repository of historical data and includes decision support tools to support strategic decisions made about accessions, training, promotions, and retention. The Personally Identifiable Information (PII) together with other organizational data is used to assist Manpower & Reserve Affairs (M&RA) personnel to properly maintain and analyze historical personnel data.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

Retrieved by individual's name, Social Security Number (SSN) and/or unit.

**SAFEGUARDS:**

Records are maintained in area only accessible to authorized MI server room personnel that are properly screened, cleared, and trained. System software uses Primary Key Infrastructure (PKI)/Common Access Card (CAC) authentication to lock out unauthorized access. System software contains authorization/permission partitioning to limit access to appropriate organizational level.

**RETENTION AND DISPOSAL:**

Disposition pending until the National Archives and Records Administration approves retention and disposal schedule; records will be treated as permanent.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Commandant, M&RA, James Wesley Marsh Center, 3280 Russell Rd., Marine Corps Base (MCB), Quantico, VA 22134–5103.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Deputy Commandant, M&RA, James Wesley Marsh Center, 3280 Russell Rd., MCB Quantico, VA 22134–5103.

The request must be signed and include full name, Social Security Number (SSN), and a complete mailing address.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to Deputy Commandant, M&RA, James Wesley Marsh Center, 3280 Russell Rd., Quantico, VA 22134–5103.

The request must be signed and include full name, Social Security Number (SSN), and a complete mailing address.

**CONTESTING RECORD PROCEDURES:**

The Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from system manager.

**RECORD SOURCE CATEGORIES:**

Operational Data Store Enterprise (ODSE) and Defense Manpower Data Center (DMDC).

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E9–29997 Filed 12–16–09; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Acting 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 January 19, 2010.

**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 Acting Director, Information Collection Clearance Division, 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: December 14, 2009.

**James Hyler,**

*Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* New.

*Title:* Evaluation of the Helen Keller National Center for Deaf-Blind Youths and Adults.

*Frequency:* One time.

*Affected Public:* Businesses or other for-profit; Individuals or households; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 201.

*Burden Hours:* 278.

*Abstract:* The Helen Keller National Center for Deaf-Blind Youths and Adults (HKNC) provides services designed to equip clients to live independently in their communities and/or to enhance their ability to secure meaningful employment. The HKNC evaluation will provide RSA with independent and objective information by which to draw conclusions about the effectiveness, including cost effectiveness, of the Center. The evaluation will identify characteristics of the populations served by HKNC and the extent to which HKNC effectively serves clients with different needs. The evaluation will also examine the relationship between HKNC and vocational rehabilitation (VR) agencies and how well HKNC meets the needs of the agencies. Finally, this evaluation will include recommendations to improve HKNC programs and service delivery, including measures that could be used to assess ongoing performance of the Center, its regional staff and functions, and its national training program.

The evaluation scope of work is identified in the following objectives:

* Provide RSA with reliable and valid information on program effectiveness, including cost effectiveness.

* Identify both the characteristics of the populations served by HKNC and the strengths and weaknesses of the program that have an impact on its effectiveness in serving these populations.

* Examine the relationship between HKNC and VR agencies and the effectiveness of direct services, technical assistance, and training activities provided by the Center's headquarters and regional programs in meeting the needs of VR agencies.

* Make recommendations for program adjustments or improvements based on study findings, including measures that could be implemented to assess ongoing performance.

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 4157. 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. E9–30018 Filed 12–16–09; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R09–OAR–2009–0853; FRL–9093–2]**

### Adequacy Status of Motor Vehicle Budget in Submitted Subsequent $NO_2$ Maintenance Plan for the South Coast Area for Transportation Conformity Purposes; California

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Adequacy.

**SUMMARY:** In this notice, EPA is notifying the public that the Agency has found that the nitrogen dioxide ($NO_2$) motor vehicle emissions budgets in the subsequent $NO_2$ maintenance plan portion of the 2007 South Coast State Implementation Plan (SIP) are adequate for transportation conformity purposes. The 2007 South Coast SIP was submitted to EPA on November 28, 2007 by the California Air Resources Board as a revision to the California state implementation plan. CARB corrected the $NO_2$ motor vehicle emissions budgets from the 2007 South Coast SIP by letter dated May 1, 2009. As a result of our finding, the Southern California Association of Governments and the U.S. Department of Transportation must use the $NO_2$ motor vehicle emissions budgets from the submitted subsequent $NO_2$ maintenance plan for future transportation conformity determinations.

**DATES:** This finding is effective January 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Wienke Tax, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901; (415) 947–4192 or *tax.wienke@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to the California Air Resources Board on November 20, 2009 stating that the 2002 and 2020 motor vehicle emissions budgets for $NO_2$ in the submitted 2007 AQMP are adequate. The budgets correspond to the South Coast $NO_2$ maintenance area, which generally includes Orange County, the southwestern two-thirds of Los Angeles County, southwestern San Bernardino County, and western Riverside County. Receipt of these motor vehicle emissions budgets was announced on EPA's transportation conformity Web site, and no comments were submitted. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*.

The adequate 2002 and 2020 motor vehicle emissions budgets (calculated for a winter season day) are provided in the following table:

ADEQUATE MOTOR VEHICLE EMISSIONS BUDGET

(In tons per day)

| Budget Year | $NO_2$ motor vehicle emissions budgets |
|---|---|
| 2002 and 2020 | 680 tons per day (winter season) |

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: December 2, 2009.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E9–30048 Filed 12–16–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9093–1; Docket ID No. EPA–HQ–ORD–2009–0115]**

### Draft Toxicological Review of 1,1,2,2-Tetrachloroethane: In Support of Summary Information on the Integrated Risk Information System (IRIS)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of peer-review workshop.

**SUMMARY:** EPA is announcing that Eastern Research Group, Inc. (ERG), an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, ''Toxicological Review of 1,1,2,2-Tetrachloroethane: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–09/001). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. EPA previously announced the 60-day public comment period (ending November 23, 2009) for the draft document in the **Federal Register** on September 24, 2009 (74 FR 48731). EPA will consider public comments and recommendations from the expert panel workshop as EPA finalizes the draft document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments submitted in accordance with the September 24, 2009, **Federal Register** notice (74 FR 48731) to ERG, for consideration by the external peer-review panel prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

ERG invites the public to register to attend this workshop as observers. In addition, ERG invites the public to give oral and/or provide written comments at the workshop regarding the draft document under review. Space is limited, and reservations will be accepted on a first-come, first-served basis. The draft document and EPA's

peer-review charge are available primarily via the Internet on NCEA's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* In preparing a final report, EPA will consider ERG's report of the comments and recommendations from the external peer-review workshop and any public comments that EPA receives.

**DATES:** The peer-review panel workshop will begin on Wednesday, January 27, 2010, at 8:30 a.m., and will end at approximately 4 p.m. Eastern Standard Time.

**ADDRESSES:** The peer-review workshop will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024. The EPA contractor, ERG, is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by Wednesday, January 20, 2010, by calling ERG at 781–674–7374 or toll free at 800–803–2833 (ask for the 1,1,2,2-Tetrachloroethane peer-review coordinator, Laurie Waite), sending a facsimile to 781–674–2906 (please reference: ''1,1,2,2-Tetrachloroethane peer-review workshop'' and include your name, title, affiliation, full address, and contact information), or sending an e-mail to *meetings@erg.com* (subject line: ''1,1,2,2-Tetrachloroethane peer-review workshop'' and include your name, title, affiliation, full address, and contact information). You may also register via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-tetraworkshop.htm.*

The draft ''Toxicological Review of 1,1,2,2-Tetrachloroethane: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title, ''Toxicological Review of 1,1,2,2-Tetrachloroethane: In Support of Summary Information on the Integrated Risk Information System (IRIS).'' Copies are not available from ERG.

*Information on Services for Individuals with Disabilities:* EPA welcomes public attendance at the ''1,1,2,2-Tetrachloroethane peer-review workshop'' and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact ERG, 110 Hartwell Avenue, Lexington, MA 02421–3136; telephone: 781–674–7374; facsimile: 781–674–2906; or e-mail: *meetings@erg.com* (subject line: 1,1,2,2-Tetrachloroethane peer-review workshop), preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding information, registration, access or services for individuals with disabilities, or logistics for the external peer-review workshop should be directed to ERG, 110 Hartwell Avenue, Lexington, MA 02421–3136; telephone: 781–674–7374; facsimile: 781–674–2906; or e-mail: *meetings@erg.com* (subject line: 1,1,2,2-Tetrachloroethane peer-review workshop).

If you have questions about the document, please contact Martin Gehlhaus, National Center for Environmental Assessment (NCEA), 1200 Pennsylvania Ave, NW., 8601P, Washington, DC 20460; telephone: 703–347–8579; facsimile: 703–347–8689; or e-mail: *gehlhaus.martin@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Information About IRIS

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

Dated: December 8, 2009.

**Rebecca Clark,**

*Acting Director, National Center for Environmental Assessment.*

[FR Doc. E9–30043 Filed 12–16–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9093–4]**

## 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 Taos, NM

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Regional Administrator of EPA Region 6 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 Taos (''Taos'') for the purchase of membrane filtrations cassettes, which are an integral component of the Membrane Bioreactor (MBR) system, proposed for the expansion of its existing Wastewater Treatment Plant (WWTP). Taos indicates that the MBR system is necessary to achieve the tertiary wastewater treatment levels at the proposed 4 million gallons per day WWTP. The membrane filtration equipment under consideration is manufactured by a company located in Canada and no United States manufacturer produces an alternative that meets Taos' technical specifications. 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 Regional Administrator is making this determination based on the review and recommendations of the EPA Region 6, Water Quality Protection Division. Taos 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 MBR system containing goods not manufactured in America, for the proposed project being implemented by Taos. It should be noted that for purposes of this action, the MBR system, while treated as a single system, is not itself a manufactured good, but is an assembly of manufactured goods.

**DATES:** *Effective Date:* December 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Rajen Patel, Buy American Coordinator, (214) 665–2788, SRF & Projects Section, Water Quality Protection Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

**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 Taos for the acquisition of a GE/Zenon Zeeweed 500D MBR system's (MBR system) membrane filtration cassettes, manufactured by GE Water and Process Technologies, Canada. Taos has been unable to find an American made membrane filtration cassette 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.

Taos' waiver request is to allow the purchase of sixteen membrane filtration cassettes for use in improvements to its existing WWTP in Taos, New Mexico. This project will replace its existing secondary wastewater treatment processes with a new MBR system to meet the effluent requirements of the NPDES permit. The membrane filtration cassette is an integral component of the MBR system because it separates the treated wastewater from the mixed liquor which comes from the biological reactors, before the treated wastewater is disinfected and discharged. Taos chose the MBR system after an engineering analysis of treatment alternatives. Taos determined this to be the most environmentally sound and cost effective solution because it meets the strict NPDES tertiary treatment standards for Total Suspended Solids, Biological Oxygen Demand, and turbidity, when compared to other considered solutions. In addition, in anticipation of procuring the MBR system, Taos has already incorporated specific technical design requirements for installation of membrane filter cassettes with the MBR system at its WWTP, including specific tank footprint, geometry and configuration.

Taos has provided information to the EPA demonstrating that there are no membrane filtration cassettes manufactured in the United States in sufficient and reasonable quantity and of a satisfactory quality to meet the required technical specification. Six companies were considered for the membrane filtration cassettes, none based in the United States. Taos has performed market research but was unsuccessful in its effort to locate any domestic manufacturers of membrane filtration cassettes for its WWTP.

Based on additional research conducted by EPA Region 6, there does not appear to be any domestic MBR cassette manufacturers that would meet Taos' technical specifications. EPA's national contractor prepared a technical assessment report dated November 19, 2009 based on the waiver request submittal. 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 MBR cassettes available for use in the proposed MBR system. Taos included a performance guarantee in the request for proposal (RFP) as well as the original specification. GE's performance guarantee applies to the entire MBR system, including all components supplied by GE. The existence of the performance guarantee supports treating the entire MBR system as a unitary whole, rather than a collection of individual components. Therefore, EPA Region 6 concludes that the ''GE/Zenon Zeeweed 500D MBR System—as a whole'' meets the ''specifications in project plans and design.''

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of P.L. 111–5, the ''American Recovery and Reinvestment Act of 2009'', 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.'' Taos has incorporated specific technical design requirements for installation of membrane filtration cassettes 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 utilities, such as Taos, 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.

The Region 6 Water Quality Protection Division has reviewed this waiver request, and to the best of my knowledge at the time of review, has determined that the supporting documentation provided by Taos is sufficient to meet the criteria listed under ARRA, Section 1605(b), Office of Management and Budget (OMB) regulations at 2 CFR 176.60–176.170, and in the April 28, 2009, ''Implementation of Buy American Provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 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 basis for this project waiver is the authorization provided in ARRA, 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 Taos' technical specifications, a waiver from the Buy American requirement is justified.

EPA headquarters' 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, Taos is hereby granted a waiver from the Buy American requirements of ARRA, Section 1605(a) of Public Law 111–5 for the purchase of ''GE/Zenon Zeeweed 500D MBR system'' using ARRA funds, as specified in Taos' request of October 23, 2009. This supplementary information constitutes the detailed written justification required by ARRA,

Section 1605(c), for waivers ''based on a finding under subsection (b).''

**Authority:** Public Law 111–5, section 1605.

Dated: December 9, 2009.

**Al Armendariz,**

*Regional Administrator, U.S. Environmental Protection Agency, Region 6.*

[FR Doc. E9–30046 Filed 12–16–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9093–3]**

## Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by WildEarth Guardians and San Juan Citizens Alliance in the United States District Court for the District of Columbia: *WildEarth Guardians, et al.* v. *Jackson,* No. 1:09–CV–00089–CKK (D. D.C.). On January 14, 2009, Plaintiffs filed a complaint alleging that EPA failed to meet its obligations under sections 111(b)(1)(B), 112(d)(6) and 112(f)(2) of the Clean Air Act (''CAA'') to take actions relative to the review/revision of the New Source Performance Standards and the National Emission Standards for Hazardous Air Pollutants with respect to the Oil and Natural Gas production source category. The proposed consent decree establishes deadlines for EPA's proposed and final actions for meeting these obligations.

**DATES:** Written comments on the proposed consent decree must be received January 19, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–HQ–OGC–2009–0918, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Amy Branning, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–1744; fax number (202) 564–5603; e-mail address: *branning.amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Additional Information About the Proposed Consent Decree

Under sections 111(b)(1)(B), 112(d)(6) and 112(f)(2) of the CAA, EPA has a mandatory duty to take actions relative to the review/revision of new source performance standards (''NSPS'') and national emission standards for hazardous air pollutants (''NESHAP'') within eight years of the issuance of the standards. The proposed consent decree would resolve a deadline suit filed by Plaintiffs for EPA's failure to take the above actions within eight years of issuing NSPS and NESHAP for the Oil and Natural Gas production source category. The proposed Consent Decree requires that EPA sign by January 31, 2011 proposed standards and/or determinations not to issue standards pursuant to sections 111(b)(1)(B), 112(d)(6) and 112(f)(2), and that EPA finalize its proposals by November 30, 2011. The proposed Consent Decree authorizes EPA to sign by January 31, 2011 a final determination not to review the NSPS pursuant to section 111(b)(1)(B) without issuing a proposal for such determination. The approach of determining not to review is not available for actions under section 112. The proposed Consent Decree further requires that, within 15 business days following signature, EPA shall deliver a notice of such action to the Office of the Federal Register for prompt publication. The proposed consent decree states that, after EPA fulfills its obligations under the decree, the case shall be dismissed with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

### II. Additional Information About Commenting on the Proposed Consent Decree

*A. How Can I Get A Copy of the Consent Decree?*

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2009–0918) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 10, 2009.

**Richard B. Ossias,**

*Associate General Counsel.*

[FR Doc. E9–30044 Filed 12–16–09; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:53 a.m. on Tuesday, December 15, 2009, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, resolution, and corporate activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Martin J. Gruenberg, seconded by Director John C. Dugan (Comptroller of the Currency), concurred in by Director John E. Bowman (Acting Director, Office of Thrift Supervision), Director Thomas J. Curry (Appointive), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (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: December 15, 2009.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E9–30160 Filed 12–15–09; 4:15 pm]

**BILLING CODE P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License: Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

*License Number:* 020208F.

*Name:* Ghanem Forwarding, LLC.

*Address:* 1 N. Charles Street, Baltimore, MD 21218.

*Order Published:* FR: 12/1/09 (Volume 229, No. 74, Pg. 62778).

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. E9–29995 Filed 12–16–09; 8:45 am]

**BILLING CODE P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

| License no. | Name/Address | Date reissued |
|---|---|---|
| 019748N | Newskin Express, Inc., 400 Crenshaw Blvd., Suite 109, Torrance, CA 90503 | November 18, 2009. |
| 019791N | Ruky International Company, 149 Isabelle Street, Metuchen, NJ 08840 | September 14, 2009. |
| 003081N | SMS Express Company, Inc., dba DYNA Freight Inc., 2415 So. Sequoia Drive, Compton, CA 90220. | October 29, 2009. |

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. E9–29993 Filed 12–16–09; 8:45 am]

**BILLING CODE P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

*License Number:* 003041F.
*Name:* Accord Shipping Co., Inc.
*Address:* 320 Pine Ave., Ste. 512, Long Beach, CA 90802.
*Date Revoked:* November 4, 2009.
*Reason:* Failed to maintain a valid bond.

*License Number:* 019059F.
*Name:* Alliance Logistics, Inc.
*Address:* 2225 W. Commonwealth Ave., Ste. 306, Alhambra, CA 91803.
*Date Revoked:* December 6, 2009.
*Reason:* Falied to maintain a valid bond.

*License Number:* 019676.
*Name:* Allright Shipping, Inc.
*Address:* 1350 Bronx River Ave., Bronx, NY 10472.
*Reason:* Failed to maintain a valid bond.

*License Number:* 020056N.
*Name:* A.M.C. Shipping, LLC.
*Address:* 79 Edna Ave., Bridgeport, CT 06610.
*Date Revoked:* November 1, 2009.
*Reason:* Failed to maintain a valid bond.

*License Number:* 018820F.
*Name:* Auto City Center, Inc.
*Address:* 15846 W. Warren Ave., Detroit, MI 48228.
*Date Revoked:* November 19, 2009.
*Reason:* Failed to maintain a valid bond.

*License Number:* 021406NF.
*Name:* Civaro North America, Inc. dba Athena Express Line.
*Address:* 172 E. Manville Street, Unit A. Compton, CA 90220.
*Date Revoked:* October 31, 2009.
*Reason:* Surrendered license voluntarily.

*License Number:* 021561NF.
*Name:* DT Shipping, Inc.
*Address:* 11203 S. La Cienega Blvd., Los Angeles, CA 90045.
*Date Revoked:* November 1, 2009.
*Reason:* Failed to maintain valid bonds.

*License Number:* 018808NF.
*Name:* Eagle Maritime, Inc.
*Address:* 115 River Road, Ste. 623, Edgewater, NJ 07020.
*Date Revoked:* November 9, 2009.
*Reason:* Surrendered license voluntarily.

*License Number:* 020205F.
*Name:* Genesis Forwarding Services VA, Inc. dba Genesis Container Lines.
*Address:* 22650 Executive Dr., Ste. 122, Sterling, VA 20166.
*Date Revoked:* November 22, 2009.
*Reason:* Surrendered license voluntarily.

*License Number:* 017310N.
*Name:* J.M.C. Transport Corporation.
*Address:* 5556 Grace Place, Commerce, CA 90022.
*Date Revoked:* November 30, 2009.
*Reason:* Failed to maintain a valid bond.

*License Number:* 019508NF.
*Name:* LT Freight International, Inc.
*Address:* 4751 Blanco Dr., San Jose, CA 95129.
*Date Revoked:* November 6, 2009. (NVOCC) and November 4, 2009 (FF).
*Reason:* Failed to maintain valid bonds.

*License Number:* 019125n.
*Name:* Monumental Shipping & Moving Corp.
*Address:* 103–10 Astoria Blvd., E. Elmhurst, NY 11369.
*Date Revoked:* November 12, 2009.
*Reason:* Failed to maintain a valid bond.

*License Number:* 019748F.
*Name:* Newskin Express, Inc.
*Address:* 400 Crenshaw Blvd., Ste. 109, Torrance, CA 90503.
*Date Revoked:* November 18, 2009.
*Reason:* Failed to maintain a valid bond.

*License Number:* 016593NF.
*Name:* Paradigm International, Inc. dba Paradigm Global Logistics.
*Address:* 11200 S. Hindry Ave., 2nd Floor, Los Angeles CA 90045.
*Date Revoked:* November 13, 2009.
*Reason:* Failed to maintain valid bonds.

*License Number:* 021391F.
*Name:* Phil-Ex Cargo, Inc.
*Address:* 94–1018 Awalai Street, Waipahu, HI 96797.
*Date Revoked:* November 2, 2009.
*Reason:* Surrendered license voluntarily.

*License Number:* 002476F.
*Name:* Quick International Service, Inc.
*Address:* 8348 NW. 30th Terr., Miami, FL 33122.
*Date Revoked:* November 6, 2009.
*Reason:* Failed to maintain a valid bond.

*License Number:* 021475NF.
*Name:* Real Logistics, Inc.
*Address:* 10450 NW. 31st Terrace, Doral, FL 33172.
*Date Revoked:* November 25, 2009.
*Reason:* Surrendered license voluntarily.

*License Number:* 019422N.
*Name:* Royale Gulf Shipping, Ltd.
*Address:* 110–A Brand Lane, Stafford, TX 77477.
*Date Revoked:* November 30, 2009.
*Reason:* Failed to maintain a valid bond.

*License Number:* 019585N.
*Name:* RPM Cargo Express, Inc. dba Carib-Link Service.
*Address:* 7150 NW. 36th Ave., Miami, FL 33147.
*Date Revoked:* November 6, 2009.
*Reason:* Failed to maintain a valid bond.

*License Number:* 018167N.
*Name:* Rye Express Logistics, LLC.
*Address:* 2010 NW. 84th Ave., Miami, FL 33122.
*Date Revoked:* November 25, 2009.
*Reason:* Surrendered license voluntarily.

*License Number:* 020994N.
*Name:* Sapphire Cargo Movers, Inc.
*Address:* Sapphire Logistics Center, Multinational Access Rd., Multinational Village, Paranaque City, 1700 Philippines.
*Date Revoked:* November 1, 2009.
*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. E9–29994 Filed 12–16–09; 8:45 am]
**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day–10–0595]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Performance Evaluation Program for HIV Rapid Testing (OMB Control No. 0920–0595, expiration date 3/31/2010)—Revision—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

*Brief Description and Background*

To support CDC's mission of improving public health and preventing disease through continuously improving laboratory practices, CDC is requesting approval from the Office of Management

and Budget (OMB) to continue data collection activities of the HIV rapid testing performance evaluation program (MPEP HIV RT) and to make changes to the results form.

This program offers external performance evaluation (PE) twice a year for rapid HIV tests approved by the U.S. Food and Drug Administration (FDA). Participation in PE programs is expected to lead to improved HIV testing performance because participants have the opportunity to identify areas for improvement in their testing practices. This program helps to ensure accurate HIV rapid testing which is the foundation for HIV prevention and intervention programs.

This program offers laboratories/testing sites opportunities for:

(1) Assuring that the laboratories/testing sites are providing accurate test results through external quality assessment;

(2) Improving testing quality through self-evaluation in a non-regulatory environment;

(3) Testing well characterized samples from a source outside the test kit manufacturer;

(4) Discovering potential testing problems so that laboratories/testing sites can adjust procedures to reduce and eliminate errors;

(5) Comparing individual laboratory/testing site results to others at the national and international level, and;

(6) Consulting with CDC staff to discuss testing issues.

Program participants receive PE samples twice each year and report testing results to CDC. In addition to conducting the performance evaluation, participants in the MPEP HIV Rapid Testing program are required to complete a biennial (every other year) laboratory practices questionnaire. The burden for the Laboratory Practices Questionnaire has been adjusted for the average per year, since respondents complete the survey every two years. In addition, with this request, CDC is adding an Enrollment Form for new participants and an Information Change Form to enable participants to update current contact information. CDC does not charge any fees to sites participating in this external quality assessment program.

There is no cost to respondents to participate in this program. The total annualized burden for this data collection is 387 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form | Respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| HIV Rapid Testing Results Form | Labs | 660 | 2 | 10/60 |
| HIV Rapid Testing Questionnaire | Labs | 330 | 1 | 30/60 |
| Enrollment Form | Labs | 10 | 1 | 3/60 |
| Information Change Form | Labs | 20 | 1 | 3/60 |

Dated: December 9, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer Centers for Disease Control and Prevention.*

[FR Doc. E9–29967 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–10–0739]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

CDC Oral Health Management Information System (OMB No. 0920–0739 exp. 6/30/2010)—Revision—Division of Oral Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The CDC seeks to improve the oral health of the Nation by targeting efforts to improve the infrastructure of State and territorial oral health departments, strengthening and enhancing program capacity related to monitoring the population's oral health status and behaviors, developing effective programs to improve the oral health of children and adults, evaluating program accomplishments, and informing key stakeholders, including policy makers, of program results. Through a cooperative agreement program, CDC provides funding to oral health programs in states and territories. Funding is used to strengthen the states' core oral health infrastructure and capacity and to reduce health disparities among high-risk groups.

The CDC collects information from State- and territory-based awardees to support oral health program management, consulting and evaluation. Information is submitted through and stored in an electronic management information system (MIS), which provides a central, standardized and searchable repository of information about the awardee's objectives, programmatic activities, performance indicators, and financial status. The MIS increases the efficiency and consistency with which applications, budgets, and reports are prepared and reviewed; facilitates program evaluation; reduces

data/information redundancy by integrating existing information from other sources; and improves accountability to management officials, funders, and stakeholders. The MIS also allows CDC staff to record information related to technical assistance, consultative plans, communication and site visits, thus improving the effectiveness and timeliness of technical assistance and communication between CDC and oral health programs. Finally, the reporting functions of the MIS facilitate rapid retrieval of information and summary reports, allowing CDC and awardees to respond to time-sensitive inquiries in a timely fashion and to make programmatic decisions in a more efficient, informed manner.

The information collected in the oral health MIS facilitates CDC staff's ability to fulfill its obligations under the cooperative agreement; to monitor, evaluate, and compare individual programs; and to assess and report aggregate information regarding the overall effectiveness of the oral health infrastructure and capacity at the state and territorial level. It supports CDC's broader mission of reducing oral health disparities by enabling CDC staff to more effectively identify the strengths and weaknesses of individual state and territorial oral health programs; to identify national progress toward reaching the goals of *Healthy People 2010;* and to disseminate information related to successful public health interventions implemented by state and territorial programs to prevent and control the burden of oral diseases.

Information will be collected electronically twice per year. No changes to the MIS or the estimated burden per response are proposed. There is a small increase in the total estimated annualized burden due to the addition of one new CDC-funded oral health program. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| State Oral Health Programs | 16 | 2 | 11 | 352 |

Dated: December 8, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–29972 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–10–10AJ]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Evaluation of Childhood Obesity Prevention and Control Initiative: New York City Health Bucks Program—New—Division of Nutrition, Physical Activity, and Obesity (DNPAO), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Division of Nutrition, Physical Activity, and Obesity (DNPAO) at the Centers for Disease Control and Prevention (CDC), is working to reduce obesity and related health conditions via a multi-pronged approach including active identification of promising local programs and policies designed to prevent childhood obesity. Priority is being given to programs and policies targeting improved eating habits and physical activity levels among children in low-income communities.

The New York City Health Bucks program, operated by the New York City Department of Health and Mental Hygiene (DOHMH), is one example of this type of initiative. The program operates in three high-need, underserved New York City neighborhoods: The South Bronx, North and Central Brooklyn, and East and Central Harlem. Through the program, targeted neighborhood residents are provided with $2 ''Health Bucks'' that can be redeemed at local farmers' markets for the purchase of fresh, locally-grown fruits and vegetables. As an added incentive for Food Stamp/Supplemental Nutrition Assistance Program (SNAP) participants, individuals using an Electronic Benefits Transfer (EBT) card at participating farmers' markets receive one $2 Health Buck for every $5 spent. The Health Bucks program is intended to increase fresh fruit and vegetable purchases and consumption, and to increase access at the community level by attracting local farmers to these underserved areas.

CDC plans to sponsor an evaluation of the NYC Health Bucks program to assess changes in consumer behavior and to identify factors serving as barriers or facilitators to program implementation. The evaluation will involve vendors, managers and consumers at 90 farmers' markets in New York City, residents in the neighborhoods near markets that accept Health Bucks, and approximately 200 organizations expected to participate in the NYC Health Bucks program during 2010.

The evaluation will include seven information collection activities: (1) A Web-based survey of local community organizations that distribute Health

Bucks in the target neighborhoods. Responses will be analyzed to assess organizations' motivations for participating in the program and any barriers or facilitators encountered. Because this survey will replace the post-season survey currently required by the DOHMH, it is not expected to place substantial new burden on this group of respondents. (2) A market managers' survey will be mailed to the manager at each market site. This survey is designed to assess barriers and facilitators to distributing and accepting Health Bucks, as well as factors influencing decisions to operate markets in underserved neighborhoods. (3) A similar survey will be distributed to farmers' market vendors to assess their experiences with the program and factors influencing their decisions to sell at markets in underserved neighborhoods. (4) In-person interviews will be conducted with an average of 30 consumers at each Health Bucks markets and 20 at non-Health Bucks markets, for a total of about 2,300 consumers. The interviews will obtain information about consumers' access to fresh fruits and vegetables at farmers' markets and other sellers, fresh fruit and vegetable purchase and consumption, food insecurity, reasons for shopping at farmers' markets, and experiences with using Health Bucks and SNAP benefits at farmers' markets. (5) Similar information will be collected from random-digit dial telephone interviews of neighborhood residents. Approximately 1,000 residents will be surveyed, with equal sample sizes in each of the three New York City neighborhoods in which NYC Health Bucks operates. (6) Focus groups will be conducted with farmers' market vendors to obtain in-depth information about their motivations for operating in underserved neighborhoods and experiences with NYC Health Bucks. (7) Focus groups will be conducted with farmers' market consumers to obtain in-depth information about their motivations for shopping at farmers' markets and experiences with NYC Health Bucks. All focus groups will incorporate appropriate representation of diverse ethnic groups, and the groups will be held in convenient locations in New York City to ensure participants can attend.

Farmers' market consumer and vendor surveys and the telephone survey of neighborhood residents will be available in English or Spanish.

The information collected in the evaluation study will be used to: assess the program's ability to improve nutrition behaviors among targeted participants; identify factors serving as barriers and facilitators to program implementation and expected outcomes; provide feedback to the DOHMH for the purposes of program improvement; and share results with other entities interested in implementing similar programs.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form type | Number of respondents | Number of responses per respondent | Average burden (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Local Community Organizations | Local Community Organization Survey | 200 | 1 | 10/60 | 33 |
| Farmers' Market Managers | Farmers' Market Managers Survey | 90 | 1 | 8/60 | 12 |
| Farmers' Market Vendors | Farmers' Market Vendor Survey | 450 | 1 | 7/60 | 53 |
| | Farmers' Market Vendor Focus Group | 24 | 1 | 2 | 48 |
| Farmers' Market Consumers | Consumer Point-of-Purchase Survey | 2300 | 1 | 7/60 | 268 |
| | Consumer Focus Group | 48 | 1 | 2 | 96 |
| NYC Health Bucks Neighborhood Residents. | Neighborhood Resident Survey | 1000 | 1 | 9/60 | 150 |
| Total | | | | | 660 |

Dated: December 8, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–29974 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day-10–09AS]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Management Information System for Comprehensive Cancer Control Programs—Existing Collection without an OMB Control Number—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Division of Cancer Prevention and Control, Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Centers for Disease Control and Prevention (CDC) currently funds the National Comprehensive Cancer Control Program (NCCCP), which provides funding and technical support to all 50 states, the District of Columbia, seven Tribes/Tribal organizations, and seven territories/U.S. Pacific Island jurisdictions. The NCCCP was established to improve the integration and implementation of comprehensive cancer control (CCC) plans across funding and jurisdiction boundaries, and is an outgrowth of efforts involving CDC, the American Cancer Society, the National Cancer Institute, the American College of Surgeons, the North American Association of Central Cancer Registries, and public health leaders at the State and national levels.

All 65 NCCCP-funded programs are required to submit continuation applications and semi-annual progress reports describing performance plans and measures. To date, progress reports have been collected on templates that

serve as a guide, but do not standardize the information to be collected. The non-standardized approach to progress reporting has resulted in CCC program reports that vary in content and detail, and cannot be readily compiled to produce summary reports. OMB approval has not previously been obtained for the collection of this information.

CDC seeks OMB approval to implement a new database-driven Management Information System (MIS) for the collection of standardized progress and performance information. The MIS will achieve two objectives. First, the MIS will provide an organized source of information about the activities and accomplishments of all funded NCCCP programs. Secondly, the electronic MIS will provide an efficient mechanism for generating State, regional, and national level summary reports.

Information reported through the MIS will be used by CDC to identify training and technical assistance needs, monitor compliance with cooperative agreement requirements, evaluate progress made in achieving program-specific goals, and obtain information needed to respond to Congressional and other inquiries regarding program activities and effectiveness.

OMB approval is requested for a three-year period. Information will be collected electronically twice per year. The initial burden per response is estimated to be six hours. After respondents have become experienced with entering data, and the amount of new data to be entered decreases, the burden per response is expected to decrease. The total estimated annualized burden hours are 780. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|
| NCCCP grantees | 65 | 2 | 6 |

Dated: December 11, 2009.

**Marilyn S. Radke,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–30013 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day-10–0604]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

School Associated Violent Death Surveillance System (0920–0604)—Extension—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Division of Violence Prevention (DVP), National Center for Injury Prevention and Control (NCIPC) proposes to maintain a system for the surveillance of school-associated homicides and suicides. The system will rely on existing public records and interviews with law enforcement officials and school officials. The purpose of the system is to (1) estimate the rate of school-associated violent death in the United States and (2) identify common features of school-associated violent deaths. The system will contribute to the understanding of fatal violence associated with schools, guide further research in the area, and help direct ongoing and future prevention programs.

Violence is the leading cause of death among young people, and increasingly recognized as an important public health and social issue. In 2006, over 3,200 school aged children (5 to 18 years old) in the United States died violent deaths due to suicide, homicide, and unintentional firearm injuries. The vast majority of these fatal injuries were not school associated. However, whenever a homicide or suicide occurs in or around school, it becomes a matter of particularly intense public interest and concern. NCIPC conducted the first scientific study of school-associated violent deaths during the 1992–99 academic years to establish the true extent of this highly visible problem. Despite the important role of schools as a setting for violence research and prevention interventions, relatively little scientific or systematic work has been done to describe the nature and level of fatal violence associated with schools. Until NCIPC conducted the first nationwide investigation of violent deaths associated with schools, public health and education officials had to rely on limited local studies and estimated numbers to describe the extent of school-associated violent death.

The system will draw cases from the entire United States in attempting to capture all cases of school-associated violent deaths that have occurred. Investigators will review public records and published press reports concerning each school-associated violent death. For each identified case, investigators will also interview an investigating law enforcement official (defined as a police officer, police chief, or district attorney), and a school official (defined as a school principal, school superintendent, school counselor, school teacher, or school support staff) who are knowledgeable about the case in question. The investigators will interview 35 school officials annually. They will also interview 35 law enforcement officials annually. Researchers will request information on both the victim and alleged offender(s)—including demographic data, their academic and criminal records, and their relationship to one another. They will also collect data on the time and location of the death; the circumstances, motive, and method of the fatal injury; and the security and violence prevention activities in the school and community where the death occurred, before and after the fatal injury event. The

estimated annual burden hours is 70. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|
| School Officials | 35 | 1 | 60/60 |
| Law Enforcement Officials | 35 | 1 | 60/60 |

Dated: December 11, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–30008 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30–Day–10–09AR]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

STD Surveillance Network (SSuN)—Existing collection without an OMB number—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The purpose of the proposed study is to improve the capacity of national, state, and local STD programs to detect, monitor, and respond rapidly to trends in STDs through enhanced collection, reporting, analysis, visualization and interpretation of disease information. A pilot project that took place from 2006 to 2008 informed the design of the currently submitted SSuN project. The pilot project was helpful in establishing the sample size estimations that will be used in the project and the standardization of the way in which questions will be asked of patients. OMB clearance was not sought for this pilot project because reporting sites (public health departments) instead of people were mistakenly counted as respondents. There were only 6 sites that were reporting data to CDC for the clinic portion of the project; however, more than 10 subjects were involved with the population portion of the pilot.

The SSuN Project will be an active STD sentinel surveillance network comprised of 12 surveillance sites around the United States. SSuN will use two surveillance strategies to collect information. The first will be a STD clinic-based surveillance which will extract data from existing electronic medical records for all patient visits at participating STD clinics over the 3 years. The second will be a population-based surveillance in which a sample of individuals reported with gonorrhea to the 12 SSuN state or city health departments are interviewed using locally designed interview templates.

For the clinic-based surveillance, the specified data elements will be abstracted on a quarterly basis from existing electronic medical records for all patient visits to participating clinics. Data in the electronic medical record may be collected at time of registration, during the clinic encounter, or through laboratory testing. For the population-based STD surveillance, the results of interviews will be entered into a developed Microsoft Access database that will be adapted locally for each clinic. High quality, informative, and timely surveillance data are necessary to guide STD programs so interventions are designed and implemented appropriately. Furthermore, surveillance data are necessary for understanding the impact of STD interventions based on the epidemiology of each STD.

This information will be collected to establish an integrated network of sentinel STD clinics and health departments to inform and guide national programs and policies for STD control in the US. It will improve the capacity of national, state, and local STD programs to detect, monitor, and respond to established and emerging trends in STDs, HIV, and viral hepatitis. SSuN will help identify and evaluate the effectiveness of public health interventions to reduce STD morbidity.

The SSuN surveillance platform will allow CDC to establish and maintain common standards for data collection, transmission, and analysis, and will allow CDC to build and maintain STD surveillance expertise in 12 surveillance areas. Such common systems, established mechanisms of communication, and in-place expertise are all critical components for timely, flexible, and high quality surveillance.

There is no cost to respondents other than their time. The total estimated annual burden hours are 432.

ESTIMATED ANNUALIZED BURDEN HOURS

| Types of respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|
| SSuN site | 12 | 4 | 2 |
| Gonorrhea Case | 2880 | 1 | 7/60 |

Dated: December 11, 2009.

**Marilyn S. Radke,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–30007 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day-10–0479]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Automated Management Information System (MIS) for Diabetes Control Programs (OMB No. 0920–0479, expiration date 5/31/2010)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Diabetes is the seventh leading cause of death in the United States, contributing to more than 233,619 deaths each year. An estimated 23.6 million people in the United States have diabetes: 17.9 million people who have been diagnosed with diabetes and 5.7 million people have undiagnosed diabetes. To reduce the burden of this disease, the Centers for Disease Control and Prevention (CDC) established the national Diabetes Control Program, authorized under sections 301 and 317(k) of the Public Health Service Act [42 U.S.C. sections 241 and 247b(k)]. This program provides funding to health departments in States and territories to develop, implement, and evaluate population-based Diabetes Prevention and Control Programs (DPCPs). These programs provide support for health departments to design, implement and evaluate diabetes prevention and control strategies that improve access to and quality of care for all, including communities most impacted by the burden of diabetes (*e.g.,* racial/ethnic minority populations, the elderly, rural dwellers and the economically disadvantaged).

CDC currently collects information from DCPCs through a Web-based Management Information System (MIS). The information is used to monitor compliance with cooperative agreement requirements, evaluate progress in achieving program-specific goals, and identify needs for training and technical assistance. The MIS is a Web-based, password access-protected repository and technical reporting system that supports the collection of accurate, uniform, and timely information about DCPCs. The MIS has standardized the format and the content of diabetes data reported from the DPCPs and provides an electronic means for efficient collection and transmission of information to CDC.

The information collected through the MIS allows CDC to monitor, evaluate, and compare individual programs; to assess and report aggregate information regarding the overall effectiveness of the DPCP program; and to rapidly respond to external inquiries about specific diabetes control activities. The MIS also supports DDT's broader mission of reducing the burden of diabetes by enabling DDT staff to more effectively identify the strengths and weaknesses of individual DPCPs and to disseminate information related to successful public health interventions.

Approval to collect information for three additional years will be requested. Respondents will be 53 DCPCs in States, the District of Columbia, the Virgin Islands, and Puerto Rico. The information collection will not include the Pacific Islands jurisdictions that were previously funded through the national Diabetes Control Program and will be funded through a separate mechanism in the future.

All information will be collected electronically. Action Plan items will be reported twice per year and other items will be reported once per year. During the next approval period, selected data elements will be revised to provide a common set of progress and performance indicators across a number of CDC's chronic disease prevention and control programs, as outlined in the new funding opportunity announcement. Burden to respondents will be reduced due to improved organization of the MIS, and increased use of existing data resources. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| Diabetes Prevention and Control Programs. | Program Information: Program Summary | 53 | 1 | 12 | 636 |
| | Resources: Personnel | 53 | 1 | 13 | 689 |
| | Resources: Contracts | 53 | 1 | 5 | 265 |
| | Resources: Partners | 53 | 1 | 10 | 530 |
| | Planning: Data Sources | 53 | 1 | 5 | 265 |
| | Action Plan Project Period Objectives & Updates. | 53 | 2 | 5 | 530 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| | Action Plan Annual Objectives & Activities & Updates. | 53 | 2 | 11.5 | 1,219 |
| Total | | | | | 4,134 |

Dated: December 8, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–29971 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–10–0009]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

National Disease Surveillance Program (OMB No. 0920–0009 Exp. 3/31/2010)—Revision—National Center for Zoonotic, Vector-borne, and Enteric Diseases (NCZVED), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Formal surveillance of 17 separate reportable diseases has been ongoing to meet the public demand and scientific interest in accurate, consistent, epidemiologic data. These ongoing disease reports include: Creutzfeldt-Jakob Disease (CJD), Cyclospora, Dengue, Hantavirus, Kawasaki Syndrome, Legionellosis, Lyme disease, Malaria, Plague, Q Fever, Reye Syndrome, Tickborne Rickettsial Disease, Trichinosis, Tularemia, Typhoid Fever, and Viral Hepatitis. This revision entails the discontinuation of the two Active Bacterial Surveillance (ABCs) forms which now collect data under a separate OMB control number, 0920–0802. Case report forms from state and territorial health departments enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases.

The purpose of the proposed study is to direct epidemiologic investigations, identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and develop guidelines for prevention and treatment. The data collected will also be used to recommend target areas most in need of vaccinations for selected diseases and to determine development of drug resistance. Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form | Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| CJD | Epidemiologist | 20 | 2 | 20/60 | 13 |
| Cyclosporiasis | Epidemiologist | 55 | 10 | 15/60 | 138 |
| Dengue | Epidemiologist | 55 | 182 | 15/60 | 2503 |
| Hantavirus | Epidemiologist | 46 | 3 | 20/60 | 46 |
| Kawasaki Syndrome | Epidemiologist | 55 | 8 | 15/60 | 110 |
| Legionellosis | Epidemiologist | 23 | 12 | 20/60 | 92 |
| Lyme Disease | Epidemiologist | 52 | 385 | 10/60 | 3337 |
| Malaria | Epidemiologist | 55 | 20 | 15/60 | 275 |
| Plague | Epidemiologist | 11 | 1 | 20/60 | 4 |
| Q Fever | Epidemiologist | 55 | 1 | 10/60 | 9 |
| Reye Syndrome | Epidemiologist | 50 | 1 | 20/60 | 17 |
| Tick-borne Rickettsia | Epidemiologist | 55 | 18 | 10/60 | 165 |
| Trichinosis | Epidemiologist | 25 | 1 | 20/60 | 8 |
| Tularemia | Epidemiologist | 55 | 2 | 20/60 | 37 |
| Thphoid fever | Epidemiologist | 55 | 6 | 20/60 | 110 |
| Viral hepatitis | Epidemiologist | 55 | 200 | 25/60 | 4583 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Form | Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Total | | | | | 11,447 |

Dated: December 10, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–30015 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day-10–0761]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Randomized Controlled Trial of Routine Screening for Intimate Partner Violence (OMB No. 0920–0761 Exp. 1/31/2011)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Intimate partner violence (IPV) is a prevalent problem with serious health consequences that include death, physical injury, increased rates of physical illness, posttraumatic stress, increased psychological distress, depression, substance abuse, and suicide. Some studies suggest that abuse perpetrated by intimate partners tends to be repetitive and escalates in severity over time. This research has been the basis for promoting early diagnosis and intervention.

Health care providers appear to be well situated to identify IPV. Women come into contact with health care services routinely for a number of reasons such as prenatal care, family planning, cancer screening, and well baby care. Women experiencing IPV make more visits to emergency departments, primary care facilities, and mental health agencies than non-abused women. Considering the magnitude and severity of IPV, and the potential role health care providers could play in reducing its serious consequences, numerous professional and health care organizations have recommended routine screening of women for IPV in primary care settings. However, various systematic reviews of the literature have not found evidence for the effectiveness of screening to improve outcomes for women exposed to IPV.

Based on the recommendations of an expert panel convened, CDC is proposing to conduct a randomized controlled trial to provide this evidence. The trial will recruit 2675 women in a network of women's health clinics. Women attending these clinics tend to be African American and of lower socioeconomic status. For this study, women will be randomly allocated to one of three arms: (1) Screened for IPV, and if disclosing IPV, provided information on available IPV services; (2) not screened and all receiving information on available IPV services; or (3) a control group that will not be screened nor receive information on available IPV services. All three arms will be assessed with a self-report measure for disability, quality of life, and utilization of health services at baseline utilizing an audio-computer-assisted structured interview (A–CASI) and at a 12-month follow-up utilizing a computerized-assisted telephone interview (CATI). The results from this Randomized Controlled Trial, will guide CDC as well as other governmental agencies, professional and health care organizations, and women's advocate groups in formulating its recommendations and policies regarding routine screening. A pretest with 196 women in a women's health clinic was conducted to test the enrollment, randomization, interview, and follow-up procedures; and provide estimates for outcome measures. Based on the results of the pretest, CDC has revised the measures, procedures, and sample size requirements for the Randomized Controlled Trial. There are no costs to respondents other than their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden response (in hours) | Annual burden (in hours) |
|---|---|---|---|---|---|
| Women Seeking Health Care Services. | Eligibility Script for Pretest | 70 | 1 | 1/60 | 2 |
| | Baseline Questionnaire Pretest | 65 | 1 | 15/60 | 17 |
| | Follow-up Questionnaire Pretest | 59 | 1 | 12/60 | 12 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden response (in hours) | Annual burden (in hours) |
|---|---|---|---|---|---|
| | Eligibility Script for Main Study ..... | 668 | 1 | 1/60 | 12 |
| | Baseline Questionnaire Main Study | 535 | 1 | 16/60 | 143 |
| | Follow-up Questionnaire Main Study (estimated 30% lost to follow-up). | 356 | 1 | 21/60 | 125 |
| Total ..... | ..... | ..... | ..... | ..... | 311 |

Dated: December 11, 2009.

**Marilyn S. Radke,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–30014 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day-10–0735]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

CDC Web site and Communication Channels Usability Evaluation (OMB No. 0925–0735, Exp. 3/31/2010)—Revision—National Center for Health Marketing (NCHM), Centers for Disease Control and Prevention (CDC.)

*Background and Brief Description*

Executive Order 12862 directs Federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they need and their level of satisfaction with existing services. The Centers for Disease Control and Prevention (CDC) seeks approval to conduct usability surveys on CDC Web sites, social media, mobile-based or other electronic communication channels hosting CDC content on an ongoing basis.

It is important for CDC to ensure that health information, interventions, and programs at CDC are based on sound science, objectivity, and continuous customer input. The CDC Web sites, social media, mobile-based or other electronic communication channels hosting CDC content must be designed to be easy to use, easy to access, and effective providers of health information and resources to our target audiences.

CDC is requesting renewal of our existing 3-year generic clearance, with revisions, in order to carry out its mission. This revised proposal requests clearance for usability surveys on the Centers for Disease Control and Prevention (CDC) Web site and, in addition, social media, mobile-based or other electronic communication channels hosting CDC content. With the previous Usability Evaluation package, various groups around the agency were able to conduct useful surveys assessing the usability of a variety of CDC Web sites. These surveys covered important CDC programs and topics, such as Seasonal Flu, Tuberculosis, HIV, STDs, and Chronic Diseases. The CDC.gov Homepage and other CDC Web sites were redesigned based on usability surveys conducted within this package and the resulting designs improved performance for Web site users and won numerous awards, both within and outside of, the Federal government space. The next step is to continue usability surveys on more Web sites, staying abreast of changes in target audience needs and online behavior as well as survey users of CDC social media, mobile-based or other electronic communication channels hosting CDC content that currently exist or will emerge during the life of this package. CDC is currently using mobile Web sites, text messaging, online quizzes, widgets, podcasts, eCards, online video, motion graphics, blogs, syndicated content, and other communication channels and will continue to explore other channels which provide CDC content to target audiences when, where, and how they want and need it. As new channels emerge, CDC will explore using them to deliver its content.

Usability surveys determine how well CDC's Web site, social media, mobile-based or other electronic communication channels hosting CDC content are performing. Observation and data collection on how users interact with the Web site or other electronic communication channels hosting CDC content are critical in ensuring that users can find information, that the Web site or other electronic communication channels are easy to use and designed to meet the needs of specific audiences. This package requests clearance for two types of surveys: Remote or in person. Remote surveys will collect data about how participants interact with CDC's Web site, social media, mobile-based or other electronic communication channels hosting CDC content. Users will take the survey at their home or work computers. In person surveys will have participants take the survey in a central location where their data can be captured electronically, as with the remote survey, but also the participants can be directly observed. The direct observation of in person surveys allows for enhanced collection of information

such as observation of facial expressions and listening to verbal feedback. This package provides a list of generic tasks and questions for the surveys that can be used to develop a survey for a specific CDC Web site, social media, mobile-based or other electronic communication channel hosting CDC content. Screening questions (comprised of demographic, introductory, or core questions) are also included in the package, and a subset of these screening questions will be used to create the proper sample for each usability survey. Participants in a usability survey are reflective of the target audience for a CDC Web site, social media, mobile-based or other electronic communication channel hosting CDC content.

Generic clearance is needed to ensure that CDC can continuously improve its Web sites, social media, mobile-based or other electronic communication channels hosting CDC content through regular surveys developed from these pre-defined questions.

Surveying the CDC Web site, social media, mobile-based or other electronic communication channels hosting CDC content on a regular, ongoing basis ensures that users have an effective, efficient, and satisfying experience on any of our Web sites or communication channels, maximizing the health impact of the information and resulting in optimum benefit for public health. The surveys will ensure that all CDC Web sites and electronic communication channels meet customer and partner priorities, build CDC's brand, and contribute to CDC health impact goals. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Survey type | Number of respondents | Frequency of response per respondent | Average burden per response (hrs.) | Total burden hours |
|---|---|---|---|---|
| In Person Surveys | 8,000 | 1 | 1 | 8,000 |
| Remote Surveys | 67,000 | 1 | 30/60 | 33,500 |
| Total | 75,000 | ..... | ..... | 41,500 |

Dated: December 9, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–29966 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–256]**

### Availability of Draft Toxicological Profiles

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), § 104(i)(3) [42 U.S.C. 9604(i)(3)], directs the ATSDR Administrator to prepare toxicological profiles of priority hazardous substances and, as necessary, to revise and publish each updated toxicological profile. This notice announces the availability of the 23rd set of toxicological profiles, which consists of three new and two updated drafts prepared by ATSDR for review and comment.

**DATES:** To be considered, comments on these draft toxicological profiles must be received on or before February 26, 2010. Comments received after the public comment period will be considered at the discretion of ATSDR, based on what it deems in the best interest of the general public.

**ADDRESSES:** Send requests for printed copies of the draft toxicological profiles to the attention of Ms. Olga Dawkins, *ODawkins@cdc.gov*, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–62, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Electronic access to these documents is also available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html*.

Requests for printed copies of the draft toxicological profiles must be in writing and must specifically identify the hazardous substance(s) profile(s) you wish to receive. ATSDR reserves the right to provide free of charge only one copy of each requested profile. Requestors will be notified in the event of extended distribution delays.

Written comments and other data submitted in response to this notice and in response to the draft toxicological profiles should bear the docket control number ATSDR–256. Send one copy of all comments and three copies of all supporting documents to the attention of Ms. Nickolette Roney, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–62, 1600 Clifton Road, NE., Atlanta, Georgia 30333, no later than the end of the comment period. Electronic comments may be sent via e-mail to *TPPublicComments@cdc.gov* and should contain the docket control number ATSDR–256 in the subject line.

Because all public comments regarding ATSDR toxicological profiles are available for public inspection, do not submit confidential information in response to this notice.

**FOR FURTHER INFORMATION CONTACT:** Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–62, 1600 Clifton Road, NE., Atlanta, Georgia 30333; telephone number (800) 232–4636 or (770) 488–3315.

**SUPPLEMENTARY INFORMATION:** The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for ATSDR and the U.S. Environmental Protection Agency (U.S. EPA) with regard to hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). As part of these responsibilities, the ATSDR Administrator must prepare toxicological profiles for substances enumerated on the priority list of hazardous substances. This list identifies 275 hazardous substances

which, according to ATSDR and U.S. EPA, pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on March 6, 2008 (73 FR 12178). In addition, ATSDR has the authority to prepare toxicological profiles for substances not found at sites on the National Priorities List, in an effort to ''* * * establish and maintain inventory of literature, research, and studies on the health effects of toxic substances'' under CERCLA Section 104(i)(1)(B), to respond to requests for consultation under section 104(i)(4), and as otherwise necessary to support the site-specific response actions conducted by ATSDR.

For previous versions of the list of substances, see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744); November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014); November 7, 2003 (68 FR 63098); and December 7, 2005 (70 FR 72840). [CERCLA also requires that ATSDR initiate a research program to fill data needs associated with the substances.] Section 104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, a summary, and an interpretation of available toxicological information and epidemiological evaluations. This information and these data identify the levels of significant human exposure for the substance and for the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or is in the process of development. If adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to ensure the initiation of research to determine such health effects.

Although during the profile development process ATSDR considered key studies for each of the substances, this **Federal Register** notice solicits any relevant, additional studies, particularly unpublished data and ongoing studies. ATSDR will evaluate such data or studies for possible addition to the profiles, now or in the future.

The following draft toxicological profiles have been made available to the public:

| Toxicological profile | CAS Number |
|---|---|
| 1. Acrylamide | 79–06–1 |
| 2. Carbon Monoxide | 630–08–0 |
| 3. 1,3–Butadiene | 106–99–0 |
| 4. Phosphate Ester Flame Retardants | 78–51–3 |
| | 126–73–8 |
| | 126–71–6 |
| | 115–86–6 |
| | 13674–84–5 |
| | 13674–87–8 |
| | 115–96–8 |
| 5. Vanadium | 7440–62–2 |

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We seek public comment and additional information that may supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as the best means to serve public health and our clients.

Dated: December 4, 2009.

**Ken Rose,**

*Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.*

[FR Doc. E9–29345 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–70–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–F–0570]**

### Lallemand, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Lallemand, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of vitamin $D_2$ bakers yeast as a dual purpose nutrient supplement and leavening agent or dough relaxer in yeast-containing baked products.

**FOR FURTHER INFORMATION CONTACT:** Judith Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1071.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4779) has been filed by Lallemand, Inc., c/o Dennis T. Gordon, 117 N. Welcome Slough Rd., Puget Island, Cathlamet, WA 98612. The petition proposes to amend the food additive regulations in part 172 *Food Additives Permitted for Direct Addition to Food for Human Consumption* (21 CFR part 172) to provide for the safe use of vitamin $D_2$ bakers yeast as a dual purpose nutrient supplement and leavening agent or dough relaxer in yeast-containing baked products.

The agency has determined under 21 CFR 25.32(k) 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.

Dated: December 8, 2009.

**Laura M. Tarantino,**

*Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.*

[FR Doc. E9–29961 Filed 12–16–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Health Center Program

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of noncompetitive replacement awards to Regional Health Care Affiliates.

**SUMMARY:** The Health Resources and Services Administration (HRSA) will be transferring Health Center Program (section 330 of the Public Health Service Act) New Access Point (NAP) and Increased Demand for Service (IDS) funds originally awarded to Trover Health System to Regional Health Care Affiliates to ensure the provision of critical primary health care services to underserved populations in Webster and McLean Counties, Kentucky.

**SUPPLEMENTARY INFORMATION:**

*Former Grantee of Record:* Trover Health System.

*Original Period of Grant Support:* March 1, 2009 to February 28, 2011 (NAP) and March 27, 2009 to March 26, 2011 (IDS).

*Replacement Awardee:* Regional Health Care Affiliates.

*Amount of Replacement Awards:* $1,300,000 (NAP) and $101,000 (IDS).

*Period of Replacement Awards:* The period of support for the replacement awards is March 1, 2009, to February 28, 2011 (NAP) and March 27, 2009, to March 26, 2009 (IDS).

**Authority:** Section 330 of the Public Health Service Act, 42 U.S.C. 245b.

*CFDA Number:* 93.703.

**Justification for the Exception to Competition**

Under the original grant applications approved by HRSA, Regional Health Care Affiliates (RHCA) was identified as the provider of health care services on behalf of the Trover Health System, while Trover Health System was to serve in an administrative capacity for the grants. After the awards were issued, Trover Health System and RHCA notified HRSA that RHCA's organizational structure had changed to enable it to carry out both administrative and programmatic requirements. The two parties requested that full responsibility for the grants be transferred from Trover Health System to RHCA. RHCA provided documentation that it meets Section 330 statutory and regulatory requirements as well as applicable grant management requirements.

Regional Health Care Affiliates will directly initiate primary health care services in Webster and McLean Counties to the more than 5,250 low income, underserved and uninsured individuals in the original service area, Webster and McLean Counties, KY, as had been proposed in funded grant applications.

Regional Health Care Affiliates can provide primary health care services immediately, is located in the same geographical area where the Trover Health System's primary health care services have been provided, and will be able to provide continuity of care to patients of the former grantee.

This underserved target population has an immediate need for vital primary health care services and would be negatively impacted by any delay caused by a competition. As a result, in order to ensure that critical primary health care services are available to the original target population in a timely manner, these replacement awards will not be competed.

**FOR FURTHER INFORMATION CONTACT:** Marquita Cullom-Stott via e-mail at *MCullom-Stott@hrsa.gov* or 301–594–4300.

Dated: December 10, 2009.

**Mary K. Wakefield,**

*Administrator.*

[FR Doc. E9–30010 Filed 12–16–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–D–0573]**

### International Conference on Harmonisation; Draft Guidance on Addendum to International Conference on Harmonisation S6; Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals S6(R1); Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Addendum to ICH S6: Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals S6(R1).'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides recommendations on nonclinical studies to support the safety of clinical trials and marketing applications for biotechnology-derived pharmaceuticals. The draft guidance is intended to clarify and provide greater detail to the nonclinical recommendations in the ICH guidance entitled ''S6 Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals'' (ICH S6) published in the **Federal Register** of November 18, 1997 (62 FR 61515).

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance by February 1, 2010.

**ADDRESSES:** Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the guidance*: Anne M. Pilaro, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 2324, Silver Spring, MD 20993–0002, 301–796–2320; or Mercedes A. Serabian, Center for Biologics Evaluation and Research (HFM–760), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5377.

*Regarding the ICH*: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics

Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In October 2009, the ICH Steering Committee agreed that a draft guidance entitled ''Addendum to ICH S6: Preclinical Safety Evaluation of Biotechnology-Derived Pharmaceuticals S6(R1)'' should be made available for public comment. The draft guidance is the product of the Safety (S6) Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the ICH S6 Safety Expert Working Group.

The draft document provides guidance on nonclinical studies to support the safety of clinical trials and marketing applications for biotechnology-derived pharmaceuticals. Biotechnology-derived pharmaceuticals include protein therapeutic, diagnostic, and prophylactic products derived from cell-culture systems such as bacteria, yeast, and eukaryotic cells, including organisms produced by recombinant DNA technology. The draft guidance specifically provides clarification of and greater detail to the nonclinical recommendations in ICH S6 regarding the topics of species selection, study design, and recommendations for immunogenicity, carcinogenicity, and reproductive and developmental toxicity testing of biotechnology-derived pharmaceuticals. ICH S6 was published more than 10 years ago and much knowledge relevant to the safety evaluation of biopharmaceuticals has been gained since that original publication. This draft guidance seeks to incorporate this new knowledge within the established framework of ICH S6 and is intended to enable the development of safe and effective biopharmaceuticals. In addition, this draft guidance harmonizes approaches given in both ICH S6 and the ICH guidance ''M3(R2) Nonclinical Safety Studies for the Conduct of Human Clinical Trials and Marketing Authorization for Pharmaceuticals.''

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments on the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: December 11, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–29991 Filed 12–16–09; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–D–0579]**

### International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 11 on Capillary Electrophoresis General Chapter; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 11: Capillary Electrophoresis General Chapter.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results of the ICH Q4B evaluation of the Capillary Electrophoresis General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This draft guidance is the 11th annex to the core Q4B guidance, which was made available in the **Federal Register** of February 21, 2008 (73 FR 9575).

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by February 16, 2010.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the guidance:* Robert H. King, Sr., Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002,

301–796–1242; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

*Regarding the ICH:* Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In October 2009, the ICH Steering Committee agreed that a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 11: Capillary Electrophoresis General Chapter'' should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Capillary Electrophoresis General Chapter harmonization proposal originating from the three-party PDG. This draft guidance is in the form of an annex to the core ICH Q4B guidance. Once finalized, the annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

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Dated: December 11, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–29990 Filed 12–16–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–D–0574]**

### International Conference on Harmonisation; Draft Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 12 on Analytical Sieving General Chapter; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 12: Analytical Sieving General Chapter.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance provides the results of the ICH Q4B evaluation of the Analytical Sieving General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The draft guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The draft guidance is intended to recognize the interchangeability between the local regional pharmacopoeias, thus avoiding redundant testing in favor of a common testing strategy in each regulatory region. This draft guidance is the 12th annex to the core Q4B guidance, which was made available in the **Federal Register** of February 21, 2008 (73 FR 9575).

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by February 16, 2010.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201,

Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*Regarding the guidance*: Robert H. King, Sr., Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4150, Silver Spring, MD 20993–0002, 301–796–1242; or Christopher Joneckis, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–0373.

*Regarding the ICH*: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In October 2009, the ICH Steering Committee agreed that a draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 12: Analytical Sieving General Chapter'' should be made available for public comment. The draft guidance is the product of the Q4B Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Q4B Expert Working Group.

The draft guidance provides the specific evaluation results from the ICH Q4B process for the Analytical Sieving General Chapter harmonization proposal originating from the three-party PDG. This draft guidance is in the form of an annex to the core ICH Q4B guidance. Once finalized, the annex will provide guidance to assist industry and regulators in the implementation of the specific topic evaluated by the ICH Q4B process.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: December 11, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–29988 Filed 12–16–09; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (''the Program''), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault

compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at Section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on January 5, 2009, through March 30, 2009.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

(a) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by'' one of the vaccines referred to in the Table, or

(b) ''Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Vaccine Injury Compensation Program, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (*Petitioner's Name* v. *Secretary of Health and Human Services*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

**List of Petitions**

1. Tracy and Edward Roman on behalf of Chase Roman, Philadelphia, Pennsylvania. *Court of Federal Claims Number:* 09–0001V.

2. Michelle and Waleed Moujaes on behalf of Dimitri Moujaes, Dublin, Ohio. *Court of Federal Claims Number:* 09–0002V.

3. Annette and Matt Flynn on behalf of Nathan Flynn, Kenosha, Washington. *Court of Federal Claims Number:* 09–0009V.

4. Brenda and Daniel Klein on behalf of Kara Quinn Klein, McMurray, Pennsylvania. *Court of Federal Claims Number:* 09–0010V.

5. Nelly and Leon Huppert on behalf of Zachary Huppert, Garden City, New York. *Court of Federal Claims Number:* 09–0011V.

6. James Burghardt, Staten Island, New York. *Court of Federal Claims Number:* 09–0012V.

7. Benjamin Jahanbani, Riverside, California. *Court of Federal Claims Number:* 09–0019V.

8. Glinda Morse on behalf of Kaden Morse, Crawfordville, Florida. *Court of Federal Claims Number:* 09–0023V.

9. Amy and Evan and Tyler Frey on behalf of Frederick Frey, Jr., Deceased, Baton Rouge, Louisiana. *Court of Federal Claims Number:* 09–0026V.

10. Kimberly Hicks on behalf of Chasen Hicks, Baytown, Texas. *Court of Federal Claims Number:* 09–0028V.

11. Deborah and Jack Breard on behalf of Reneau Breard, Garden City, New York. *Court of Federal Claims Number:* 09–0029V.

12. Cynthia Lilley on behalf of Robert Lilley, Nashville, Tennessee. *Court of Federal Claims Number:* 09–0031V.

13. Jacqueline and Mark Smith on behalf of Kyler J. Smith, Palm Harbor, Florida. *Court of Federal Claims Number:* 09–0032V.

14. Ronald R. Leyland, Greensburg, Pennsylvania. *Court of Federal Claims Number:* 09–0033V.

15. Elliott M. Leake, Raleigh, North Carolina. *Court of Federal Claims Number:* 09–0034V.

16. Amy Crutchfield, New York, New York. *Court of Federal Claims Number:* 09–0039V.

17. Theresa and Mark Eichinger on behalf of Samantha Eichinger, Cedar Rapids, Iowa. *Court of Federal Claims Number:* 09–0040V.

18. Cheri A. Johnson, Coon Rapids, Minnesota. *Court of Federal Claims Number:* 09–0041V.

19. Helaine and William Searle on behalf of Cody James Searle, Prescott, Arizona. *Court of Federal Claims Number:* 09–0043V.

20. Dayna and Mike Relstab on behalf of Michael Relstab, Memphis, Tennessee. *Court of Federal Claims Number:* 09–0047V.

21. Lee Keffer, Kosovo, Serbia. *Court of Federal Claims Number:* 09–0050V.

22. Sharon Goldman, Somerville, Massachusetts. *Court of Federal Claims Number:* 09–0051V.

23. Shauna Ammendola, Ridgewood, New Jersey. *Court of Federal Claims Number:* 09–0056V.

24. Ziva Fink, St. Louis Park, Minnesota. *Court of Federal Claims Number:* 09–0057V.

25. Patricia Blow on behalf of Kenn Blow, Deceased, Faribault, Minnesota. *Court of Federal Claims Number:* 09–0058V.

26. Lauren Caro, Sunrise, Florida. *Court of Federal Claims Number:* 09–0061V.

27. Donna and John Guerra on behalf of Michael Guerra, San Antonio, Texas. *Court of Federal Claims Number:* 09–0062V.

28. Melissa and John Mark Wallace on behalf of Melodi Mae Wallace, Sandy, Utah. *Court of Federal Claims Number:* 09–0065V.

29. Julia and Thomas Canny on behalf of Christian Canny, Garden City, New York. *Court of Federal Claims Number:* 09–0068V.

30. Tserendulam and Daniel Wagner on behalf of Sarnai Wagner, Pooler,

Georgia. *Court of Federal Claims Number:* 09–0069V.

31. Angela and Andrew Rewolinski on behalf of Alexander Rewolinksi, West Allis, Wisconsin. *Court of Federal Claims Number:* 09–0070V.

32. Angela and Andrew Rewolinski on behalf of Ethan Rewolinski, West Allis, Wisconsin. *Court of Federal Claims Number:* 09–0071V.

33. Catherine Guidry on behalf of Hayden Guidry, St. Francisville, Louisiana. *Court of Federal Claims Number:* 09–0072V.

34. Shannon Nelson, Schaumburg, Illinois. *Court of Federal Claims Number:* 09–0073V.

35. Dolores Holzem, Dells, Wisconsin. *Court of Federal Claims Number:* 09–0076V.

36. Jessica and R. Blake Schmutz on behalf of Dallin Blake Schmutz, Dallas, Texas. *Court of Federal Claims Number:* 09–0077V.

37. Hodan Hassan on behalf of Geni-Fadumo Farah, New Hope, Minnesota. *Court of Federal Claims Number:* 09–0079V.

38. Cheryl and Ernest Graves on behalf of Garrett Lee Graves, Fernandina Beach, Florida. *Court of Federal Claims Number:* 09–0080V.

39. Neeru Arora, Vernon Hills, Illinois. *Court of Federal Claims Number:* 09–0083V.

40. Ben D. Schultz, Sauk City, Wisconsin. *Court of Federal Claims Number:* 09–0084V.

41. Tiffany and Rodrigo Magalhaes on behalf of Christopher Magalhaes, Camp Legune, North Carolina. *Court of Federal Claims Number:* 09–0085V.

42. Sou Sou Awad on behalf of Christopher L. Varga, Phoenix, Arizona. *Court of Federal Claims Number:* 09–0087V.

43. Helen and Lloyd Barnes on behalf of Helen Therese Barnes, Omaha, Nebraska. *Court of Federal Claims Number:* 09–0088V.

44. Usuamayak Danesi on behalf of Sean Danesi, Reseda, California. *Court of Federal Claims Number:* 09–0090V.

45. Rachel Campos on behalf of Alexis Campos, Bountiful, Utah. *Court of Federal Claims Number:* 09–0091V.

46. Elizabeth Pace Laderer, Glenn Cove, New York. *Court of Federal Claims Number:* 09–0097V.

47. April and Scott Sanders on behalf of Mathew Dylan Sanders, Ada, Oklahoma. *Court of Federal Claims Number:* 09–0098V.

48. Carlis James DeWese, Gambrills, Maryland. *Court of Federal Claims Number:* 09–0101V.

49. Chistina Blackfox on behalf of Victoria Nicole Blackfox, Deceased, Miami, Oklahoma. *Court of Federal Claims Number:* 09–0102V.

50. Katie and Mark Eleccion on behalf of Mark Eleccion, Napa, California. *Court of Federal Claims Number:* 09–0105V.

51. Michelle Broussard-Pacot on behalf of Cole Pacot, Rowlett, Texas. *Court of Federal Claims Number:* 09–0107V.

52. Harry Selph, Greenville, South Carolina. *Court of Federal Claims Number:* 09–0110V.

53. Radhakrishna Kukkillaya on behalf of Manorama A. Kukkillaya, Logan, West Virginia. *Court of Federal Claims Number:* 09–0115V.

54. Katie and Dan Dittman on behalf of Jolie Tess Dittman, Omaha, Nebraska. *Court of Federal Claims Number:* 09–0117V.

55. Sonya and Erik Mercado on behalf of Erik Mercado, Jr., Deceased, Austin, Texas. *Court of Federal Claims Number:* 09–0120V.

56. Kimberly Totzkay on behalf of Shelby Whale, Taylor, Michigan. *Court of Federal Claims Number:* 09–0123V.

57. Susan Johnson, Winston-Salem, North Carolina. *Court of Federal Claims Number:* 09–0124V.

58. Yin H. Mendive-Garcia and Julio Garcia on behalf of Julian A. Garcia, Richardson, Texas. *Court of Federal Claims Number:* 09–0126V.

59. Elizabeth Medina and George Barahona on behalf of Brandon Barahona, Wenonah, New Jersey. *Court of Federal Claims Number:* 09–0127V.

60. Trinity and Johnny Montgomery on behalf of Trace Montgomery, Ardmore, Oklahoma. *Court of Federal Claims Number:* 09–0128V.

61. Brianna Samsal on behalf of Michael Thomas Martin, Deceased, Newport Beach, California. *Court of Federal Claims Number:* 09–0132V.

62. Yin H. Mendive-Garcia and Julio Garcia on behalf of Julian A. Garcia, Richardson, Texas. *Court of Federal Claims Number:* 09–0134V.

63. Eura Dell Franklin, Dallas, Texas. *Court of Federal Claims Number:* 09–0135V.

64. Joseph John Dushel, Baltimore, Maryland. *Court of Federal Claims Number:* 09–0138V.

65. Jamie and Joseph Uhelsky on behalf of Caitlin Uhelsky, Middletown, New York. *Court of Federal Claims Number:* 09–0140V.

66. Limya Elshazli on behalf of Mohamed Mohamed, Dallas, Texas. *Court of Federal Claims Number:* 09–0141V.

67. Jody and James Rettig on behalf of Tristan James Rettig, Cumming, Georgia. *Court of Federal Claims Number:* 09–0143V.

68. Santhamma George, Dallas, Texas. *Court of Federal Claims Number:* 09–0144V.

69. Michelle and William Sasser on behalf of Katherine Elizabeth Sasser, Santa Rosa, California. *Court of Federal Claims Number:* 09–0145V.

70. Susan Lawson on behalf of Julia Grimes, Boca Raton, Florida. *Court of Federal Claims Number:* 09–0148V.

71. Thomas Lamb, San Francisco, California. *Court of Federal Claims Number:* 09–0149V.

72. Valerie Soto on behalf of Yvette Diaz, Las Vegas, Nevada. *Court of Federal Claims Number:* 09–0150V.

73. Ronie Fearon, South Euclid, Ohio. *Court of Federal Claims Number:* 09–0151V.

74. Lu Marie Guzman-Diaz and Hector Orellano-Diaz on behalf of Jeshua Orellano-Guzman, Napa, California. *Court of Federal Claims Number:* 09–0157V.

75. Bridget and Dusty Golden on behalf of Hailey Golden, Miami, Oklahoma. *Court of Federal Claims Number:* 09–0161V.

76. Jeremy Coe, Columbus, Nebraska. *Court of Federal Claims Number:* 09–0169V.

77. Lynn and Scott O'Brien on behalf of Davis William O'Brien, Woodstock, Georgia. *Court of Federal Claims Number:* 09–0170V.

78. Zenoria Phillips-Deloatch on behalf of Moshella F. Roberts, Deceased, Fayetteville, North Carolina. *Court of Federal Claims Number:* 09–0171V.

79. Andrea Cortez on behalf of Renaldo Cortez, Deceased, Baycliff, Texas. *Court of Federal Claims Number:* 09–0176V.

80. Judy A. Jourden, Bradford, Pennsylvania. *Court of Federal Claims Number:* 09–0177V.

81. Jeremy Coe, Columbus, Nebraska. *Court of Federal Claims Number:* 09–0178V.

82. Debby and Dalibor Hradek on behalf of Federico Hradek, Lima, Ohio. *Court of Federal Claims Number:* 09–0179V.

83. Justin W. Gerhardt, Quantico, Virginia. *Court of Federal Claims Number:* 09–0180V.

84. Calista and Sam Bussard on behalf of James Bussard, Deceased, Spokane Valley, Washington. *Court of Federal Claims Number:* 09–0191V.

85. Dana Ionescu on behalf of Emma Ionescu, Cooper City, Florida. *Court of Federal Claims Number:* 09–0192V.

Dated: December 10, 2009.

**Mary K. Wakefield,**

*Administrator.*

[FR Doc. E9–30009 Filed 12–16–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention, announces the following meeting for the aforementioned subcommittee:

*Time and Date:* 9:30 a.m.–5 p.m., January 7, 2010.

*Place:* Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018. Telephone (859) 334–4611, Fax (859) 334–4619.

*Status:* Open to the public, but without a public comment period. To access by conference call dial the following information at 1 (866) 659–0537, Participant Pass Code 9933701.

*Background:* The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2011.

*Purpose:* The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

*Matters To Be Discussed:* The agenda for the Subcommittee meeting includes: discussion of dose reconstruction cases under review (sets 6–9); OCAS dose reconstruction quality management and assurance activities.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

*Contact Person for More Information:* Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta GA 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, E-mail *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 3, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9–29976 Filed 12–16–09; 8:45 am]

**BILLING CODE 4163–18–P**

## 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 February 10, 2010, 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, Pharm.D., 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 February 10, 2010, during the morning session, the committee will discuss new drug application (NDA) 022–481, proposed trade name PIXUVRI (pixantrone dimaleate) injection, manufactured by Cell Therapeutics, Inc. The proposed indication (use) for this product is as a single agent treatment for patients with recurring or refractory (difficult to treat), aggressive non-Hodgkin's lymphoma (NHL) who have received two or more prior lines of therapy.

During the afternoon session, the committee will discuss NDA 022–374, proposed trade name OMAPRO (omacetaxine mepesuccinate) for injection, manufactured by ChemGenex Pharmaceuticals. The proposed indication (use) for this product is for the treatment of adults with chronic myeloid leukemia (CML) bearing a genetic alteration known as the Bcr-Abl T315I mutation, and who have failed prior therapy with the drug IMATINIB.

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 27, 2010. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m., and 3:30 p.m. to 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 January 19, 2010. 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 January 20, 2010.

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: December 11, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–29989 Filed 12–16–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the twenty-first meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. on Thursday, February 4, 2010, and from 8 a.m. to approximately 3 p.m. on Friday, February 5, 2010, at the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

The main agenda items involve the review of a revised report on gene patents and licensing practices, the review of a public consultation draft report on genetics education and training, and an information-gathering session on the mechanisms and policies related to genomic data sharing. Other agenda items include a preliminary discussion to help plan a future session on implications of an affordable genome; a report on activities of the Clinical Utility and Comparative Effectiveness Task Force; and updates from Federal agencies on activities related to the implementation of the Genetic Information Nondiscrimination Act, the coverage and reimbursement of genetic tests, the oversight of genetic testing, and the retention and use of residual dried blood spot specimens after newborn screening.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health, and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov*. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://oba.od.nih.gov/SACGHS/sacghs_meetings.html*.

Dated: December 10, 2009.

**Jennifer Spaeth,**

*Director, NIH Office of Federal Advisory Committee Policy.*

[FR Doc. E9–30023 Filed 12–16–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Transplant and Viruses.

*Date:* January 11, 2010.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call.)

*Contact Person:* Priti Mehrotra, PhD, Chief, Immunology Review Branch, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, Room 3138, Bethesda, MD 20892–7616, 301–435–9369, *pm158b@nih.gov*.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, ''B Lymphocyte Responses.''

*Date:* January 12, 2010.

*Time:* 12:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call.)

*Contact Person:* Wendy F. Davidson, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–8399, *davidsonw@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 11, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–30022 Filed 12–16–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Auditory Neuroscience.

*Date:* January 19–20, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

*Contact Person:* John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, PAR–07–420: Lymphatic Biology in Health and Disease.

*Date:* January 27–28, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

*Contact Person:* Maqsood A. Wani, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892. 301–435–2270, *wanimaqs@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 10, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–30021 Filed 12–16–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–N–0664]**

### Food and Drug Administration Clinical Trial Requirements, Regulations, Compliance and Good Clinical Practices; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

**SUMMARY:** The Food and Drug Administration (FDA) Florida District, in cosponsorship with The Society of Clinical Research Associates, Inc. (SoCRA), is announcing a public workshop entitled ''FDA Clinical Trial Requirements, Regulations, Compliance and GCP.'' This 2-day public workshop is intended to provide information about FDA clinical trial requirements to the regulated industry.

*Date and Time*: The public workshop will be held on Wednesday, March 3, 2010, from 8 a.m. to 5 p.m., and Thursday, March 4, 2010, from 8 a.m. to 4:35 p.m.

*Location*: The public workshop will be held at The Wyndham Orlando Resort, 8001 International Dr., Orlando, FL 32819, 407–351–2420.

Attendees are responsible for their own accommodations. To make reservations at the Wyndham Orlando Resort, at the discounted rate of $149 per night (plus applicable taxes), contact the hotel before February 10, 2010, citing ''SoCRA''. The hotel's Web site is: *http://www.wyndham.com/hotels/MCOWD/main.wnt*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

*Contacts*:

*For FDA*: C. Stewart Watson, Food and Drug Administration, 555 Winderley Pl., suite 200, Maitland, FL 32751, 407–475–4756, FAX: 407–475–4768, e-mail: *charles.watson@fda.hhs.gov*.

*For SoCRA*: SoCRA Administrative Office, 530 West Butler Ave., suite 109, Chalfont, PA 18914, 1–800–762–7292 or 215–822–8644, FAX: 215–822–8633, e-mail: *SoCRAmail@aol.com*.

*Registration*: You are encouraged to register by February 26, 2010. Seats are limited; please submit your registration as soon as possible. Workshop space will be filled in order of receipt of registration. Registration will close when the workshop is filled. Those accepted into the workshop will receive confirmation. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The SoCRA registration fees cover the cost of the workshop facilities, materials, breaks, and lunches. The cost of registration is as follows:

COST OF REGISTRATION

| Affiliation | Fee |
|---|---|
| FDA Employee | Fee waived |
| Federal Government (SoCRA Member) | $450.00 |
| Federal Government (Non-SoCRA Member) | $525.00 |
| Non-Federal Government (SoCRA Member) | $575.00 |
| Non-Federal Government (Non-SoCRA Member) | $650.00 |

If you need special accommodations due to a disability, please contact C. Stewart Watson at least 7 days in advance of the meeting.

*Registration instructions:* To register, please submit your name, affiliation,

mailing address, phone/fax number, and e-mail, along with a check or money order payable to SoCRA. Please mail your payment to: SoCRA Administrative Office, 530 West Butler Ave., suite 109, Chalfont, PA 18914. Registration may be downloaded on the SoCRA Web site at *http://www.socra.org*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Other payment forms accepted are major credit cards (VISA, MasterCard, or American Express only). For more information on the meeting, or for questions on registration, contact the SoCRA Administrative Office (see *Contact*).

**SUPPLEMENTARY INFORMATION:** The public workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The public workshop will provide those engaged in FDA-regulated (human) clinical trials with information on a number of topics concerning FDA requirements related to informed consent, clinical investigation requirements, institutional review board investigations, electronic record requirements, and investigator initiated research. Topics for discussion include the following: (1) What FDA Expects in a Pharmaceutical Clinical Trial, (2) Adverse Event Reporting, (3) Part 11 Compliance—electronic signatures, (4) Informed Consent Regulations, (5) IRB Regulations and FDA Inspections, (6) Keeping Informed and Working Together, (7) FDA Conduct of Clinical Investigator Inspections, (8) Meetings with the FDA, (9) Investigator Initiated Research, (10) Medical Device Aspects of Clinical Research, (11) Working with FDA's Center for Biologics Evaluation and Research, (12) Ethical Issues in Subject Enrollment, (13) The Inspection is Over—What Happens Next? Possible FDA Compliance Actions.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The public workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The public workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by Government agencies to small businesses.

Dated: December 10, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–30017 Filed 12–16–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0089

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority for the following collection of information: 30 CFR Part 702 regarding the exemption of coal extraction incidental to the extraction of other minerals. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned clearance number 1029–0089.

**DATES:** Comments on the proposed information collection must be received by February 16, 2010, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request and explanatory information contact John Trelease, at (202) 208–2783 or e-mail at the address provided above.

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR part 702—Exemption for Coal Extraction Incidental to the Extraction of Other Minerals. The information submitted by respondents is required to obtain a benefit. OSM will request a 3-year term of approval for this information collection activity.

*Comments are invited on:* (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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.

*Title:* 30 CFR Part 702 Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

*OMB Control Number:* 1029–0089.

*Summary:* This part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16⅔ percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

*Bureau Form Number:* None.

*Frequency of Collection:* Once and annually thereafter.

*Description of Respondents:* Producers of coal and other minerals and State regulatory authorities.

*Total Annual Responses:* 120.

*Total Annual Burden Hours:* 535.

*Total Non-wage Costs:* $200.

Dated: December 11, 2009.

**Dennis G. Rice,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. E9–29933 Filed 12–16–09; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLOROR957000–L62510000–PM000: HAG10–0084]**

### Filing of Plats of Survey: Oregon/ Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

**Willamette Meridian**

*Oregon*

T. 39 S., R. 2 E., accepted November 20, 2009.
T. 38 S., R. 3 E., accepted November 20, 2009.
T. 29 S., R. 11 W., accepted December 2, 2009.
T. 35 S., R. 8 W., accepted December 8, 2009.

**ADDRESSES:** A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW., 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Chief, Branch of Geographic Sciences, Bureau of Land Management, 333 SW., 1st Avenue, Portland, Oregon 97204.

Dated: December 10, 2009.

**Fred O'Ferrall,**

*Branch of Lands and Minerals Resources.*

[FR Doc. E9–30001 Filed 12–16–09; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–933–00–1320–01; COC 71978]**

### Notice of Public Hearing and Request for Comments on Environmental Assessment, Geologic Engineering Report, and Maximum Economic Recovery for COC–71978; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public hearing.

**SUMMARY:** Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, geologic engineering report, and maximum economic recovery of Federal coal to be offered. An application for coal lease was filed by New Elk Coal Company, LLC, requesting the Bureau of Land Management offer for competitive lease 1,279.62 acres of Federal coal in Las Animas County, Colorado.

**DATES:** The public hearing will be held at 6 p.m., March 25, 2010. Written comments should be received no later than March 05, 2010.

**ADDRESSES:** The public hearing will be held at La Quinta Inn, 2833 Toupal Drive, Trinidad, Colorado 81082. Written comments should be addressed to the Bureau of Land Management, Attn: Melissa Smeins, 3028 E. Main St, Canon City, Colorado 81212. You may also send a fax to 719–269–8599 or e-mail at *Melissa_Smeins@co.blm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Melissa Smeins, at the address above, or by telephone at 719–269–8523.

**SUPPLEMENTARY INFORMATION:** Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on 6 p.m., March 25, 2010, at the La Quinta Inn at the address given above.

An application for coal lease was filed by New Elk Coal Company, LLC. requesting the Bureau of Land Management offer for competitive lease Federal coal in the lands outside established coal production regions described as:

T. 33 S., R. 67 W., 6th P.M.
Sec. 6, lots 2 to 7, inclusive, and E½SW¼;
Sec. 7, lot 2;
Sec. 17, E½NE¼, NE¼SE¼;
Sec. 18, lots 2 to 4, inclusive, and E½SW¼;
Sec. 19, lot 1, inclusive, and NE¼NW¼, NW¼NE¼;
T. 33 S., R. 68 W., 6th P.M.
Sec. 1, lots 1 & 2, inclusive, S½NE¼, E½SE¼;
Sec. 12, E½NE¼;
Sec. 13, NE¼, NE¼SE¼.

Containing approximately 1,279.62 acres more or less.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

1. The method of mining to be employed to obtain maximum economic recovery of the coal,

2. The impact that mining the coal in the proposed leasehold may have on the area, and

3. The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the March 25, 2010, public hearing should be received at the Bureau of Land Management Office in Canon City by 12 p.m., March 25, 2010. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The cost of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to Melissa Smeins at the above address prior to close of business on March 05, 2010. Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The environmental assessment, maximum economic recovery report, and comments submitted by the public will be available from the Bureau of Land Management Field Office in Canon City (*see* above) upon request.

A copy of the environmental assessment, the maximum economic recovery report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and

meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215.

Dated: December 9, 2009.

**Kurt M. Barton,**

*Land Law Examiner, Solid Minerals.*

[FR Doc. E9–29980 Filed 12–16–09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNML003100 L14300000.ES0000; NMNM 122512]**

### Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM) has examined approximately 5 acres of public land in Dona Ana County, New Mexico, and found them suitable for classification for lease and/or conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended. The Property Control Division of the New Mexico General Services Department proposes to construct buildings for the Department of Public Safety, New Mexico State Police District 4 Headquarters.

**DATE:** Interested parties should submit written comments regarding the proposed lease/conveyance or classification of the land on or before February 1, 2010.

**ADDRESSES:** Written comments concerning this notice should be addressed to: District Manager, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

**FOR FURTHER INFORMATION CONTACT:** Frances Martinez, Realty Specialist, at the above address or at (575) 525–4385.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 7 of the Taylor Grazing Act (43 U.S.C. 315f), the following public land in Dona Ana County, New Mexico, has been examined and found suitable for classification for lease and conveyance to the New Mexico General Services Department under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*):

**New Mexico Principal Meridian**

T. 22 S., R. 2 E.,
Sec. 28, W½NE¼SW¼SE¼.

The area described contains 5 acres, more or less, in Dona Ana County.

In accordance with the R&PP Act, the Property Control Division of the New Mexico General Services Department proposes to construct buildings for the Department of Public Safety, New Mexico State Police District 4 Headquarters, which will include offices for the District 4 Uniform Bureau, the Investigations Bureau, and the Special Investigations Bureau, a communication center for District 4 and District 12, and a full service automobile repair garage. This will consolidate the three offices currently leased for officers and agents. Additional detailed information pertaining to this application, plan of development, and site plans are contained in case file NMNM 122512 located in the BLM Las Cruces District Office. The above-described land is not needed for any Federal purpose. Lease and conveyance of the land to the Property Control Division of the New Mexico General Services Department is consistent with the BLM Mimbres Resource Management Plan, dated December 1993, and would be in the public interest. The Property Control Division of the New Mexico General Services Department has not applied for more than the 640-acre annual limitation for public purposes other than recreation use and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b).

The lease and conveyance, if issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior, including, but not limited to, the terms required by 43 CFR 2741.9;

2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Statute (stat.) 391 (43 U.S.C. 945);

3. Lease or patent of the public land shall be subject to valid existing rights. Subject to limitations prescribed by law and regulation, prior to patent issuance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable;

4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the same;

5. An appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or operations on the leased/patented lands;

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal land and interests therein.

Detailed information concerning this proposed project, including, but not limited to, documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the address above.

On December 17, 2009, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the R&PP Act, and leasing under the mineral leasing laws.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for the proposed use. Comments on the classification are restricted to whether: (1) The land is physically suited for the proposal; (2) The use will maximize the future use or uses of the land; (3) The use is consistent with local planning and zoning; and (4) The use is consistent with state and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for R&PP use.

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. Any adverse comments will be reviewed by the BLM State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective February 16, 2010. The land will not be available for lease or conveyance until after the classification becomes effective.

**Authority:** 43 CFR 2741.5.

**Bill Childress,**

*District Manager.*

[FR Doc. E9–30005 Filed 12–16–09; 8:45 am]

**BILLING CODE 4310–VC–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–44 (Third Review)]**

### Sorbitol From France

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of a full five-year review concerning the antidumping duty order on Sorbitol from France.

**SUMMARY:** The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on Sorbitol from France would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

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

**FOR FURTHER INFORMATION CONTACT:** Dana Lofgren (202–205–2539), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On October 6, 2009, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (74 FR 54068, October 21, 2009). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

*Participation in the review and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the review will be placed in the nonpublic record on April 14, 2010, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on May 4, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 28, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 30, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 23, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 13, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 13, 2010. On June 3, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 7, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and

a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 11, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–29981 Filed 12–16–09; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–674]**

### In the Matter of Certain Light Emitting Diode Chips, Laser Diode Chips and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation as to Dalian Lumei Optoelectronics Corporation; Termination of the Investigation in Its Entirety

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 29) of the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation as to the last remaining respondent Dalian Lumei Optoelectronics Corporation (''Dalian Lumei'') based on a settlement agreement, and has terminated the investigation in its entirety.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on April 6, 2009, based on a complaint filed on March 2, 2009, by Gertrude Neumark Rothschild of Hartsdale, New York. 74 FR 15520–21 (April 6, 2009). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain light emitting diode chips, laser diode chips, and products containing same by reason of infringement of certain claims of U.S. Patent No. 5,252,499. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complaint names numerous respondents.

On October 30, 2009, complainant Rothschild and respondent Dalian Lumei jointly moved to terminate the investigation as to Dalian Lumei based on a settlement agreement. In the same motion, complainant moved for the termination of the investigation in its entirety. The Commission investigative attorney supported the motion.

On November 13, 2009, the ALJ issued an ID (Order No. 29) granting the motion. No party petitioned for review of the ID, and the Commission has determined not to review it.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

By order of the Commission.

Issued: December 9, 2009.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–29703 Filed 12–16–09; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–09–034]**

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** December 30, 2009 at 11 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436. *Telephone:* (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 701–TA–463 (Final)(Certain Oil Country Tubular Goods from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before January 13, 2010.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: December 15, 2009.

By order of the Commission.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. E9–30098 Filed 12–15–09; 4:15 pm]

**BILLING CODE 7020–02–P**

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Hearing of the Judicial Conference Advisory Rules Committee

**AGENCY:** Advisory Committee on Evidence Rules, Judicial Conference of the United States.

**ACTION:** Notice of cancellation of open hearing.

**SUMMARY:** The following public hearing on proposed amendments to the Federal Rules of Evidence, has been canceled: Evidence Rules Hearing, January 5, 2010, in Phoenix, AZ.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 9, 2009.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. E9–29931 Filed 12–16–09; 8:45 am]

**BILLING CODE 2210–55–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Amended Consent Decree Under the Clean Water Act (CWA)

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 7, 2009, a proposed Integrated Overflow Abatement Plan (''IOAP'') to control combined sewer overflows (''CSOs'')

and eliminate sanitary sewer overflows (''SSOs'') and other unauthorized discharges from the sewer system was lodged with the Court in *United States and Commonwealth of Kentucky* v. *The Louisville and Jefferson County Metropolitan Sewer District* (MSD) Civil Action No. 3:08–CV–608–CRS, Western District of Kentucky, Louisville Division. Pursuant to the Amended Consent Decree entered by the Court on April 15, 2009, the IOAP constitutes a material amendment to the Consent Decree, affording the public an opportunity to provide comments on it prior to it being submitted to the Court for approval.

The Amended Consent Decree required that MSD submit plans to control CSOs and eliminated SSOs and other unauthorized discharges from the sewer system. MSD integrated those plans into the IOAP, which includes a Long Term Control Plan (''LTCP'') and a Sanitary Sewer Discharge Plan (''SSDP''). The IOAP was drafted by MSD's Wet Weather Team which included a broad range of stakeholders, MSD staff and consultants. The IOAP was presented to the MSD Board on October 7, 2008, and at several public meetings on November 10, 12 and 20, 2008. MSD held a public hearing to receive both written and oral public comments on the IOAP on December 2, 2008, and concluding on December 5, 2008.

MSD submitted the IOAP to the United States Environmental Protection Agency (''EPA'') and the Commonwealth of Kentucky's Environmental and Public Protection Cabinet (''KDEP'') on December 19, 2008, as required by the Consent Decree. Following review of the IOAP, EPA and KDEP requested clarifications and revisions regarding the IOAP's regulatory compliance approach, proposed level of overflow control, schedule and budgets. MSD submitted revisions to the IOAP on June 19, 2009, and August 21, 2009. EPA and KDEP sent a conditional letter of approval to MSD on October 23, 2009.

The IOAP is a long-term plan to control CSOs and eliminate SSOs and other unauthorized discharges of sewage and partially treated sewage in the community. The IOAP is expected to improve water quality in both Jefferson County, Kentucky and the Ohio River. The expected water quality benefits of the IOAP include reductions in the peak levels of bacteria in the Ohio River, Beargrass Creek, and other Jefferson County waterways as well as a reduction in the duration of wet weather impairment of local waterways (*i.e.,* the number of days that bacteria levels exceed water quality standards during periods of wet weather). The IOAP, in coordination with other community water initiatives, will also improve water quality ambient conditions.

From projects selected for the LTCP, MSD anticipates approximately 96 percent capture and treatment of wet weather combined sewage during an average year. Remaining CSO loads (after removing background) are estimated to no longer cause water quality standard violations in the Ohio River and peak fecal coliform counts are modeled to be reduced by 54 percent. At the mouth of Beargrass Creek, peak coliform counts are modeled to be reduced by 18 percent.

From projects selected for the SSDP, MSD anticipates elimination of 145 SSO events per year based on 2005–2007 data; elimination of an average of 290 million gallons of overflow volume per year (based on average of 2005–2007 normalized for rainfall); elimination of 100 tons of 5-day biochemical oxygen demand (''BOD5''); and, elimination of almost 200 tons of solids annually.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the IOAP. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and Commonwealth of Kentucky* v. *The Louisville and Jefferson County Sewer District,* DOJ # 90–5–1–1–08254/1. The IOAP may be examined at the MSD Building, 700 West Liberty, Louisville, KY 40202. During the public comment period, the IOAP, may also be examined at the Main Library located at 301 York Street, Louisville, KY 40203, and MSD's Web site which is *http://www.msdlouky.org/projectwin/.*

The IOAP and all of its exhibits are too numerous and voluminous for filing with the Court. Instead of filing the entire IOAP, MSD filed the Executive Summaries of the IOAP, LTCP and SSDP. MSD has placed copies of the entire IOAP and all of the exhibits in places accessible by the public. During the public comment period, the IOAP may be examined at the MSD Building, 700 West Liberty, Louisville, KY 40202. The IOAP may also be examined at the Louisville Free Public Library located at 301 York Street, Louisville, KY 40203, and the branch libraries as well as MSD's Web site at *http://www.msdlouky.org/projectwin/.*

A copy of the Executive Summary of the IOAP may also be obtained by mail from MSD by calling (502) 540–6000. In requesting a copy of the Executive Summary, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the MSD. In requesting copies of the Executive Summaries for the Long Term Control Plan (30 pages) and the Sanitary Sewer Discharge Plan (15 pages), please enclose a check in the amount of $11.25 (25 cents per page reproduction cost).

**Maureen Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9–29962 Filed 12–16–09; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on December 10, 2009, two proposed Consent Decrees (''Decrees'') in *United States and the State of South Dakota* v. *CEGA Services, Inc. (f/k/a Northwestern Metal Company) and Commonwealth Mining Company,* Case No. 5:09–cv–05103–JLV, were lodged with the United States District Court for the District of South Dakota, Western Division. The case was brought under Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a) and 9613(g)(2), for the recovery of response costs related to the cleanup at the Gilt Edge Mine Superfund Site (''Site'') in Lawrence County, South Dakota.

The Consent Decrees require Commonwealth Mining Company (''Commonwealth'') and CEGA Services, Inc. (''CEGA'') to: (1) Confess to $6.2 million and $5 million judgments, respectively; (2) agree to transfer the Site properties they own to the State of South Dakota; (3) with respect to Commonwealth, liquidate off-Site property it owns and pay over 60 percent of the proceeds to the United States; (4) assign any insurance coverage related to the Site to the United States.

The United States and the State of South Dakota filed a Complaint simultaneous with the Consent Decrees alleging that the Defendants are jointly and severally liable for response costs related to the cleanup at the Gilt Edge Mine Superfund Site in Lawrence County, South Dakota. 42 U.S.C. 9607(a), 9613(g)(2). The Consent Decrees would resolve the claims

against the Defendants as described in the Complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to Case No. 5:09–cv–05103–JLV, D.J. Ref. No. 90–11–3–08278.

The Decrees may be examined at the Office of the United States Attorney, District of South Dakota, 515 Ninth Street, Suite 201, Rapid City, South Dakota 57701. They also may be examined at the offices of U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202. During the public comment period, the Decrees may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

A copy of the Decrees may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting copies from the Consent Decree Library, please enclose a check in the amount of $18.50 (25 cents per page reproduction cost) ($10.25 for a copy of the Consent Decree related to Commonwealth) ($8.25 for a copy of the Consent Decree related to CEGA) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. E9–30006 Filed 12–16–09; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on High Efficiency Dilute Gasoline Engine II

Notice is hereby given that, on November 9, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on High-Efficiency Dilute Gasoline Engine II, (''HEDGE II'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SYGMAMOTORS, Sao Jose Campos, SP, Brazil, has been added as a party to the venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HEDGE II intends to file additional written notifications disclosing all changes in membership.

On February 19, 2009, HEDGE II filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 2, 2009 (74 FR 15003).

The last notification was filed with the Department on August 25, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 30, 2009 (74 FR 50246).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9–29947 Filed 12–16–09; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Schools Interoperability Framework Association

Notice is hereby given that, on November 4, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act'') Schools Interoperability Framework Association (''SIF Association'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Schools Interoperability Framework Association, Washington, DC. The nature and scope of SIF Association's standards development activities are: (1) To create a set of platform-independent, vendor-neutral definitions and interoperable specifications for software used by primary and secondary schools (pK–12); (2) to engage pK–12 institutions to identify gaps within the specifications; and (3) to engage local, state, federal, and international governmental agencies to make data more available by moving data that is stored only at the local level to higher reporting agencies.

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9–29948 Filed 12–16–09; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993 Limo Foundation

Notice is hereby given that, on November 10, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), LiMo Foundation (''LiMo'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, KDDI Corporation, Tokyo, Japan, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of this group research project. Membership in this group research project remains open, and LiMo intends to file additional written notifications disclosing all changes in membership.

On March 1, 2007, LiMo filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 9, 2007 (72 FR 17583).

The last notification was filed with the Department on September 8, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 22, 2009 (74 FR 54594).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9–29949 Filed 12–16–09; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Clean Diesel V

Notice is hereby given that, on November 9, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Clean Diesel V (''Clean Diesel V'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have withdrawn from this venture: BORGWARNER, Auburn Hills, MI; Caterpillar, Inc., Mossville, IL; Chrysler, LLC, Auburn Hills, MI; Delphi, Troy, MI; Emitec, Lohmar, GERMANY; Ford Motor Company, Dearborn, MI; Hitachi Automotive Systems, Advanced Technical Center, Ibaragi Prefecture, JAPAN; Modine Mfg. Co., Racine, WI; NGK Spark Plug Co., Ltd., Nagoya, JAPAN; Nissan Technical Center N.A., Inc., Farrnington Hills, MI; Usui Kokusai Sangyo Kaisha, Ltd., Shizuoka-ken, JAPAN; Valeo, Cedex, FRANCE; and Yuchai Machinery Co., Ltd., Guangxi, PEOPLE'S REPUBLIC OF CHINA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Clean Diesel V intends to file additional written notifications disclosing all changes in membership.

On January 10, 2008, Clean Diesel V filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 25, 2008 (73 FR 10064).

The last notification was filed with the Department on August 25, 2009. A notice was published in the **Federal Register** on September 30, 2009 (74 FR 50245).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9–29945 Filed 12–16–09; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—Open SystemC Initiative

Notice is hereby given that, on November 12, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open SystemC Initiative (''OSCI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Qualcomm Incorporated, San Diego, CA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notifications disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on July 1, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 21, 2009 (74 FR 42330).

**Patricia A. Brink,**

*Deputy Director of Operations, Antitrust Division.*

[FR Doc. E9–29950 Filed 12–16–09; 8:45 am]

**BILLING CODE 4410–11–M**

## OFFICE OF MANAGEMENT AND BUDGET

### Discount Rates for Cost-Effectiveness Analysis of Federal Programs

**AGENCY:** Office of Management and Budget.

**ACTION:** Revisions to Appendix C of OMB Circular A–94.

**SUMMARY:** The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

**DATES:** The revised discount rates are effective immediately and will be in effect through December 2010.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

**Jeffrey B. Liebman,**

*Associate Director for Economic Policy, Office of Management and Budget.*

**Attachment**

*OMB Circular No. A–94*

**Appendix C**

(Revised December 2009)

**Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses**

*Effective Dates.* This appendix is updated annually. This version of the appendix is valid for calendar year 2010. A copy of the updated appendix can be obtained in electronic form through the OMB home page at *http://www.whitehouse.gov/omb/circulars_a094_a94_appx-c/*, the text of the main body of the Circular is found at *http://www.whitehouse.gov/omb/assets/a94/a094.pdf*, and a table of past years' rates is located at *http://www.whitehouse.gov/omb/assets/a94/dishist.pdf*. Updates of the appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381).

*Nominal Discount Rates.* A forecast of nominal or market interest rates for 2010 based on the economic assumptions for the Fiscal Year 2011 Budget are presented below. These nominal rates are to be used for

discounting nominal flows, which are often encountered in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

[In percent]

| 3-Year | 5-Year | 7-Year | 10-Year | 20-Year | 30-Year |
|---|---|---|---|---|---|
| 2.3 | 3.1 | 3.5 | 3.9 | 4.4 | 4.5 |

*Real Discount Rates.* A forecast of real interest rates from which the inflation premium has been removed and based on the economic assumptions from the 2011 Budget is presented below. These real rates are to be used for discounting constant-dollar flows, as is often required in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES

([In percent]

| 3-Year | 5-Year | 7-Year | 10-Year | 20-Year | 30-Year |
|---|---|---|---|---|---|
| 0.9 | 1.6 | 1.9 | 2.2 | 2.7 | 2.7 |

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. E9–30054 Filed 12–16–09; 8:45 am]

**BILLING CODE P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received

Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 19, 2010. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 292–7405.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

*Description of Permit Modification Requested:* The Foundation issued a permit (2009–014) to Dr. Douglas P. Nowacek, Duke University on January 7, 2009. The issued permit allows the applicant to tag up to 100 Humpback and Minke whales each.

The applicant requests to collect skin and blubber samples from an additional 100 Humpback and Minke whales each. Samples will be used to determine genetic stock structure of the animals sampled as well as individual genetic identification and sex determination. Skin samples will also be collected to stable isotope analysis that provides information on the diet composition of individual whales.

*Location:* Antarctic Peninsula waters.

*Dates:* January 1, 2010 to July 31, 2010.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. E9–29979 Filed 12–16–09; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos.: 70–7003, 70–7004; NRC–2009–0177]**

### USEC, Inc.; American Centrifuge Plant; American Centrifuge Lead Cascade Facility; Notice of Withdrawal of License Transfer Application and Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Conforming Amendment

The U.S. Nuclear Regulatory Commission (NRC) has granted a request from USEC Inc. (USEC) to withdraw its February 10, 2009 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML090850065), request for written consent to transfer control of Material Licenses SNM–7003 and SNM–2011 (American Centrifuge Lead Cascade Facility [LCF] and American Centrifuge Plant [ACP], respectively) from USEC to a subsidiary limited liability company (LLC) under the provisions of 10 Code of Regulations (CFR) 70.36. The request was supplemented by letters dated June 12, 2009 (ADAMS Accession No. ML091670085, Supplement to Request for Written Consent to Transfer of Licenses), and June 17, 2009 (ADAMS Accession No. ML091970393, Draft Financial Assurance Instrument Associated with Request for Transfer of Licenses).

Under their request, USEC proposed to modify its existing corporate structure and requested NRC consent to transfer control of Material Licenses SNM–7003 and SNM–2011 from USEC Inc. to the subsidiary American Centrifuge Operating, LLC. In addition,

USEC requested NRC approval of changes to the LCF and the ACP Material Licenses, license applications, and security program documents to reflect the changes in USEC's corporate structure. No physical or operational changes to the LCF or the ACP were being proposed.

The NRC had previously issued a Notice of Consideration of the Receipt of a License Transfer Application and Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Conforming Amendment and Opportunity to Provide Comments and Request a Hearing in the **Federal Register** on April 24, 2009 (74 FR 18749). However, by letter dated November 25, 2009 (ADAMS Accession No. ML093350026), USEC withdrew its request.

For further details with respect to this action, see USEC's request dated February 10, 2009, the supplemental letter dated June 12, 2009, and the licensee's letter dated November 25, 2009, which withdrew the request for consent to transfer control of Material Licenses SNM–7003 and SNM–2011. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of December, 2009.

For the Nuclear Regulatory Commission.

**Osiris Siurano,**

*Project Manager, Uranium Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E9–30029 Filed 12–16–09; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice.

**SUMMARY:** This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

**FOR FURTHER INFORMATION CONTACT:** Glenda Haendschke, Acting Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

**SUPPLEMENTARY INFORMATION:** Appearing in the listing below are the individual authorities established under Schedules A, B, and C between March 1, 2009, and March 31, 2009. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of September 30 is published each year. The following Schedules are *not* codified in the code of Federal Regulations. These are agency specific exceptions.

**Schedule A**

No Schedule A appointments in the month of March 2009.

**Schedule B**

No Schedule B appointments were approved for March 2009.

**Schedule C**

The following Schedule C appointments were approved during March 2009:

*Commodity Futures Trading Commission*

CTOT09768 Director, Office of External Affairs for the Chairperson. Effective March 6, 2009.

*Environmental Protection Agency*

EPGS09006 Deputy Press Secretary for the Associate Administrator for Public Affairs. Effective March 5, 2009.

EPGS07029 Director of Advance to the Deputy Chief of Staff (Operations). Effective March 12, 2009.

EPGS60076 Senior Counsel for Congressional and Intergovernmental Relations. Effective March 26, 2009.

*Occupational Safety and Health Review Commission*

SHGS00007 Confidential Assistant to the Chairman. Effective March 3, 2009.

SHGS60008 Counsel to a Commissioner. Effective March 3, 2009.

SHGS60009 Confidential Assistant to the Commission. Effective March 3, 2009.

*Office of the United States Trade Representative*

TNGS00006 Director of Scheduling and Advance for the Chief of Staff. Effective March 30, 2009.

TNGS90001 Deputy Assistant United States Trade Representative for Intergovernmental Affairs and Public Liaison. Effective March 30, 2009.

TNGS90002 Congressional Affairs Specialist to the United States Trade Representative. Effective March 30, 2009.

TNGS90003 Personal Assistant to the United States Trade Representative. Effective March 30, 2009.

TNGS90005 Confidential Assistant to the Chief of Staff. Effective March 30, 2009.

TNGS90006 Deputy Assistant United States Trade Representative for Congressional Affairs. Effective March 30, 2009.

*Securities and Exchange Commission*

SEOT11011 Director of Communications to the Chairman. Effective March 5, 2009.

SEOT11012 Chief of Staff to the Chairman. Effective March 5, 2009.

SEOT60090 Confidential Assistant to the Chairman. Effective March 17, 2009.

*Department of State*

DSGS69808 Staff Assistant to the Deputy Secretary. Effective March 18, 2009.

*Department of the Treasury*

DYGS00407 Executive Assistant to the Senior Advisor. Effective March 6, 2009.

DYGS00424 Special Assistant to the Assistant Secretary (Economic Policy). Effective March 19, 2009.

DYGS00446 Special Assistant for Legislative Affairs. Effective March 19, 2009.

DYGS00479 Speechwriter. Effective March 26, 2009.

*Department of Defense*

DDGS17185 Staff Assistant to the Under Secretary of Defense for Policy. Effective March 4, 2009.

DDGS17186 Staff Assistant for Policy. Effective March 4, 2009.

DDGS17187 Special Assistant for Asian and Pacific Security Affairs. Effective March 11, 2009.

DDGS16914 Personal and Confidential Assistant for the Deputy Secretary of Defense. Effective March 16, 2009.

DDGS17194 Special Assistant for White House Liaison for the Secretary of Defense. Effective March 30, 2009.

DDGS17190 Special Assistant for General Counsel. Effective March 31, 2009.

DDGS17191 Senior Advisor for General Counsel. Effective March 31, 2009.

*Department of Justice*

DJGS00468 Press Assistant, Office of Public Affairs. Effective March 4, 2009.
DJGS00469 Media Affairs Specialist, Office of Public Affairs. Effective March 4, 2009.
DJGS00470 Confidential Assistant to the Attorney General. Effective March 4, 2009.
DJGS00473 Director of Scheduling to the Attorney General. Effective March 6, 2009.
DJGS00204 Senior Counsel to the Deputy Attorney General. Effective March 10, 2009.
DJGS00471 Senior Counsel to the Associate Attorney General. Effective March 10, 2009.
DJGS00346 Deputy Director, Office of Public Affairs. Effective March 17, 2009.
DJGS00478 Counsel to the Attorney General. Effective March 19, 2009.
DJGS00193 Senior Counsel to the Assistant Attorney General (Legal Policy). Effective March 23, 2009.
DJGS00373 Staff Assistant, Office of Public Affairs. Effective March 23, 2009.
DJGS00114 Special Assistant to the Attorney General. Effective March 25, 2009.
DJGS00176 Public Affairs Specialist, Office of Public Affairs. Effective March 25, 2009.
DJGS00289 Counsel to the Deputy Attorney General. Effective March 25, 2009.
DJGS00476 Counsel to the Deputy Attorney General. Effective March 25, 2009.
DJGS00406 Public Affairs Specialist, Office of Public Affairs. Effective March 30, 2009.

*Department of Homeland Security*

DMGS00754 Governor and Homeland Security Advisors Coordinator for Intergovernmental Programs. Effective March 9, 2009.
DMGS00396 Press Secretary for Public Affairs. Effective March 16, 2009.
DMGS00629 Confidential Assistant to the General Counsel. Effective March 16, 2009.
DMGS00642 Special Assistant for Congressional Affairs Customs and Border Protection. Effective March 16, 2009.
DMGS00649 Deputy White House Liaison to the White House Liaison. Effective March 16, 2009.
DMGS00702 Special Assistant for the Department of Homeland Security. Effective March 16, 2009.
DMGS00736 Director of Strategic Communications for Public Affairs. Effective March 16, 2009.
DMGS00766 Business Liaison for Private Sector. Effective March 16, 2009.
DMGS00627 Counselor, Office of Counter Narcotics Enforcement. Effective March 25, 2009.
DMGS00641 Policy Advisor for Health Affairs and Chief Medical Officer. Effective March 25, 2009.
DMGS00683 Deputy Director of Scheduling for Travel. Effective March 25, 2009.
DMGS00051 Senior Business Liaison for Private Sector. Effective March 26, 2009.
DMGS00413 Legislative Policy Advisor for Policy. Effective March 26, 2009.
DMGS00544 Advance Representative of Scheduling and Advance. Effective March 26, 2009.
DMGS00550 Confidential Assistant for the Department of Homeland Security. Effective March 26, 2009.
DMGS00563 Assistant Press Secretary for Media Relations. Effective March 26, 2009.
DMGS00577 Deputy Director of the Center for Faith Based and Community Initiatives. Effective March 26, 2009.
DMGS00591 Senior Liaison Officer for Operations and Administration. Effective March 26, 2009.
DMGS00610 Public Affairs and Press Assistant for Public Affairs. Effective March 26, 2009.
DMGS00689 Advance Representative of Scheduling and Advance. Effective March 26, 2009.
DMGS00717 Business Liaison/Private Sector for Private Sector. Effective March 26, 2009.
DMGS00729 Special Assistant for the Chief Privacy Officer. Effective March 26, 2009.
DMGS00745 Confidential Assistant for Public Affairs. Effective March 26, 2009.
DMGS00749 Confidential Assistant to the Secretary. Effective March 26, 2009.
DMGS00772 Assistant Director of Legislative Affairs for Legislative Affairs. Effective March 26, 2009.
DMGS00786 Legislative Assistant for Legislative Affairs. Effective March 26, 2009.

*Department of the Interior*

DIGS01141 Associate Director, External and Intergovernmental Affairs for the Secretary. Effective March 3, 2009.
DIGS01143 Special Assistant to the Secretary. Effective March 3, 2009.
DIGS01144 Senior Advisor for Alaskan Affairs for the Secretary. Effective March 6, 2009.
DIGS01145 Special Assistant to the Secretary. Effective March 9, 2009.
DIGS01147 Press Secretary, Office of Communications. Effective March 11, 2009.
DIGS01148 Special Assistant for Indian Affairs. Effective March 11, 2009.
DIGS01149 Director of Advance for the Secretary. Effective March 11, 2009.
DIGS01150 Special Assistant to the Deputy Secretary of the Interior. Effective March 11, 2009.
DIGS01152 Special Assistant to the Deputy Secretary. Effective March 25, 2009.
DIGS01153 Deputy Director, Congressional and Legislative Affairs. Effective March 25, 2009.
DIGS01155 Associate Director, External and Intergovernmental Affairs. Effective March 27, 2009.
DIGS01156 Special Assistant to the Secretary. Effective March 27, 2009.
DIGS01146 Deputy Director, Congressional and Legislative. Effective March 30, 2009.

*Department of Agriculture*

DAGS00102 Confidential Assistant for Marketing and Regulatory Programs. Effective March 13, 2009.
DAGS01021 Confidential Assistant for Rural Development. Effective March 17, 2009.
DAGS01023 Advance Lead for Communications. Effective March 17, 2009.
DAGS01024 Deputy Director of Scheduling and Advance for the Office of Communications. Effective March 17, 2009.
DAGS01022 Confidential Assistant for Rural Development. Effective March 26, 2009.
DAGS00116 Confidential Assistant for Marketing and Regulatory Programs. Effective March 31, 2009.
DAGS00117 Special Assistant for Food Safety. Effective March 31, 2009.

*Department of Commerce*

DCGS00689 Special Assistant, Executive Secretariat. Effective March 3, 2009.
DCGS00298 Special Advisor for Telecommunications and Information. Effective March 4, 2009.
DCGS00465 Confidential Assistant, Office of White House Liaison. Effective March 4, 2009.
DCGS00686 Director of Scheduling and Advance to the Chief of Staff. Effective March 6, 2009.
DCGS00564 Confidential Assistant to the Senior Advisor to the Secretary. Effective March 16, 2009.

DCGS00569 Confidential Assistant for Public Affairs. Effective March 17, 2009.
DCGS00494 Press Secretary for Public Affairs. Effective March 20, 2009.
DCGS00030 Special Assistant, Minority Business Development Agency. Effective March 25, 2009.
DCGS00574 Confidential Assistant, Office of Business Liaison. Effective March 25, 2009.
DCGS00629 Deputy Director for Public Affairs. Effective March 25, 2009.

*Department of Labor*

DLGS60135 Special Assistant for Planning, Scheduling, and Advance. Effective March 3, 2009.
DLGS60089 Special Assistant to the Secretary of Labor. Effective March 19, 2009.
DLGS60160 Senior Speechwriter for Public Affairs. Effective March 27, 2009.

*Department of Education*

DBGS00227 Confidential Assistant, White House Liaison. Effective March 5, 2009.
DBGS00229 Confidential Assistant to the Chief of Staff. Effective March 5, 2009.
DBGS00649 Confidential Assistant for Scheduling and Advance Staff. Effective March 5, 2009.
DBGS00626 Special Assistant to the Chief of Staff. Effective March 13, 2009.
DBGS00288 Confidential Assistant for Legislation and Congressional Affairs. Effective March 17, 2009.
DBGS00376 Director, Scheduling and Advance Staff for Strategy. Effective March 18, 2009.
DBGS00250 Confidential Assistant for Strategy. Effective March 24, 2009.
DBGS00462 Special Assistant, Office of Communications and Outreach. Effective March 24, 2009.
DBGS00143 Special Assistant for College Access the Deputy Chief of Staff for Strategy. Effective March 27, 2009.
DBGS00551 Confidential Assistant to the Assistant Secretary for Planning, Evaluation, and Policy Development. Effective March 27, 2009.
DBGS00586 Special Assistant to the Deputy Chief of Staff for Strategy, Office of Communication and Outreach. Effective March 27, 2009.
DBGS00672 Confidential Assistant for the Deputy Chief of Staff for Strategy, Office of the Secretary. Effective March 27, 2009.

*Department of Veterans Affairs*

DVGS60002 Special Assistant for Public and Intergovernmental Affairs. Effective March 5, 2009.
DVGS60017 Special Assistant for Public and Intergovernmental Affairs. Effective March 12, 2009.
DVGS00082 Special Assistant for Public and Intergovernmental Affairs. Effective March 19, 2009.
DVGS60072 Special Assistant for Congressional and Legislative Affairs. Effective March 19, 2009.
DVGS60035 Special Assistant to the Secretary of Veterans Affairs. Effective March 26, 2009.
DVGS60080 Special Assistant to the Secretary of Veterans Affairs. Effective March 26, 2009.

*Department of Energy*

DEGS00725 Special Assistant to the Chief of Staff. Effective March 6, 2009.
DEGS00726 New Media Specialist, Office of Public Affairs. Effective March 6, 2009.
DEGS00727 Special Assistant to the Deputy Chief of Staff. Effective March 10, 2009.
DEGS00728 Special Assistant to the Chief of Staff. Effective March 11, 2009.
DEGS00729 Advisor for Policy and Communications, Office of Public Affairs. Effective March 11, 2009.
DEGS00730 Director, Public Affairs for Nuclear Security/Administrator for Nuclear Security. Effective March 11, 2009.
DEGS00731 Special Assistant to the Chief of Staff. Effective March 11, 2009.
DEGS00732 Deputy Scheduler, Office of Scheduling and Advance. Effective March 11, 2009.
DEGS00733 Trip Coordinator, Office of Scheduling and Advance. Effective March 17, 2009.
DEGS00734 Special Assistant to the Chief of Staff. Effective March 17, 2009.
DEGS00735 Special Assistant to the Chief of Staff. Effective March 23, 2009.
DEGS00736 Deputy Press Secretary, Office of Public Affairs. Effective March 25, 2009.
DEGS00737 Special Assistant for Congressional and Intergovernmental Affairs. Effective March 25, 2009.
DEGS00738 Deputy Director, Scheduling and Advance, Office of Scheduling and Advance. Effective March 26, 2009.

*Department of Housing and Urban Development*

DUGS60078 Staff Assistant to the Chief of Staff. Effective March 3, 2009.
DUGS60174 Congressional Relations Officer for Congressional Relations. Effective March 3, 2009.
DUGS60178 Intergovernmental Relations Specialist for Congressional and Intergovernmental Relations. Effective March 3, 2009.
DUGS60194 Staff Assistant for Public Affairs. Effective March 3, 2009.
DUGS00053 Staff Assistant to the Chief of Staff. Effective March 6, 2009.
DUGS60249 Congressional Relations Specialist for Congressional and Intergovernmental Relations. Effective March 10, 2009.
DUGS60388 Scheduling Coordinator for Administration/Chief Human Capital Officer. Effective March 11, 2009.
DUGS60180 Special Assistant for Housing, Federal Housing Commissioner. Effective March 16, 2009.
DUGS60114 Staff Assistant for Housing, Federal Housing Commissioner. Effective March 17, 2009.
DUGS60341 Special Assistant for Program Initiatives for the Chief of Staff. Effective March 17, 2009.
DUGS60342 Special Assistant to the Chief of Staff. Effective March 17, 2009.
DUGS60363 Special Assistant to the Chief of Staff. Effective March 17, 2009.
DUGS60599 Deputy Chief of Staff. Effective March 18, 2009.
DUGS60184 Deputy Assistant Secretary for Congressional Relations for Congressional and Intergovernmental Relations. Effective March 19, 2009.
DUGS06632 General Deputy Assistant Secretary for Public Affairs. Effective March 20, 2009.
DUGS60117 Staff Assistant for Administration/Chief Human Capital Officer. Effective March 23, 2009.
DUGS60469 Special Assistant for Public and Indian Housing. Effective March 23, 2009.

*Department of Transportation*

DTGS60295 Special Assistant for Policy for the Associate Deputy Secretary. Effective March 9, 2009.
DTGS60324 Director of Scheduling and Advance for the Chief of Staff. Effective March 9, 2009.
DTGS60202 Special Assistant to the Administrator. Effective March 17, 2009.
DTGS60258 Associate Director for Governmental Affairs. Effective March 17, 2009.
DTGS60369 Deputy Assistant Secretary for Governmental Affairs. Effective March 17, 2009.
DTGS60451 Director of Communications for the Administrator. Effective March 17, 2009.

DTGS60371 Deputy Assistant Secretary for Governmental Affairs. Effective March 19, 2009.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. E9–30011 Filed 12–16–09; 8:45 am]

**BILLING CODE 6325–39–P**

## POSTAL REGULATORY COMMISSION

### Facility Tours

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of Commission tours.

**SUMMARY:** Commission staff and a Commissioner will tour two Washington area facilities to gain familiarity with current postal operations. On Thursday, December 17, 2009, beginning at 6 p.m., the group will tour the Southern Maryland processing and distribution center and network distribution center in Capitol Heights, Maryland. On Friday, December 18, 2009, beginning at 8 a.m., the group will tour the main Fairfax Post Office delivery unit in Fairfax City, Virginia.

**DATES:** December 17, 2009 and December 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, general counsel, Postal Regulatory Commission, 202–789–6820 or *stephen.sharfman@prc.gov*.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. E9–30117 Filed 12–16–09; 8:45 am]

**BILLING CODE 7710–FW–S**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11964 and #11965]**

### Louisiana Disaster #LA–00028

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–1863–DR), dated 12/10/2009.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* 10/29/2009 through 11/03/2009.

*Effective Date:* 12/10/2009.

*Physical Loan Application Deadline Date:* 02/08/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 09/10/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 12/10/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parishes:

Beauregard, Bossier, Caldwell, Claiborne, De Soto, Natchitoches, Ouachita, Union, Webster.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Non-Profit Organizations with Credit Available Elsewhere | 3.625 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.000 |
| *For Economic Injury:* | |
| Non-Profit Organizations without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 11964B and for economic injury is 11965B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9–30002 Filed 12–16–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11960 and #11961]**

### Arkansas Disaster Number AR–00038

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–1861–DR), dated 12/03/2009.

*Incident:* Severe Storms, Tornadoes, and Flooding.

*Incident Period:* 10/29/2009 through 11/08/2009.

**DATES:** *Effective Date:* 12/10/2009.

*Physical Loan Application Deadline Date:* 02/01/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 09/03/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Arkansas, dated 12/03/2009, is hereby amended to establish the incident period for this disaster as beginning 10/29/2009 and continuing through 11/08/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9–30003 Filed 12–16–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11962 and #11963]**

### Virginia Disaster #VA–00027

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Virginia (FEMA—1862—DR), dated 12/09/2009.

*Incident:* Severe Storms and Flooding Associated with Tropical Depression Ida and a Nor'easter.

*Incident Period:* 11/11/2009 and continuing.

*Effective Date:* 12/09/2009.

*Physical Loan Application Deadline Date:* 02/08/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 09/09/2010.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance,

U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 12/09/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties and Independent Cities:

Chesapeake City, Halifax, Hampton City, Isle of Wight, King and Queen, Newport News City, Norfolk City, Northampton, Poquoson City, Portsmouth City, Surry, Virginia Beach City.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage* | |
| Non-Profit Organizations with Credit Available Elsewhere | 3.625 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.000 |
| *For Economic Injury* | |
| Non-Profit Organizations without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 119626 and for economic injury is 119636.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9–30004 Filed 12–16–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 30b1–6T; SEC File No. 270–599; OMB Control No. 3235–0652.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 30b1–6T (17 CFR 270.30b1–6T) under the Investment Company Act of 1940 (the ''Act'') is entitled: ''Weekly Portfolio Report for Certain Money Market Funds.'' The rule requires that if the market-based net asset value (''market-based NAV'') of a registered investment company, or series thereof, that is regulated as a money market fund under rule 2a–7 (17 CFR 270.2a–7) on any business day is less than $.9975 [1] that money market fund must promptly notify the Securities and Exchange Commission (''Commission'') by electronic mail and provide a portfolio schedule to the Commission within one business day. Subsequently, the money market fund must submit a portfolio schedule within two business days after the end of each week until the fund's market-based NAV at the end of the week equals or exceeds $.9975. The portfolio schedule must be sent electronically in Microsoft Excel format. The purpose of the rule is to facilitate the Commission's oversight of money market funds and ensure that the Commission receives substantially similar information to that which it received from money market funds participating in the Treasury Department's Temporary Guarantee Program for Money Market Funds (''Guarantee Program''), which had guaranteed the $1.00 share value of accounts held by investors as of September 19, 2008 in participating money market funds.[2] The Guarantee Program was established to help stabilize money market funds following a period of substantial redemptions that threatened the ability of some money market funds to maintain the $1.00 share value.[3] The program expired on September 18, 2009.

Commission staff estimates estimate, based on past experience under the Guarantee Program, that 10 money market funds are required by rule 30b1–6T to provide weekly reports disclosing certain information regarding the fund's portfolio holdings. Staff estimates that money market funds require an average of approximately 6 burden hours to compile and electronically submit the initial required portfolio holdings information, and an average of approximately 4 burden hours in subsequent reports.[4] Based on these estimates, we estimate that the annual burden will be 210 hours per money market fund that is required to provide the information and an aggregate annual burden of 2100 hours for all of the money market funds required to submit portfolio schedules.[5]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. 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 control number. Compliance with rule 30b1–6T is mandatory for any money market fund whose market-based NAV is less than $.9975. Responses to the disclosure requirements will be kept confidential.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: or Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov*; and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

[1] Most money market funds seek to maintain a stable net asset value per share of $1.00, but a few seek to maintain a stable net asset value per share of a different amount, *e.g.,* $10.00. For convenience, we generally refer to the stable net asset value of $1.00 per share.

[2] Our staff estimates that approximately 79 percent of money market funds participated in the Guarantee Program, and that the money market funds that did not participate in the program were mostly funds that invest predominately in U.S. Treasury and U.S. Government securities.

[3] See Press Release, U.S. Department of the Treasury, Treasury Announces Guaranty Program for Money Market Funds (Sept. 19, 2008), available at *http://www.treas.gov/press/releases/hp1147.htm.*

[4] We understand that the required information is currently maintained by money market funds pursuant to other regulatory requirements or in the ordinary course of business. Accordingly, for the purposes of our analysis, we do not ascribe any time to gathering the required information.

[5] Because one report is required each week, a fund would submit 52 reports in one year. The first report would require 6 hours and subsequent reports would require 4 hours each. The difference between the hours is due to the fact that funds generally would not incur the additional start-up time applicable to the first report. The annual burden of the reporting requirement would be 210 hours (1 report × 6 hours = 6 hours, 51 reports × 4 hours = 204 hours, and 6 hours + 204 hours = 210 hours). 210 hours × 10 (the estimated number of money market funds that will be required to submit portfolio schedules under the rule each year) = 2100 hours.

Dated: December 10, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–29968 Filed 12–16–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61141; File No. SR–Phlx–2009–101]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change Relating to Collection of Exchange Fees

December 10, 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 December 8, 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.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 909, Security for Exchange Fees and Other Claims, to require member organizations to provide a clearing account number at the National Securities Clearing Corporation (''NSCC'') for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* on the Commission's Web site at *http://www.sec.gov,* 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 create an efficient method of collecting undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.[3] This proposal will provide a cost savings to the Exchange in that it will alleviate administrative processes related to the collection of monies owed to the Exchange. Collection matters divert staff resources away from the Exchange's regulatory and business purposes. In addition, the debiting process will prevent member accounts from becoming overdue.

The Exchange proposes to eliminate the requirement to provide and maintain a security deposit. Currently, Rule 909 requires member organizations and applicants for registration to provide and maintain a security deposit in an amount not to exceed $50,000, unless the member organization maintains excess net capital of at least the amount established by the Exchange in which case a deposit is not required. The Exchange proposes to amend Rule 909 to eliminate all references to the security deposit and the excess net capital requirements. The security deposit was meant to require adequate financial security for the debts of member corporations and for ensuring that member corporations are generally financially solvent. The Exchange would instead propose to require member organizations and applicants to provide a clearing account number for an account at NSCC in order to permit the Exchange to debit undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange or other charges related to Rule 924.[4] The Exchange will send a monthly invoice[5] to each member organization on approximately the 4th–6th business day of the following month.[6] The Exchange will also send a file to NSCC each month on approximately the 23rd of the following month to initiate the debit of the appropriate amount stated on the member's invoice for the prior month. Because the members will receive an invoice well before any monies are debited (normally within two weeks), the members will have adequate time to contact the staff with any questions concerning their invoice. If a member disputes an invoice, the Exchange will not include the disputed amount in the debit if the member has disputed the amount in writing to the Exchange's designated staff by the 15th of the month, or the following business day if the 15th is not a business day, and the amount in dispute is at least $10,000 or greater.

Once NSCC receives the file from the Exchange, NSCC would proceed to debit the amounts indicated from the clearing members' account. In the instance where the member clears through an Exchange clearing member, the estimated transactions fees owed to the Exchange are typically debited by the clearing member on a daily basis using daily transaction detail reports provided by the Exchange to the clearing member[7] in order to ensure adequate funds have been escrowed. The Exchange would debit any monies owed including undisputed or final fees[8], fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.[9] The Exchange believes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange will not debit accounts for fees that are unusually large or for special circumstances, unless such debiting is requested by the member.

[4] Exchange Rule 924 entitled, Obligations of Members and Member Organizations to the Exchange, states, among other things, that members and member organizations shall be liable for such fees, fines, dues, penalties and other amounts imposed by the Exchange.

[5] The monthly invoice will indicate that the amount on the invoice will be debited from the designated NSCC account. Each month, the Exchange will send a file to the member's clearing firm which will indicate the amounts to be debited from each member. If a member is ''self-clearing'', no such file would be sent as the member would receive the invoice, as noted above, which would indicate the amount to be debited.

[6] By way of example, October invoices were sent on November 5th.

[7] The Exchange provides a Daily Transaction Detail Report to Clearing Members on a daily basis.

[8] Exchange fees are noted on the Exchange Fee Schedule.

[9] This includes, among other things, fines which result from: violation of Rule 60, Order and Decorum; violations of the Minor Rule Plan pursuant to Rule 970; monetary sanctions imposed by the Business Conduct Committee relating to a Letter of Caution; and monetary sanctions imposed by a Hearing Panel in connection with Disciplinary Violations. With respect to disciplinary sanctions that are imposed by either the Business Conduct Committee or a Hearing Panel, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly

Continued

that the debit process eliminates the need to require a security deposit since the Exchange would debit member accounts at NSCC on a given day of each month and such debiting would eliminate the risk of unpaid invoices because of the large amounts of capital held at NSCC by members.

Additionally, the Exchange proposes amending the title of Rule 909 from ''Security for Exchange Fees and Other Claims'' to ''Collection of Exchange Fees and Other Claims'' in order to more accurately describe the proposed rule. The Exchange would provide members with a thirty day period, upon approval of this proposal, to provide the Membership Department with an NSCC number, if they have not already provided such a number in the past.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] 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 providing its members with an alternative to providing a security deposit to the Exchange while also providing members with an efficient process to pay undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange. The Exchange believes that this process of debiting NSCC accounts will ease the member's administrative burden in paying monthly invoices, avoid overdue balances and provide same day collection from all members, who owe monies to the Exchange, which results in equitable treatment.

*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.

not take action to debit a member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the members invoice prior to the actual NSCC debit.

[10] Currently, there are members who have provided the Exchange with an NSCC clearing account number, which accounts are already debited on a monthly basis.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were 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 Number SR–Phlx–2009–101 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–2009–101. 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 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–101 and should be submitted on or before January 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–29969 Filed 12–16–09; 8:45 am]

**BILLING CODE 8011–01–P**

[13] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 6182]**

### Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, January 5, 2010, in Room 10–0718 of Jemal's Riverside Building, 1900 Half Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the forty-first session of the International Maritime Organization (IMO) Standards of Training and Watchkeeping (STW) to be held at the IMO Headquarters, United Kingdom, from January 11 to January 15, 2010.

The primary matters to be considered include:

—Decisions of other IMO bodies;
—Validation of modal training courses;
—Unlawful practices associated with certificates of competency;
—Training for seafarer safety representatives;
—Casualty analysis;
—Comprehensive review of the STCW Convention and the STCW Code;
—Review of the principles for establishing the safe manning levels of ships;
—Measures to enhance maritime security;
—Development of an e-navigation strategy implementation plan;
—Revision of the recommendations for entering enclosed spaces aboard ships;

—Development of model procedures for executing ship board emergency procedures; and
—Work programme and agenda for STW 42.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should contact the meeting coordinator; Ms. Zoe Goss by e-mail at *zoe.a.goss@uscg.mil*, by phone at (202) 372–1425, by fax at (202) 372–1926, or in writing at Commandant (CG–5212), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1308, Washington, DC 20593–0001 not later than 72 hours before the meeting. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited.

Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/hq/cg5/imo*.

Dated: December 8, 2009.

**J. Trent Warner,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. E9–30037 Filed 12–16–09; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF STATE

**[Public Notice 6842]**

### Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 p.m. on Thursday, January 7, 2010, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the fifty second Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF) to be held at the IMO Headquarters, United Kingdom, from January 25 to January 29, 2010.

The primary matters to be considered include:

—Adoption of the agenda
—Decisions of other IMO bodies
—Development of new generation intact stability criteria
—Safety of small fishing vessels
—Development of options to improve effect on ship design and safety of the International Convention on Tonnage Measurement, 1969
—Time dependent survivability of passenger ships in damaged condition
—Guidance on the impact of open watertight doors on existing and new ship survivability
—Stability and sea-keeping characteristics of damaged passenger ships in a seaway when returning to port by own power or under tow
—Guidelines for verification of damage stability requirements for tankers and bulk carriers
—Safety provisions applicable to tenders operating from passenger ships
—Damage stability regulations for ro-ro passenger ships
—Development of an agreement on the implementation of the 1993 Torremolinos Protocol
—Consideration of IACS unified interpretations
—Subdivision standards for cargo ships
—Work program and agenda for SLF 53
—Election of Chairman and Vice-Chairman for 2011
—Any other business
—Amendments to the 1966 Load Line Convention and the 1988 Load Line Protocol related to seasonal zone
—Report to the Maritime Safety Committee.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should contact the meeting coordinator; Mr. Jaideep Sirkar by e-mail at *jaideep.sirkar@uscg.mil*, by phone at (202) 372–1366, by fax at (202) 372–1925, or in writing at Commandant (CG–5212), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than 72 hours before the meeting. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/hq/cg5/imo*.

Dated: December 8, 2009.

**Jon Trent Warner,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. E9–30047 Filed 12–16–09; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2009–0131]**

### Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of request for extension of currently approved information collection.

**SUMMARY:** The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for changes to a currently approved information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

**DATES:** Please submit comments by February 16, 2010.

**ADDRESSES:** You may submit comments identified by DOT Docket ID Number FHWA–2009–0131, by any of the following methods:

*Web Site:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.

*Fax:* 1–202–493–2251.

*Mail:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

*Hand Delivery or Courier:* U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Gary Jensen, 202–366–2048 or Kenneth Petty, 202–366–6654, Office of Planning, Environment, and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15

p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** *Title:* Transportation, Community, and System Preservation Program Grant Application. Delta Region Transportation Development Program Grant Application. Transportation Planning Excellence Awards Nomination Form.

*OMB Control #:* 2125–0615.

*Background:* Transportation, Community, and System Preservation Program Grant Application: Section 1117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) provides funding for the Transportation, Community, and System Preservation (TCSP) Program. The TCSP Program is a comprehensive initiative of research and grants to investigate the relationships between transportation, community, and system preservation plans and practices and identify sector-based initiatives to improve such relationships. States, metropolitan planning organizations, local governments, and tribal governments are eligible for discretionary grants to carry out eligible projects to integrate transportation, community, and system preservation plans and practices that:

- Improve the efficiency of the transportation system of the United States.
- Reduce environmental impacts of transportation.
- Reduce the need for costly future public infrastructure investments.
- Ensure efficient access to jobs, services, and centers of trade.
- Examine community development patterns and identify strategies to encourage private sector development patterns and investments that support these goals.

The 2-page TCSP grant application is the tool used to collect the necessary information needed to successfully submit eligible TCSP Program projects to the Secretary of Transportation for approval and for the distribution of TCSP funds. The TCSP grant application includes four parts: (A) Project Information—General contact and funding information, (B) Project Abstract—Overview of the purpose and intent of project, (C) Project Narrative—Description of the project and the expected results, and (D) Project Eligibility—Discussion of how the project meets statutory eligibility.

The TCSP Program is a discretionary program. However in some years, the projects awarded TCSP Program funding have been designated by Congress. In order to comply with Congressional designation, the FHWA Division offices will continue to be asked to identify the intended recipient of the TCSP designated grant. The specified grant recipient would then be asked to complete the grant application each fiscal year that they receive TCSP funding and submit it electronically.

**Background: Delta Region Transportation Development Program Grant Application**

Section 1117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) provides funding for the Delta Region Transportation Development Program (DRTDP). The DRTDP supports and encourages multistate transportation planning and corridor development, provides for transportation project development, facilitates transportation decision making and supports transportation construction in the eight States comprising the Delta Region (Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee). A State transportation department or metropolitan planning organization in a Delta Region State may receive and administer funds provided under the program.

The 2-page DRTDP grant application is the tool used to collect the necessary information needed to successfully submit eligible DRTDP projects to the Secretary of Transportation for approval and for the distribution of DRTDP funds. The DRTDP grant application collects project information including general contact and funding information, a narrative project description, and information regarding statutory eligibility.

The DRTDP Program is a discretionary program. However in some years, the projects awarded DRTDP Program funding have been designated by Congress. In order to comply with Congressional designation, the FHWA Division offices will continue to be asked to identify the intended recipient of the DRTDP designated grant. The specified grant recipient would then be asked to complete the grant application each fiscal year that they receive DRTDP funding and submit it electronically.

**Background: Transportation Planning Excellence Awards Nomination Form**

The Transportation Planning Excellence Awards (TPEA) Program is a biennial awards program developed by the FHWA and the Federal Transit Administration (FTA) to recognize outstanding initiatives across the country to develop, plan and implement innovative transportation planning practices. The program is co-sponsored by the American Planning Association.

The on-line TPEA nomination form is the tool for submitters to nominate a process, group, or individual involved in a project or process that has used the FHWA and/or the FTA funding sources to make an outstanding contribution to the field of transportation planning. The information about the process, group or individual provided by the submitter may be shared and published if that submission is selected for an award.

The TPEA Program is a biennial awards program and individuals will be asked to submit nominations via the online form every two years. The participants will provide their information by means of the Internet.

*Respondents:* For the TCSP Program, 200 participants annually. For the DRTDP Program, 20 participants annually. For the TPEA, 150 participants biennially.

*Frequency:* For the TCSP Program, grant applications are solicited on an annual basis. For the DRTDP, grant applications are solicited on an annual basis. For the TPEA, nominations are solicited every two years.

*Estimated Average Burden per Response:* For the TCSP Program, approximately 120 minutes. For the DRTDP, approximately 90 minutes. For the TPEA Program, approximately 90 minutes.

*Estimated Total Annual Burden Hours:* For the TCSP Program, 400 hours annually. For the DRTDP, 30 hours annually. TPEA, 225 hours in the first year and 225 hours in the third year.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 11, 2009.

**Tina Campbell,**

*Acting Chief, Management Programs and Analysis Division.*

[FR Doc. E9–30031 Filed 12–16–09; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35331]**

### Sierra Northern Railway—Lease and Operation Exemption—Union Pacific Railroad Company

Sierra Northern Railway (SNR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and to operate, pursuant to a lease agreement with Union Pacific Railroad Company (UP), a line of railroad known as the Santa Cruz

Branch line located between milepost 0.433, at the east boundary of Salinas Road, near Watsonville Junction, CA, to milepost 31.39, at the end of UP's line near Davenport, CA, including the interconnection with the Santa Cruz and Big Trees Railroad at milepost 20.4 at Santa Cruz, CA, and various associated siding and spur trackage. The total length of the line is approximately 31.0 miles, and there is an additional 3.6 miles of sidings and spurs.

SNR states that, pursuant to an interchange agreement attached to the lease agreement and made a part of this transaction, UP also is granting to SNR certain trackage rights over trackage in UP's Watsonville yard as necessary for interchange. SNR further states that neither the lease agreement nor the interchange agreement contain a provision or agreement that may limit future interchange with a third party. *See* 49 CFR 1150.43(h).

SNR states that it expects the transaction to be consummated in December 2009, on or shortly after the effective date of this exemption. The earliest this transaction may be consummated is December 31, 2009, the effective date of the exemption (30 days after the exemption was filed).

SNR certifies that its projected annual revenues as a result of the transaction will not result in SNR becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than December 24, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35331, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David Magaw, President, Sierra Northern Railway, 341 Industrial Way, Woodland, CA 95776.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 14, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. E9–29986 Filed 12–16–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

December 11, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before January 19, 2010 to be assured of consideration.

**Financial Management Service (FMS)**

*OMB Number:* 1510–0074.

*Type of Review:* Extension.

*Title:* Electronic Funds Transfer (EFT) Market Research Study.

*Description:* This is a generic clearance to conduct customer satisfaction surveys. The need for these surveys arises from Congressional directive that accompanied legislation enacted in 1996, as part of the Debt Collection Improvement Act (Pub. L. 104–134), expanding the scope of check recipients required to use direct deposit to receive Federal benefit payments (*see* 31 U.S.C. 3332). Congress directed Treasury to ''study the socioeconomic and demographic characteristics of those who currently do not have Direct Deposit and determine how best to increase usage among all groups.''

*Respondents:* Businesses or other for-profits.

*Estimated Total Burden Hours:* 7,500 hours.

*Clearance Officer:* Wesley Powe, (202) 874–7662, Financial Management Service, Room 135, 3700 East West Highway, Hyattsville, MD 20782.

*OMB Reviewer: OMB Reviewer:* OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *oira_submission@omb.eop.gov*.

**Celina Elphage,**

*Treasury PRA Clearance Officer.*

[FR Doc. E9–30024 Filed 12–16–09; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

December 11, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before January 19, 2010 to be assured of consideration.

**Financial Crimes Enforcement Network (FinCEN)**

*OMB Number:* 1506–0004.

*Type of Review:* Revision.

*Title:* Currency Transaction Reports.

*Description:* Financial institutions file form 104 for currency transaction in excess of $10,000 a day pursuant to 31 U.S.C. 5313(a) and 31 CFR 103.22(a)(b). The form is used by criminal investigators, and taxation and regulatory enforcement authorities, during the course of investigations involving financial crimes.

*Respondents:* Businesses or other for-profits.

*Estimated Total Reporting Burden:* 9,140,000 hours.

*Clearance Officer:* Russell Stephenson, (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

*OMB Reviewer:* Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

**Celina Elphage,**

*Treasury PRA Clearance Officer.*

[FR Doc. E9–30025 Filed 12–16–09; 8:45 am]

**BILLING CODE 4810–02–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on January 11–12, 2010, in the Carlton Ballroom at the St. Regis, 923 16th and K Streets, NW., Washington DC, from 8:30 a.m. to 5 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of veterans relating to disability compensation.

On both days, the Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other Veteran benefits programs to include the Institute of Medicine Study on Reintegration of Military Personnel and the Senior Oversight Committee Programs Review Results.

Time will be allocated for receiving public comments on the afternoon of January 11. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Farber at (202) 461–9728 or at *Ersie.farber@va.gov.*

Dated: December 10, 2009.

By direction of the Secretary.

**Vivian Drake,**

*Acting Committee Management Officer.*

[FR Doc. E9–29951 Filed 12–16–09; 8:45 am]

**BILLING CODE 8320–01–P**


Federal Register

**Thursday,**

**December 17, 2009**

## Part II

# Department of the Treasury

**Internal Revenue Service**

**26 CFR Parts 1, 31 and 301**

**Basis Reporting by Securities Brokers and Basis Determination for Stock; Proposed Rule**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1, 31, and 301**

**[REG–101896–09]**

**RIN 1545–BI66**

## Basis Reporting by Securities Brokers and Basis Determination for Stock

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to reporting sales of securities by brokers and determining the basis of securities. The proposed regulations reflect changes in the law made by the Energy Improvement and Extension Act of 2008 that require brokers when reporting the sale of securities to the IRS to include the customer's adjusted basis in the sold securities and to classify any gain or loss as long-term or short-term. This document also contains proposed regulations reflecting changes in the law that alter how taxpayers compute basis when averaging the basis of shares acquired at different prices and that expand the ability of taxpayers to compute basis by averaging. The document also proposes regulations that provide brokers and others until February 15 to furnish certain information statements to customers. This document also contains proposed regulations that implement new reporting requirements imposed upon persons that transfer custody of stock and upon issuers of stock regarding organizational actions that affect the basis of the issued stock. This document also contains proposed regulations reflecting changes in the law that alter how brokers report short sales of securities. Finally, this document provides for a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by February 8, 2010. Outlines of topics to be discussed at the public hearing scheduled for February 17, 2010 must be received by February 8, 2010.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG–101896–09), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–101896–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–101896–09). The public hearing will be held in the auditorium of the IRS New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations under section 1012, Edward C. Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622–4960; concerning the proposed regulations under sections 3406, 6045, 6045A, 6045B, 6721, and 6722, Stephen Schaeffer of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622–4910; concerning submissions of comments, the public hearing, and/or to be placed on the building access list to attend the public hearing, Funmi Taylor of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking related to the furnishing of information in connection with the transfer of securities has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 16, 2010. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations in §§ 1.6045–1(c)(3)(xi)(C) and 1.6045A–1 concerning furnishing information in connection with a transfer of securities is necessary to allow brokers that effect sales of transferred covered securities to determine and report the adjusted basis of the securities and whether any gain or loss with respect to the securities is long-term or short-term in compliance with section 6045(g) of the Internal Revenue Code (Code). The collection of information is required to comply with the provisions of section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343 (122 Stat. 3765, 3854 (2008)). The likely respondents are brokers of securities and issuers, transfer agents, and professional custodians of securities that do not effect sales.

*Estimated total annual reporting burden:* 240,000 hours.

*Estimated average annual burden per respondent:* 8 hours.

*Estimated average burden per response:* 4 minutes.

*Estimated number of respondents:* 30,000.

*Estimated frequency of responses:* 4,000,000.

The burden for the collection of information contained in proposed regulation § 1.6045–1 except for § 1.6045–1(c)(3)(xi)(C) will be reflected in the burden on Form 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' when revised to request the additional information in that proposed regulation. The burden for the collection of information contained in proposed regulation § 1.6045B–1 will be reflected in the burden on the form that the IRS will create to request the information in that proposed regulation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1), the Regulations on Employment Tax and Collection of Income Tax at the Source (26 CFR part 31), and the Regulations on Procedure and Administration (26 CFR part 301) relating to information reporting by brokers and others as required by section 6045. The document

also contains proposed amendments relating to the scope and computation of basis by the average basis method under section 1012 and to new information reporting requirements by brokers, custodians, and issuers of securities under sections 6045A and 6045B. These sections were amended or added by section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343 (122 Stat. 3765, 3854 (2008)) (the Act). These proposed regulations are proposed to be issued under the authority contained in sections 1012, 3406, 6045, 6045A, 6045B, and 7805.

*1. Returns of Brokers*

Section 6045(g) provides that every broker that is required to file a return with the IRS under section 6045(a) showing the gross proceeds from the sale of a covered security must include in the return the customer's adjusted basis in the security and whether any gain or loss with respect to the security is long-term or short-term. Thus, a broker that is currently subject to gross proceeds reporting under section 6045(a) with respect to the sale of a covered security is also subject to the reporting of adjusted basis of that security and whether any gain or loss with respect to that security is long-term or short-term under section 6045(g).

Section 1.6045–1(a)(1) provides that the term *broker* generally means any U.S. or foreign person that, in the ordinary course of a trade or business, stands ready to effect sales to be made by others. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, a broker includes only a person described as a U.S. payor or U.S. middleman in § 1.6049–5(c)(5). Additionally, under § 1.6045–1(g)(1), reporting is not required with respect to certain holders of securities that are exempt foreign persons. U.S. and foreign brokers that are subject to gross proceeds reporting under the existing rules will also be subject to reporting under the rules of section 6045(g).

a. Covered Security

For purposes of reporting under section 6045(g), section 6045(g)(3)(A) provides that a covered security is any specified security acquired on or after the applicable date if the security: (1) Was acquired through a transaction in the account in which the security was held; or (2) was transferred to that account from an account in which the security was a covered security, but only if the broker receiving custody of the security receives a statement under section 6045A (described later in this preamble) with respect to the transfer.

b. Specified Security

Section 6045(g)(3)(B) provides that a specified security is any: (1) Share of stock in a corporation; (2) note, bond, debenture, or other evidence of indebtedness; (3) commodity, or a contract or a derivative with respect to the commodity, if the Secretary determines that adjusted basis reporting is appropriate; and (4) other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate.

c. Applicable Date

The applicable date of the reporting requirements under section 6045(g) depends on the type of specified security that is sold. For stock in or of a corporation (other than stock in a regulated investment company (RIC) or stock acquired in connection with a dividend reinvestment plan (DRP)), section 6045(g)(3)(C)(i) provides that the applicable date is January 1, 2011. For stock in a RIC (RIC stock) or stock acquired in connection with a DRP (DRP stock) (for which additional rules are described later in this preamble), section 6045(g)(3)(C)(ii) provides that the applicable date is January 1, 2012. For any other specified security, section 6045(g)(3)(C)(iii) provides that the applicable date is January 1, 2013, or a later date determined by the Secretary. The reporting rules related to options transactions apply only to options granted or acquired on or after January 1, 2013, as provided in section 6045(h)(3).

d. Reporting Method

A broker must report a customer's adjusted basis under the following statutory rules. Under section 6045(g)(2)(B)(i)(I), a broker must report the adjusted basis of any security (other than RIC stock or DRP stock) using the first-in, first-out (FIFO) basis determination method unless the customer notifies the broker of the specific stock to be sold or transferred by means of making an adequate identification of the stock sold or transferred at the time of sale or transfer. Under section 6045(g)(2)(B)(i)(II), a broker must report the adjusted basis of RIC stock or DRP stock in accordance with the broker's default method under section 1012 unless the customer notifies the broker that the customer elects another permitted method.

*2. Determination of Basis*

a. In General

For any sale, exchange, or other disposition of a specified security on or after the applicable date, section 1012(c) provides that the conventions prescribed by regulations under section 1012 for determining adjusted basis apply on an account by account basis.

b. RIC Stock

Section 1012(c)(2) provides that RIC stock acquired before January 1, 2012, is treated as held in a separate account from RIC stock acquired on or after that date. However, a RIC may elect (at the time and in the form and manner prescribed by the Secretary), on a stockholder by stockholder basis, to treat all stock in the RIC held by the stockholder as one account without regard to when the stock was acquired (single-account election). When this election applies, the average basis of a customer's stock is computed by averaging the basis of shares of identical stock acquired before, on, and after January 1, 2012, and all the shares are treated as covered securities. If a broker holds RIC stock as a nominee of the beneficial owner of the shares, the broker makes the election.

c. DRP Stock

If stock is acquired on or after January 1, 2011, in connection with a DRP, section 1012(d)(1) provides that the basis of that stock is determined under one of the basis computation methods permissible for RIC stock. Accordingly, the average basis method may be used for determining the basis of DRP stock. This special rule for DRP stock, however, applies only while the stock is held as part of the DRP. If the stock is transferred to another account, under section 1012(d)(2), each share of stock has a cost basis in that other account equal to its basis in the DRP immediately before the transfer (with adjustment for charges connected with the transfer).

Section 1012(d)(4)(A) provides that a DRP is any arrangement under which dividends on stock are reinvested in stock identical to the stock on which the dividends are paid. Stock is treated as acquired in connection with a DRP if the stock is acquired pursuant to the DRP or if the dividends paid on the stock are subject to the DRP. Under section 1012(d)(3), in determining basis under this rule, the account by account rules of section 1012(c), including the single-account election available to RICs, apply.

*3. Other Broker Reporting Provisions*

a. Wash Sales

Section 6045(g)(2)(B)(ii) provides that, unless the Secretary provides otherwise, a customer's adjusted basis in a covered security generally is determined for reporting purposes without taking into account the effect on basis of the wash sale rules of section 1091 unless the purchase and sale transactions resulting in a wash sale occur in the same account and are in identical securities (rather than substantially identical securities as required by section 1091).

b. S Corporations

Section 6045(g)(4) provides that, for purposes of section 6045, an S corporation (other than a financial institution) is treated in the same manner as a partnership. This rule applies to any sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011. When this rule takes effect, brokers generally will be required to report gross proceeds and basis information to customers that are S corporations for securities purchased on or after January 1, 2012.

c. Short Sales

In the case of a short sale, section 6045(g)(5) provides that gross proceeds and basis reporting under section 6045 generally is required for the year in which the short sale is closed (rather than, as under the present rule for gross proceeds reporting, the year in which the short sale is entered into).

d. Options

Section 6045(h)(1) provides that if a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, the amount received with respect to the grant or paid with respect to the acquisition of such option must be treated for reporting purposes as an adjustment to gross proceeds or as an adjustment to basis, as the case may be. Section 6045(h)(2) provides that gross proceeds and basis reporting is required when there is a lapse of, or a closing transaction with respect to, an option on a specified security or an exercise of a cash-settled option on a specified security. Section 6045(h)(3) provides that section 6045(h)(1) and (h)(2) do not apply to any option granted or acquired before January 1, 2013.

e. Time for Furnishing Statements

The Act amended section 6045(b) to extend the due date from January 31 to February 15 for furnishing certain information statements to customers, effective for statements required to be furnished after December 31, 2008. Section 6045(b) provides that the statements to which the new February 15 due date applies are statements required under section 6045 and statements with respect to other reportable items that are furnished with these statements in a consolidated reporting statement (as defined in regulations under section 6045). See Notice 2009–11 (2009–5 IRB 420), providing that, with respect to reportable items from calendar year 2008, brokers had until February 17, 2009, to report all items that they customarily reported on their annual composite form recipient statements. *See* § 601.601(d)(2).

*4. Transfer Statements*

The Act added section 6045A, which provides that a broker and any other person specified in Treasury regulations (applicable person) that transfers to a broker a security that is a covered security in the hands of the transferring person must furnish to the broker receiving custody of the security (receiving broker) a written statement that allows the receiving broker to satisfy the basis reporting requirements of section 6045(g). Section 6045A(c) provides that, unless the Secretary provides otherwise, the statement required by this rule must be furnished to the receiving broker not later than fifteen days after the transfer of the covered security.

*5. Issuer Reporting*

The Act added section 6045B, which provides that an issuer of specified securities must file a return according to forms or regulations prescribed by the Secretary describing any organizational action (such as a stock split, merger, or acquisition) that affects the basis of the specified security, the quantitative effect on the basis of that specified security, and any other information the Secretary requires. Section 6045B(b) provides that this return must be filed within forty-five days after the date of the organizational action, unless the action occurs in December, in which case the return must be filed by January 15th of the following year.

Section 6045B(c) provides that an issuer must furnish, according to forms or regulations prescribed by the Secretary, to each nominee with respect to that security (or to each certificate holder if there is no nominee) a written statement showing: (1) The name, address, and telephone number of the information contact of the person required to file the return; (2) the information required to be included on the return with respect to the security; and (3) any other information required by the Secretary. This statement must be furnished to the nominee or certificate holder on or before January 15th of the year following the calendar year in which the organizational action took place.

Section 6045B(e) provides that the Secretary may waive the return filing and information statement requirements if the person to which the requirements apply makes publicly available, in the form and manner determined by the Secretary, the name, address, telephone number, and e-mail address of the information contact of that person, and the information about the organizational action and its effect on basis otherwise required to be included in the return.

*6. Penalties*

The Act amended the list of returns and statements in section 6724(d) for which sections 6721 and 6722 impose penalties for any failure to file or furnish complete and correct returns and statements. This section imposes a penalty on brokers for a failure to file returns or furnish complete and correct statements after a sale of securities as required by section 6045. Section 6724(d) now also imposes penalties with respect to the returns and statements required by sections 6045A and 6045B.

*7. Request for Comments*

Notice 2009–17 (2009–8 IRB 575), published by the IRS on February 23, 2009, invited public comments regarding guidance under the new reporting requirements in sections 6045, 6045A, and 6045B and for determining the basis of certain securities under section 1012. In particular, Notice 2009–17 requested comments on the applicability of the reporting requirements, basis method elections, DRPs, reconciliation with customer reporting, special rules and mechanical issues, transfer reporting, issuer reporting, and broker practices and procedures. Many comments were received in response to Notice 2009–17. The comments were considered in developing the proposed regulations. *See* § 601.601(d)(2).

**Explanation of the Provisions and Summary of Comments**

The proposed regulations provide rules for determining basis and for reporting adjusted basis and whether any gain or loss on a sale is long-term or short-term. The proposed regulations also address the new reporting requirements imposed upon persons

transferring custody of stock and upon issuers of stock.

The proposed regulations do not address rules regarding reporting for options, compensatory options, or other equity-based compensation arrangements, or reporting of adjusted basis for indebtedness, because indebtedness is only subject to the requirements of section 6045(g) if acquired on or after January 1, 2013, and options are only subject to the requirements of section 6045(g) and (h) if granted or acquired on or after January 1, 2013. These rules are expected to be addressed in future guidance.

The proposed regulations generally are limited to the amendments to the Internal Revenue Code (Code) under the Act in sections 1012, 6045, 6045A, 6045B, and 6724 and do not address requests from commentators regarding changes to substantive rules in other areas such as the rules regarding allocation of a return of capital. The proposed regulations also do not address technical issues related to information reporting such as electronic delivery of returns by brokers to customers. These comments are outside the scope of the proposed regulations.

*1. Returns of Brokers*

Section 1.6045–1(c) requires brokers to make a return of information with respect to each sale by a customer of the broker effected by the broker in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others. Section 1.6045–1(d) sets forth the information that the broker must include on the return.

The proposed regulations amend the definition of *broker* in § 1.6045–1(a)(1) to modify the exception for non-U.S. payors and non-U.S. middlemen. Under the revised rule, a non-U.S. payor or non-U.S. middleman would be a broker to the extent provided in a withholding agreement described in § 1.1441–1(e)(5)(iii) between a qualified intermediary and the IRS or similar agreement with the IRS. The Treasury Department and IRS expect that such agreements generally will provide that the broker that is party to such agreement will be subject to the broker reporting requirements under section 6045 to the same extent as U.S. payors and U.S. middlemen. The Treasury Department and IRS request comments regarding the usefulness of information received from non-U.S. payors and non-U.S. middlemen, the costs to non-U.S. payors and non-U.S. middlemen of complying with such a requirement, and other potential effects of such a requirement in a withholding or reporting agreement with the IRS.

a. Form and Manner of New Broker Reporting Requirements

The proposed regulations provide that brokers must report adjusted basis and whether any gain or loss with respect to the security is long-term or short-term on Form 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' or any successor form under section 6045(a) when reporting the sale of a covered security. They clarify that the basis reported by a broker is the total amount paid by a customer or credited against a customer's account as a result of the acquisition of securities adjusted for commissions and the effects of other transactions occurring within the account. The proposed regulations also require brokers to adjust the basis they report to take into account the information received on a transfer statement in connection with the transfer of a covered security (including transfers from a decedent and gift transfers) as well as information received from issuers of stock about the quantitative effect on basis from corporate actions. The proposed regulations generally do not require a broker to adjust the reported basis for transactions, elections, or events occurring outside the account. For example, with respect to wash sales (discussed in more detail later in this preamble), the proposed regulations require that a broker adjust the reported basis in accordance with section 1091 if both the purchase and sale transactions occur with respect to identical securities in the same account.

Commentators suggested that brokers be required to report certain warnings or indicators to a customer about potential discrepancies between the broker-reported basis and the basis the customer must report on the customer's income tax return. For example, commentators suggested that a flag be added to the information return that would alert a customer that a foreign issuer may not have reported to the broker all issuer actions affecting basis. The proposed regulations do not adopt these suggestions but, as discussed with respect to wash sales later in this preamble, require a broker to report to customers engaging in wash sales the amount of any disallowed loss. Brokers may communicate additional information on other statements furnished to customers if desired. The Treasury Department and IRS request further comments regarding whether additional information items should be required on the information return. A draft of the 2011 Form 1099–B is available for viewing and comment on the IRS Web site at *http://www.irs.gov/pub/irs-dft/f1099k-dft.pdf*.

For a sale of securities that were acquired on different dates or at different prices, some commentators requested that brokers be permitted to report the sale on a single information return. Other commentators asked that the proposed regulations require separate reporting of the sale of securities acquired on different dates or at different prices. The proposed regulations generally maintain the current requirement that brokers report a sale of securities within an account on one return, even if the sale involves multiple acquisitions, to limit the number of separate returns filed with the IRS and statements furnished to customers. However, because brokers must report whether any gain or loss on the sale of a covered security is short-term or long-term, and because noncovered securities must be reported separately from covered securities to avoid treatment as covered securities, a single sale in an account could necessitate as many as three returns if the sale included covered securities held more than a year, covered securities held one year or less, and noncovered securities.

b. Scope of Covered Securities and Treatment of Noncovered Securities

The proposed regulations clarify that a broker is not required to report adjusted basis and whether any gain or loss on a sale is long-term or short-term for securities that are excepted from all reporting under section 6045 at the time of their acquisition. For example, the new basis reporting requirements do not apply to a security purchased by an organization that is tax-exempt even if the organization later loses its tax-exempt status and becomes subject to gross proceeds reporting on the sale of securities under section 6045(a).

With respect to a security transferred into an account in a non-sale transaction, the security is a covered security under the proposed regulations if it was a covered security prior to transfer and the broker receives the statement required under section 6045A for the transfer (the transfer statement, discussed in more detail later in this preamble) indicating that the security is a covered security. Conversely, a security is a noncovered security if the broker receives a transfer statement indicating that the security is a noncovered security. A transferred security will be presumed to be a covered security unless the transfer statement expressly states that the security is a noncovered security.

If the receiving broker does not receive a transfer statement or receives a transfer statement that does not contain all of the required information, the proposed regulations permit the broker to treat the security as a noncovered security if, as suggested by commentators, the broker notifies the person that effected the transfer and requests a complete statement, and no complete statement is provided in response to this request before the broker reports the sale or subsequent transfer of the security. The proposed regulations do not require brokers to make this request more than once.

If a broker receives the information required on the transfer statement after reporting the sale of the security, the proposed regulations require the broker to file a corrected Form 1099–B if the reporting was incorrect or incomplete. Similarly, if an issuer furnishes the return required by section 6045B concerning corporate organizational actions (the issuer statement, discussed in more detail later in this preamble) after the broker has reported the sale of the security, the proposed regulations require the broker to file a corrected Form 1099–B to report any adjustments to basis not reflected previously. Commentators requested that corrected reporting not be required for de minimis adjustments or for statements furnished beyond a specific period after the close of the calendar year. The proposed regulations do not adopt either suggestion. The Treasury Department and IRS request further comments regarding corrected reporting.

Commentators expressed concern regarding the difficulty, in some cases, of determining whether a security is stock (for which basis must be reported for acquisitions beginning in January 2011 or January 2012) or indebtedness or another financial instrument (for which basis does not need to be reported for acquisitions in 2011 or 2012). Some commentators suggested that the proposed regulations classify each security or require issuers to file a classification report with the IRS to permit the IRS to publish a report identifying each security. The proposed regulations do not adopt this approach. Instead, the proposed regulations provide that, solely for purposes of determining the applicable date for basis reporting, any security an issuer classifies as stock is treated as stock. If no issuer classification has been made, the security is not treated as stock unless the broker knows, or has reason to know, that the security is reasonably classified as stock under general tax principles.

Some commentators expressed a desire to report adjusted basis and whether any gain or loss on a sale is long-term or short-term for noncovered securities. Other commentators requested that the regulations prohibit such reporting on Form 1099–B and permit reporting only of adjusted basis and whether any gain or loss on a sale is long-term or short-term to the customer on statements not filed with the IRS. In order to encourage more reporting of information and simplify reporting by taxpayers on their income tax returns, the proposed regulations allow brokers the option of reporting adjusted basis and whether any gain or loss on a sale is long-term or short-term for noncovered securities on a security by security basis. Therefore, a broker may choose to report this information for any given noncovered security. The proposed regulations also provide that a broker that chooses to report this information with respect to a noncovered security is not subject to penalties under section 6721 or 6722 for any failure to report such information correctly, provided that the broker indicates on Form 1099–B that the sale reported is a sale of a noncovered security. The instructions to the tax return will inform taxpayers of their duty to verify the information reported by brokers and to adjust the reported information when necessary to reflect the taxpayer's correct information. This duty applies equally to covered and noncovered securities.

c. Determination of Basis Required To Be Reported

Section 6045(g)(2)(B)(i)(I) provides that, except for RIC stock or DRP stock, a broker must report using the FIFO basis determination method unless the customer notifies the broker of the specific security to be sold or transferred by means of making an adequate identification of the security sold or transferred at the time of sale or transfer. With respect to RIC stock or DRP stock, section 6045(g)(2)(B)(i)(II) provides that a broker must report adjusted basis in accordance with the broker's default method under section 1012 unless the customer notifies the broker that the customer elects another permitted method.

The proposed regulations clarify that, when a customer sells less than the entire position of a security in an account, the selling broker must follow the customer's instruction, if any, adequately identifying the security sold or, when applicable, requesting that average basis be used to compute the basis of eligible stock. Thus, under the proposed regulations, a broker must report basis using any permitted lot identification and basis determination method the customer chooses when the customer provides a valid instruction (discussed in more detail later in this preamble). Absent a valid instruction from the customer, the proposed regulations clarify that a broker must report basis of a security (other than stock eligible for averaging) using the FIFO basis determination method when reporting the sale. The proposed regulations also clarify that, absent a valid instruction to use another method, a broker must report basis for stock eligible for averaging using the broker's default basis determination method.

Commentators requested that brokers and customers be permitted to report basis by different methods and that brokers be permitted to report basis for all sales using only one of the permitted basis determination methods, for example, the average basis method. The proposed regulations do not adopt these requests because section 1012 permits customers to report basis by a different permissible method than the default method selected by the broker and section 6045 requires brokers to follow instructions from customers regarding this selection. The requested rules are inconsistent with the goal of conforming broker reporting with taxpayer basis determination method elections to facilitate and promote compliance in taxpayer reporting of income.

*2. Average Basis Method*

Section 1.1012–1(e) provides rules for computing the basis of RIC stock by averaging the cost of all shares in the account (the average basis method). Taxpayers may elect to use the average basis method for RIC stock acquired at different prices and maintained by a custodian or agent in an account for the periodic acquisition, redemption, sale, or other disposition of the stock.

Consistent with section 1012(d)(1), the proposed regulations extend the average basis method to shares of stock acquired after December 31, 2010, in connection with a DRP, and clarify that shares are eligible for averaging only if they are identical.

Commentators suggested that stock should be eligible for averaging together if it has the same Committee on Uniform Security Identification Procedures (CUSIP) number. The proposed regulations adopt this suggestion and define *identical shares of stock* as stock with the same CUSIP number (or other security identifier number as permitted in additional guidance of general applicability, *see* § 601.601(d)(2)). However, for purposes of defining a DRP, the proposed regulations provide

that the stock of a successor entity or entities that result from certain corporate actions such as mergers, consolidations, split-offs, or spinoffs, is identical to the stock of the predecessor entity. Thus, corporate actions will not cause stock acquired in connection with a DRP to become ineligible for averaging because, for example, a dividend declared before the action and paid after the action is completed is not reinvested in stock with the same CUSIP number. The proposed regulations further provide, however, that shares of stock acquired in connection with a DRP are not identical to shares of stock with the same CUSIP number that are not acquired in connection with a DRP.

*3. Broker's Default Basis Determination Method*

Consistent with section 6045(g)(2)(B)(i)(II), the proposed regulations provide that the basis of RIC stock and DRP stock is determined in accordance with a broker's default method, unless a taxpayer elects another permitted method.

a. Consistency in Use of Average Basis Method

Commentators suggested that the proposed regulations should not require brokers to compute basis for a DRP using the average basis method for taxpayers electing this method. The proposed regulations do not adopt this recommendation because it is inconsistent with the statutory requirement that the average basis method be available to any taxpayer that desires to use it for a DRP, as well as with the goal of conforming broker reporting with taxpayer basis determination method elections to facilitate and promote compliance in taxpayer reporting of income. The proposed regulations specify that a broker must compute basis using the basis determination method the taxpayer elects. The proposed regulations also provide that the taxpayer must report gain or loss on its return using the method the taxpayer elects or, if the taxpayer fails to make an election, the broker's default method.

b. Default Method

Commentators suggested that a broker should be allowed to determine a default basis determination method when a taxpayer fails to elect a method for determining the basis of RIC stock or DRP stock. Consistent with section 6045(g)(2)(B)(i)(II), the proposed regulations do not prescribe a broker default method, which each broker may determine.

c. Communicating Default Method to Taxpayers

A commentator suggested that the proposed regulations should require that a broker notify a taxpayer of the broker's default method by the earlier of opening a new account or January 1 of the year the average basis method election is effective. Other commentators suggested, however, that the proposed regulations should not specify how brokers communicate their default basis determination method to taxpayers. The proposed regulations do not require a specific method or time for this communication.

*4. Definition of Dividend Reinvestment Plan*

a. Issuer and Non-Issuer Plans

A commentator requested that the proposed regulations broadly define *dividend reinvestment plan* to include both broker administered plans and issuer, or corporate, administered plans. Other commentators suggested, however, that if brokers are required to use the average basis method, the definition should include only issuer-administered plans. The proposed regulations define dividend reinvestment plan to include a written arrangement, plan, or program administered by an issuer or non-issuer of stock. Neither the statute nor the legislative history indicates any Congressional intent to limit the average basis method to issuer-administered plans.

b. Reinvestment of Dividends

A commentator suggested that a plan requiring reinvestment of only a portion of the dividends paid should qualify as a DRP under the proposed regulations. The proposed regulations provide that a plan qualifies as a DRP if the plan documents require that at least 10 percent of any dividend paid be reinvested in identical stock. Assuming this 10 percent requirement is met, a plan may reinvest different percentages of dividends in different stocks.

A commentator opined that a plan should not be considered a DRP if the stock is not paying dividends when the issuer offers the plan. Another commentator verbally stated that the proposed regulations should provide that a plan may qualify as a DRP even if the stock has never issued dividends or ceases to pay dividends. This commentator noted that the stock of a start-up company may be included in a DRP in the expectation of paying dividends in the future, and that a company that traditionally pays dividends may be required to temporarily suspend dividends, for example in the case of bankruptcy reorganization. The proposed regulations provide that a stock may be held in a DRP even if no dividends have ever been declared or paid or the issuer has ceased paying dividends.

A commentator suggested that the term *dividends* should include all income from stock for purposes of a DRP. The proposed regulations do not define dividends. Specific comments are requested on whether and how the regulations should define dividends, such as whether the regulations should define the term by reference to section 316, or more broadly to include any payment or distribution from stock, including ordinary dividends, capital gains dividends or distributions, non-taxable returns of capital, and cash dividends in lieu of fractional shares. Comments may address industry practices that relate to this definition.

c. Acquired in Connection With a DRP

Commentators suggested that subsequent additions to a DRP, such as purchases or transfers of stock, be eligible for the average basis method. A commentator recommended that subsequent additions be separated into separate averaging pools. Another commentator suggested that a single averaging pool should be allowed for all post-effective date identical stock. One commentator stated that brokers have difficulty distinguishing non-DRP purchases of stock from purchases of stock with the same CUSIP number in a DRP, and therefore brokers should be allowed to apply the same basis determination method to all stock with the same CUSIP number in an account.

Consistent with section 1012(d)(4), the proposed regulations provide that stock is acquired in connection with a DRP if the stock is acquired under the DRP or the dividends paid are subject to the DRP. Stock acquired in connection with a DRP includes the initial purchase of stock in the DRP, subsequent transfers of identical stock into the DRP, additional periodic purchases of identical stock through the DRP, and all identical stock acquired through reinvestment of dividends paid under the DRP.

d. Withdrawal From or Termination of a DRP

A commentator asked about the consequences if a DRP is terminated or a taxpayer transfers shares from a DRP at one broker to a broker that does not offer a DRP. The proposed regulations provide that, if a taxpayer withdraws from a DRP or the plan administrator terminates the DRP, shares of identical

stock acquired after the withdrawal or termination are not acquired in connection with a DRP. After the withdrawal or termination, the taxpayer may no longer use the average basis method for the stock, but the basis of each share of stock immediately after the change is the same as the basis immediately before the change.

*5. Computing Average Basis*

a. Elimination of Double-Category Method

Under § 1.1012–1(e)(3) and (4), taxpayers compute average basis using either a double-category method, which divides stock by holding period and averages long-term shares separately from short-term shares, or a single-category method, which averages all shares together regardless of holding period.

Commentators suggested that the proposed regulations eliminate the double-category method and noted that it is not widely used. One commentator stated that problems may occur when shares are transferred between accounts that use different methods. The proposed regulations adopt this suggestion and eliminate the double-category method. The proposed regulations provide that average basis is computed by averaging the basis of all identical stock in an account regardless of holding period and include a transition rule that requires taxpayers using the double-category method to average the basis of all identical stock in an account on the date of publication of final regulations. Specific comments are requested on whether the double-category method should be retained.

Section 1.1012–1(e)(4)(iii) provides that the single-category method may not be used if it appears that the taxpayer's purpose is to convert long-term gain or loss into short-term gain or loss, or vice versa. Consistent with the elimination of the double-category method, the proposed regulations remove this provision. The proposed regulations include ordering rules that specify that the holding period of stock to which the average basis method applies is determined on a FIFO basis.

b. Wash Sales

Section 1.1012–1(e)(4)(iv) provides that section 1091(d) and the associated regulations apply to wash sales of stock from an account using the single-category method of computing average basis. Commentators suggested that brokers should not be required to apply these rules to stock held in separate accounts.

Section 6045(g)(2)(B)(ii) provides that, for purposes of reporting, brokers must apply the wash sale rules only to acquisition and sale transactions in the same account and for identical securities. The rules for brokers are discussed later in this preamble.

For a taxpayer using the average basis method, the proposed regulations provide that the taxpayer must apply section 1091 and the associated regulations (dealing with wash sales of substantially identical securities) in computing average basis regardless of whether the stock or security sold or otherwise disposed of and the stock acquired are in the same account or in different accounts.

c. Basis After Change From Average Basis Method

The proposed regulations provide that, except for a revocation of the average basis method election (discussed later in this preamble), if a taxpayer changes from the average basis method to another basis determination method for any reason, the basis of each share of stock immediately after the change is the same as the basis immediately before the change.

*6. Time and Manner of Making the Average Basis Method Election*

Section 1.1012–1(e)(6) provides that a taxpayer elects to use the average basis method on an income tax return for the first taxable year the taxpayer wants the election to apply.

a. Manner of Making the Average Basis Method Election

Under the proposed regulations, a taxpayer elects the average basis method for covered securities by notifying the custodian or other agent for the taxpayer's account in writing. The taxpayer makes a separate election for each account holding stock for which the average basis method is permissible. A taxpayer uses the procedures under the current regulations to elect the average basis method for noncovered securities.

Commentators requested that the proposed regulations provide guidance on how taxpayers must inform brokers of their basis determination method. Commentators suggested that brokers may obtain this information through documents provided to a taxpayer opening an account and urged that the rules be flexible and allow electronic communication. The proposed regulations require that a taxpayer must notify a custodian or agent in writing of an average basis method election, but otherwise do not specify how a taxpayer must communicate a basis determination method.

b. Time for Making the Average Basis Method Election

Some commentators suggested that taxpayers should be allowed or required to choose a basis determination method when opening an account or when acquiring stock for which the average basis method is permitted. Other commentators stated that taxpayers should choose a method by the date of a sale. The proposed regulations provide that taxpayers may elect the average basis method at any time, effective for sales after the date of the election.

c. Revocation of Average Basis Method Election

A commentator asked for clarification on how long brokers must retain basis information. Another commentator suggested that any revocation period should end by the earlier of the date of first sale, the end of the calendar year, or one year from the first purchase of stock.

In order to minimize broker recordkeeping requirements, the proposed regulations provide that a taxpayer may revoke the average basis method election by the earlier of one year from the date of making the election or the first sale or other disposition of the stock following the election. A broker may extend the one-year period but no longer than the first sale. A revocation applies to all identical stock in an account and is effective when the taxpayer notifies the broker or other custodian of the revocation. If a taxpayer revokes the election, the basis of each share of stock in the account is determined using another permissible method.

d. Change From Average Basis Method

Section 1.1012–1(e)(6)(ii) provides that a taxpayer that elects to use the average basis method may not revoke the election without the consent of the Commissioner. Under Rev. Proc. 2008–52 (2008–36 IRB 587), Section 30 of the Appendix, a taxpayer within the scope of Rev. Proc. 2008–52 uses the automatic consent procedures to change to the basis determination method described in § 1.1012–1(c)(1) (FIFO or specific identification, discussed later in this preamble). The revenue procedure provides that the automatic consent procedures do not apply to RIC stock or to a change from FIFO to specific identification or vice versa, which is not a change in method of accounting. *See* § 601.601(d)(2).

A commentator recommended that taxpayers should not be able to change

from the average basis method except by opening a new account. Other commentators opined that taxpayers should have broad discretion to change from the average basis method. Several commentators suggested that brokers should not be required to recreate a stock's original basis if a taxpayer changes from the average basis method.

The proposed regulations provide that a taxpayer may change from the average basis method to another permissible method at any time. A taxpayer's change in basis determination method applies to stock acquired on or after January 1, 2012, in a different manner than to stock acquired before January 1, 2012. Consistent with the account by account rules, discussed later in this preamble, a change in basis determination method applies to identical stock a taxpayer acquires on or after January 1, 2012, that the taxpayer holds in the same account. By contrast, a taxpayer's change in basis determination method applies to all identical stock the taxpayer acquires before January 1, 2012, that the taxpayer holds in any account. Unless the taxpayer revokes the average basis method election, discussed earlier in this preamble, the taxpayer must change from the average basis method prospectively. Thus, the basis of each share of stock to which the change applies is the basis immediately before the change.

A commentator requested clarification on how often a taxpayer may change a basis method election. Commentators suggested that changes should be limited, for example to once per year. The proposed regulations do not limit the number of times or frequency a taxpayer may change basis determination methods.

A commentator suggested that the proposed regulations should require taxpayers to obtain the Commissioner's permission to change basis determination methods. Another commentator recommended that taxpayers be allowed to change from the average basis method without the Commissioner's permission. The proposed regulations clarify that a change in basis determination method is a change in method of accounting to which the provisions of sections 446 and 481 and the associated regulations apply. A taxpayer may change its basis determination method by obtaining the consent of the Commissioner under applicable administrative procedures. The IRS may publish additional guidance of general applicability, see § 601.601(d)(2), that provides broad consent for taxpayers to change basis determination methods.

*7. Applying Average Basis Method Account by Account*

Section 1.1012–1(e)(2) provides that a taxpayer must use the same basis determination method for all of the taxpayer's accounts in the same RIC. Section 1.1012–1(e)(6)(ii) provides that a taxpayer must apply an average basis method election to all shares (except certain gift shares) of a particular RIC that the taxpayer holds in any account.

a. Definition of Account

Commentators requested that the proposed regulations define the term ''account.'' Commentators noted that each fund of a RIC is treated as a single account, while a broker may hold other securities with different CUSIP numbers in a single account. Commentators suggested that accounts should be treated as separate accounts if they have different account numbers, and that subaccounts such as cash and margin accounts should not be treated as separate accounts.

The proposed regulations do not define the term account. Instead, the proposed regulations provide rules prescribing when stock must be treated as held in separate accounts and the result of that treatment.

b. Basis Determination Methods Applied Account by Account

Commentators suggested that the proposed regulations allow a taxpayer to make separate basis calculations for the same stock held in two separate accounts, even if held by the same broker. The proposed regulations adopt this suggestion. Consistent with section 1012(c), the proposed regulations provide that the average basis method election applies to all identical RIC stock or DRP stock in an account. For sales or other dispositions of stock after 2011, a taxpayer may use different basis determination methods for identical stock held in two separate accounts, even if held by the same broker. A taxpayer also may use different basis determination methods for shares of stock held in the same account that are not identical.

For sales or other dispositions before 2012 of RIC stock or DRP stock for which a taxpayer has used the average basis method, the proposed regulations retain the rules requiring that the taxpayer use the average basis method for identical stock held in separate accounts. However, a taxpayer may use different basis determination methods for shares of stock held in the same account that are not identical.

c. Separate Accounts

Consistent with section 1012(c)(2)(A), the proposed regulations provide that, absent a single-account election (explained later in this preamble), RIC stock or DRP stock that a taxpayer acquires before January 1, 2012, is treated as held in a separate account from any stock acquired on or after that date. The proposed regulations further provide that any stock that is a covered security (within the meaning of section 6045(g)(3)) is treated as held in a separate account from any stock that is a noncovered security regardless of when acquired, as is consistent with Congressional intent. The proposed regulations include an example in which a security acquired on or after January 1, 2012, is a noncovered security.

*8. Single-Account Election*

Section 1012(c)(2) provides that, with respect to RIC stock, a RIC may elect (at the time and in the form and manner prescribed by the Secretary), on a stockholder by stockholder basis, to treat all stock in the RIC held by the stockholder as one account without regard to when the stock was acquired (single-account election). Section 1012(d)(3) provides that the account by account rules of section 1012(c), including the single-account election available to RICs, also apply to DRP stock.

a. Application and Scope of Election

The proposed regulations provide that a RIC or DRP may make a single-account election to treat identical RIC stock or identical DRP stock held in separate accounts for which the taxpayer has elected to use the average basis method as held in a single account. If a broker holds the stock as a nominee, the broker, and not the RIC or DRP, makes the election. The single-account election is irrevocable. Commentators opined that a single-account election should not encompass stock a taxpayer acquires before January 1, 2012, if the basis information is unreliable. A commentator requested that the proposed regulations include a standard of reliability or, alternatively, allow brokers to exclude stock for which reliable basis information is not available from the single-account election. Another commentator requested penalty relief if reliable basis information is not available for pre-effective date shares.

The proposed regulations provide that a RIC, DRP, or broker may make a single-account election only for stock for which it has accurate basis

information. A RIC, DRP, or broker has accurate basis information if the RIC, DRP, or broker neither knows nor has reason to know that the basis information is inaccurate. *See* also section 6724 and the regulations thereunder regarding standards for relief from information reporting penalties. Stock for which accurate basis information is unavailable may not be included in the single-account election and must be treated as held in a separate account.

The proposed regulations provide that, once the single-account election is made, it applies to all identical stock that is a covered security a taxpayer later acquires in an account. If a taxpayer acquires identical stock that is a noncovered security in an account, a RIC, DRP, or broker may make another single-account election if the RIC, DRP, or broker has accurate basis information. In addition to allowing a RIC, DRP, or broker to make a single-account election for some taxpayers and not others, consistent with section 1012(c)(2)(B), the proposed regulations allow a RIC, DRP, or broker to make the election for some identical stocks held for a taxpayer and not for other stocks.

b. Time and Manner for Making the Single-Account Election

The proposed regulations provide that a RIC, DRP, or broker makes the single-account election by clearly noting it on its books and records. The books and records must reflect the date of the election; the taxpayer's name, account number, and taxpayer identification number; the stock subject to the election; and the taxpayer's basis in the stock. The books and records reflecting the election must be provided to the taxpayer upon request. The proposed regulations provide that the single-account election may be made at any time and more than once for a specific stock.

The proposed regulations require a RIC, DRP, or broker to use reasonable means to notify a taxpayer of a single-account election. Reasonable means include mailings, circulars, and electronic mail. The notification may be sent separately to the taxpayer or included with the taxpayer's account statement, or by other means calculated to provide actual notice. The notice must identify the securities subject to the election and advise the taxpayer that the stock will be treated as covered securities without regard to the date acquired.

*9. FIFO and Specific Identification Methods*

Section 1.1012–1(c)(1) provides that if a taxpayer acquires shares of stock on different dates or at different prices and sells or transfers some of those shares, and does not adequately identify the lot from which the shares are sold or transferred, the shares deemed sold or transferred are the earliest acquired shares (the FIFO rule). If a taxpayer makes an adequate identification of the shares sold under § 1.1012–1(c)(2), (3), or (4), the shares treated as sold are the shares the taxpayer identified.

a. FIFO Rule

A commentator verbally requested that the proposed regulations clarify how the FIFO rule of § 1.1012–1(c)(1) applies to stock splits. The commentator asked whether shares acquired from the split are treated as acquired on the date of the purchase of the original shares or on the date of the split. In general, the shares that are first acquired are the shares with the longest holding period. Therefore, this question is addressed by rules under sections 307 and 1223 and the associated regulations and is outside the scope of these regulations.

A commentator requested clarification on whether the FIFO rule applies to stock that is part of a stock certificate that includes multiple lots. In response to this comment, the proposed regulations clarify that the FIFO rule also applies to multiple lots represented by a single stock certificate.

b. Timing of Lot Selection

Commentators suggested that taxpayers that wish to identify a specific lot of stock to be sold should be required to do so at the time of trade. Some commentators recommended that taxpayers should be allowed to wait to identify stock until the settlement date or until the end of the year. Other commentators opined that post-sale changes to specific identification of stock should not be allowed.

Rev. Rul. 67–436 (1967–2 CB 266) holds that an identification of stock by the time of delivery, which was within four days of the sale date, complied with the requirement to identify stock at the time of the sale or transfer. Consistent with Rev. Rul. 67–436, the proposed regulations provide that a taxpayer makes an adequate identification of stock at the time of sale, transfer, delivery, or distribution if the taxpayer identifies the stock no later than the earlier of the settlement date or the time for settlement under Securities and Exchange Commission regulations. Rev. Rul. 67–436 will be obsoleted when these regulations are published as final regulations. *See* § 601.601(d)(2).

c. Standing Lot Selection Orders

Several commentators recommended that the proposed regulations allow taxpayers to specify a lot selection method to their brokers through standing orders such as last-in-first-out or highest-in-first-out. In response to these comments, the proposed regulations clarify that taxpayers may establish a lot selection method by standing order.

d. Method of Communicating Lot Selection

To provide maximum flexibility, the proposed regulations do not designate how taxpayers must communicate lot selection to brokers. Any reasonable method of communication, including electronic and oral communication, is permissible.

e. Confirmation of Sales

Section 1.1012–1(c)(3)(i)(*b*) and (ii)(*b*) requires a broker or agent to provide written confirmation of the sale of stock a taxpayer has specifically identified within a reasonable time after sale. Commentators suggested that the broker or agent should determine whether to provide a confirmation and its form, and that current technology renders the confirmation requirement obsolete. Another commentator suggested that the proposed regulations allow brokers to provide lot information to taxpayers either by trade confirmation, monthly statements, or year-end reports. The proposed regulations do not amend the current confirmation requirement, which ensures that taxpayers receive necessary information in a timely manner. What is reasonable depends on the facts and circumstances.

f. Writing in Electronic Format

Commentators suggested that the proposed regulations specifically authorize electronic written confirmation or recordkeeping. In response to these comments, the proposed regulations clarify that a written confirmation, record, document, instruction, or advice includes a writing in electronic format.

g. Identification by Trustee or Executor

Section 1.1012–1(c)(4) provides that a trustee of a trust or executor or administrator of an estate makes an adequate identification if the trustee, executor, or administrator specifies the stock in writing in the books and records of the trust or estate. If the stock is distributed, the trustee, executor, or

administrator must identify the stock in writing to the distributee.

A commentator verbally noted that this rule does not require a trustee, executor, or administrator to identify stock to a broker or other agent selling the stock. The proposed regulations add the requirement that the trustee, executor, or administrator identify the stock to the broker or agent.

*10. Reporting of Wash Sales*

Section 6045(g)(2)(B)(ii) provides that, unless the Secretary instructs otherwise, a broker is required to report the adjusted basis of a covered security without taking into account the effect on basis of the wash sale rules of section 1091 unless the purchase and sale transactions resulting in a wash sale occur in the same account and are for identical securities (rather than substantially identical securities).

The proposed regulations provide that a broker is required to report adjusted basis in accordance with section 1091 only if both the purchase and sale transactions occur with respect to covered securities in the same account with the same CUSIP number (or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin). If a broker is required to apply section 1091 for reporting purposes, the broker must report the amount of the disallowed loss in addition to adjusted basis and gross proceeds for the sold security. The proposed regulations further provide that the broker must adjust the basis of the purchased security by the amount of the disallowed loss when reporting the eventual sale of the purchased security.

Commentators requested exceptions from reporting wash sales resulting in de minimis adjustments and wash sales triggered by scheduled periodic investments such as in an employee stock purchase plan or by automatic dividend reinvestment. Because the underlying substantive rules disallow losses in these situations, the proposed regulations do not adopt these recommendations. In addition, commentators requested an exception from reporting for wash sales for high frequency traders such as day traders based on the belief that high frequency traders generally make timely and valid elections to use the mark-to-market method of accounting under section 475(e) or (f) and that section 475(d)(1) therefore exempts them from the wash sale rules. Commentators also requested that the regulations provide a general exception from basis reporting for high frequency traders based on the belief that section 475 makes basis reporting superfluous for most high frequency traders. The proposed regulations do not adopt these recommendations, in part because the proposed regulations provide generally that reporting should occur without regard to the mark-to-market method of accounting. The Treasury Department and IRS request further comments on the treatment of high frequency traders, including specifics about the burden that basis reporting may impose, and how brokers can identify customers that have made valid and timely mark-to-market accounting method elections under section 475(e) or (f) and which transactions by these persons are subject to the provisions of section 475.

Commentators asserted that identical securities could have separate CUSIP numbers, potentially after a change to the name of the issuer. To facilitate administration of wash sale reporting, the proposed regulations interpret identical securities to mean securities with the same CUSIP number (or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin).

*11. Reporting of Short Sales*

In the case of a short sale, section 6045(g)(5) provides that gross proceeds and basis reporting under section 6045 is generally required for the year in which the short sale is closed rather than, as under the present law rule for gross proceeds reporting, the year in which the short sale is entered into.

The proposed regulations implement this change to reporting of short sales by requiring brokers to report all short sales opened on or after January 1, 2010, for the year in which the short sale is closed. For sales that are opened and closed in 2010, the proposed regulations require brokers to report only gross proceeds information with respect to the securities sold to open the short sale, which is consistent with how brokers currently report short sale transactions. For sales closed on or after January 1, 2011, using covered securities, however, the proposed regulations require brokers to report both the information concerning the securities sold to open the short sale and the information concerning the securities acquired to close the short sale on a single return of information. For sales closed on or after January 1, 2011, using noncovered securities, the proposed regulations require brokers to report only the information concerning the securities sold to open the short sale and permit, but do not require, brokers to report adjusted basis for the securities acquired to close the short sale and whether any gain or loss on the short sale is long-term or short-term. The proposed regulations provide that reporting adjusted basis and whether any gain or loss on the short sale is long-term or short-term is not subject to penalty under section 6721 or 6722 if the Form 1099–B indicates that the sale reported is a sale of a noncovered security. These requirements are in line with the reporting beginning with calendar year 2011 of both adjusted basis and gross proceeds on Form 1099–B.

Under section 1233, satisfaction of a short sale obligation through other borrowed property does not close a short sale. The proposed regulations address this situation and provide that, if an obligation arising from a short sale is satisfied by the receipt of transferred securities that themselves are borrowed from or through the person effecting the transfer, the receiving broker should not file a Form 1099–B but should instead provide the information regarding the short sale of the borrowed securities to the person effecting the transfer. Under the proposed regulations, the person effecting the transfer must file Form 1099–B when the obligation is finally satisfied and the short sale is closed.

The proposed regulations modify the backup withholding rules for short sales to provide that backup withholding can occur only at the time the short sale is closed and becomes subject to reporting under section 6045(g)(5).

Commentators requested that brokers not be responsible for the additional reporting requirements related to short sales that are opened before January 2011 but also requested clear guidance on how to implement reporting for short sales opened prior to January 2011 to prevent duplicate reporting. The proposed regulations prevent duplicate reporting by requiring brokers to report short sales opened prior to January 2011 under current rules except for short sales opened in 2010 that remain open into 2011. Instead of reporting the sale for calendar year 2010, the proposed regulations require that brokers report these sales for the year in which the sale is closed.

Finally, commentators requested that the reporting of short sales not require brokers to apply the constructive sale rules of section 1259, which can trigger the recognition of gain if the investor also holds or acquires an appreciated position in the same securities, or the rules under section 1233(h) concerning limitations imposed on investors that own property substantially identical to the short sale property. The proposed regulations provide for these exclusions from reporting.

*12. Reporting of Sales by S Corporations*

Under § 1.6045–1(c)(3)(i)(B)(*1*), a broker currently is not required to report sales of securities by corporations. Section 1.6045–1(c)(3)(i)(C) currently permits a broker to treat a customer as a corporation if the broker has actual knowledge that the customer is a corporation, if the customer files a Form W–9, ''Request for Taxpayer Identification Number and Certification,'' exemption certificate claiming an exemption as a corporation, or, absent knowledge to the contrary, if the name of the customer contains an unambiguous expression of corporate status such as ''Corporation'' or ''Incorporated.''

To comply with the new requirement under section 6045(g)(4) that brokers report sales by customers that are S corporations of covered securities acquired on or after January 1, 2012, the proposed regulations exclude S corporations from the list of exempt Form 1099–B recipients, but only for sales of covered securities acquired on or after January 1, 2012. The proposed regulations also curtail the ability of brokers to rely solely on the name of the customer to determine whether the customer is a corporation exempt from reporting, but only for sales of covered securities acquired on or after January 1, 2012. Commentators requested that the proposed regulations retain this rule because its removal potentially requires brokers to seek a certification from all corporate customers. The proposed regulations do not adopt this recommendation, however, because brokers cannot infer from a customer's name whether the customer is taxed as an S corporation or C corporation. Commentators also requested that accounts opened by corporations before January 2012 be excepted from reporting. The proposed regulations do not adopt this request as contrary to the statute.

Commentators requested that Form W–9 be updated to facilitate a customer's statement to its broker of its current election to be taxed as an S corporation and that the proposed regulations require brokers to solicit or re-solicit Form W–9 from each existing corporate customer. The IRS is currently considering the requested modification to Form W–9. The proposed regulations do not impose a requirement to solicit or re-solicit Form W–9 from all existing corporate customers because, under § 1.6045–1(c)(3)(i)(C), Form W–9 is only one method by which brokers may determine whether a corporate customer is exempt from all reporting beginning in 2012. However, if a broker does not have actual knowledge that a corporate customer is taxed as a C corporation or is otherwise exempt (for example, because it is a bank or organization exempt from tax under section 501(a)), a broker must request a Form W–9 exemption certificate or else must make a return of information for any sales by the corporation of covered securities acquired on or after January 1, 2012. A broker also may be required to backup withhold on gross proceeds paid to the customer.

Commentators requested that brokers be permitted to report other Form 1099 information such as interest and dividends for S corporations because reporting of the sales of securities is done on composite statements containing all such information. The proposed regulations do not address this topic directly because no penalty is imposed for the act of filing a nonrequired return.

*13. Reporting to Trust Interest Holders in a WHFIT*

Commentators requested that the proposed regulations exempt trustees and middlemen from any requirement to report information under sections 6045(g) to trust interest holders in a widely held fixed investment trust (WHFIT) with respect to both the securities held by a WHFIT and trust interests in a WHFIT because the WHFIT rules in § 1.671–5 already provide a framework for communicating similar information to trust interest holders. These proposed regulations clarify that the sale of a trust interest in a WHFIT by a trust interest holder is required to be reported under section 6045(a). However, to the extent that a trustee or middleman has a requirement to provide information under section 6045(g), the trustee or middleman is deemed to meet those requirements by complying with the WHFIT rules in § 1.671–5. The Treasury Department and IRS request additional comments on whether any basis reporting rules are needed in addition to those provided under § 1.671–5 to accommodate trust interest holders in a WHFIT.

*14. Due Date for Payee Statements Furnished in a Consolidated Reporting Statement*

Section 6045(b) extends the due date to furnish all of the payee statements required under section 6045 to customers from January 31 to February 15, effective for statements required to be furnished after December 31, 2008. Thus, in addition to Form 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' the February 15 due date applies to Form 1099–S, ''Proceeds from Real Estate Transactions,'' and, when reporting payments to attorneys or substitute payments by brokers in lieu of dividends or interest, Form 1099–MISC, ''Miscellaneous Income.'' This February 15 due date also applies to any other statement required to be furnished on or before January 31 of a calendar year if furnished with a statement required under section 6045 in a consolidated reporting statement. The Act did not define consolidated reporting statement but provided that the term would be defined in regulations. *See* Notice 2009–11 (2009–5 IRB 420), providing that, with respect to reportable items from calendar year 2008, brokers had until February 17, 2009, to report all items that they customarily reported on their annual composite form recipient statements. See § 601.601(d)(2).

The proposed regulations define *consolidated reporting statement* as a grouping of statements furnished to the same customer or same group of customers on the same date whether or not the statements are furnished with respect to the same or different accounts or transactions. Importantly, the proposed regulations require that the grouping of statements be limited to those furnished to the customer based on the same relationship as the statement furnished under section 6045 (for example, broker, payor, or real estate settlement agent), and not as a result of any other relationship between the parties such as debtor to creditor or employer to employee. Based on this limitation, the following forms may be furnished in a consolidated reporting statement with a statement required under section 6045: Form 1099–DIV, ''Dividends and Distributions''; Form 1099–INT, ''Interest Income''; Form 1099–MISC, ''Miscellaneous Income''; Form 1099–OID, ''Original Issue Discount''; Form 1099–PATR, ''Taxable Distributions Received From Cooperatives''; Form 1099–Q, ''Payments From Qualified Education Programs (Under Sections 529 and 530)''; Form 1099–R, ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.''; Form 3921, ''Exercise of an Incentive Stock Option Under Section 422(b)'' (in development); Form 3922, ''Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)'' (in development); and Form 5498, ''IRA Contribution Information.'' The Treasury Department and IRS request further comments regarding whether any other forms should be included in

the definition of consolidated reporting statement.

For statements filed by brokers with respect to sales, the proposed regulations acknowledge that a customer may not sell securities in an account in every year and, thus, may not receive Form 1099–B every year. The proposed regulations provide that a broker may treat any customer as receiving a required statement under section 6045 if the customer has an account for which a statement would be required to be furnished under section 6045 had a sale occurred during the year.

*15. Reporting Required in Connection With Transfers of Securities*

Under new section 6045A, a broker and any other person specified in Treasury regulations (applicable person) that transfers to a broker a security that is a covered security in the hands of the applicable person must furnish to the receiving broker a written statement for purposes of enabling the receiving broker to satisfy the reporting requirements of section 6045(g). Section 6045A(c) provides that, unless the Secretary provides otherwise, the statement required by this rule must be furnished to the receiving broker not later than fifteen days after the transfer of the covered security.

a. Transfer Reporting Generally

The proposed regulations create a presumption that every transfer of custody effected by an applicable person to a broker or other professional custodian of any share of stock in a corporation on or after January 1, 2011, that is not a sale is a transfer of a covered security subject to reporting. Thus, the proposed regulations provide that a transfer statement must be furnished for every such transfer. This duty applies even if the security transferred is a noncovered security or is treated as a noncovered security because it was excepted from all reporting under section 6045 (for example, because the customer was an exempt recipient) at the time of its acquisition. In either situation, the transfer statement is not required to include any other required information provided that the transfer statement indicates that the security transferred is a noncovered security. This presumption that all transferred securities are covered securities and the requirement to provide a transfer statement for noncovered or excepted securities solely for the purpose of establishing that the security is a noncovered or excepted security will reduce uncertainty for receiving brokers and custodians. The person initiating the transfer of custody is permitted, but not required, to provide other information about the noncovered or excepted security.

The proposed regulations place the duty to furnish the transfer statement on the person effecting the transfer of custody if the person is an applicable person. Under the proposed regulations, an *applicable person* is a broker within the meaning of § 1.6045–1(a)(1), any person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities, and any agent of these persons. An applicable person does not include the beneficial owner of the securities, any governmental unit or agency or instrumentality of a governmental unit with respect to escheated securities, or any person that acts solely as a clearing house for the transfer.

Under the proposed regulations, an applicable person has a duty to furnish a transfer statement if that person effects the transfer of custody of the securities. For securities held by direct registration with the issuer, including certificated shares, the person effecting the transfer is the issuer or its transfer agent. For securities held in street name, the person effecting the transfer is the broker or other firm carrying the securities.

Although the person responsible for providing a transfer statement will often be a broker or other applicable person that effects sales, the proposed regulations also impose this duty on issuers, transfer agents, professional custodians, and other applicable persons that may not effect sales. For these applicable persons, this duty is limited to a duty to receive the statement when receiving custody of transferred securities and then to retransmit the information on the statement when transferring custody of those securities to a broker (or, if no statement is received, to furnish a statement that the securities are noncovered securities). The proposed regulations regarding transfer statements do not impose a duty on those that do not effect sales to update basis in response to adjustments announced by issuers under section 6045B or to compute basis by average cost under section 1012. These computations apply only to basis reporting at the time of sale under section 6045 and, thus, apply only to brokers effecting sales. The Treasury Department and IRS request further comments regarding the scope of the transfer statement requirement.

Because the transfer statement is not filed with the IRS, no official form or format will be required. Instead, the proposed regulations specify the information required on the statement. At the request of commentators, the proposed regulations permit flexibility in the format and method by which the information is furnished pursuant to agreement of the parties. The Treasury Department and IRS request further comments about the form and format for the transfer statement and any substitutes thereto.

Under the proposed regulations, the transfer statement must identify the applicable person furnishing the statement, the broker receiving the statement, the owner or owners transferring the securities, and, if different, the owner or owners of the securities after any transfer other than a sale, such as a transfer of gifted or inherited securities. The transfer statement must also identify the securities being transferred and information about the transfer such as the date the transfer was initiated and the settlement date of the transfer (if known when reporting).

Under the proposed regulations, a transfer statement must include the total adjusted basis of the securities, the original date of acquisition, and the date for determining whether any gain or loss with respect to the security would be long-term or short-term at the time of sale. The transfer statement must also indicate the extent to which the reported basis amount has been adjusted to reflect any corporate actions that affect the basis of the security by reporting the number from the issuer statement required under section 6045B (discussed later in this preamble) of the most recent corporate action that is reflected on the transfer statement. Additionally, if the average basis method is used to determine basis, the proposed regulations permit reporting an original acquisition date of ''VARIOUS'' for securities owned at least five years.

Commentators suggested that additional information items be required on the statement such as the original purchase amount, the reason why the securities are (or are treated as) noncovered securities (if applicable), and the basis method used by the taxpayer immediately prior to the transfer. The proposed regulations do not require this additional information on the statement because the proposed regulations do not require this information to be reported on Form 1099–B. Additional information may be communicated with the statement, even if not required.

If an applicable person furnishing a transfer statement later receives a

statement for an earlier transfer that reports that the transferred securities are covered securities and includes information inconsistent with the subsequent transfer statement, the proposed regulations require that a corrected statement be furnished to correct the inconsistent information within fifteen days following the receipt of the prior transfer statement.

b. Reporting Required in Connection With Transfers of Gifted and Inherited Securities

Under section 6045(g)(3)(A)(ii), a covered security includes stock or indebtedness acquired on or after the applicable date if the security is transferred from an account in which the security was a covered security (but only if the receiving broker or other professional custodian receives a transfer statement). Therefore, under the proposed regulations, gifted and inherited securities that were covered securities in the account of the donor or decedent remain covered securities when transferred to the recipient's account and accompanied by a transfer statement.

Under the proposed regulations, when covered securities are transferred from a decedent, the transfer statement must indicate that the securities are inherited. The transfer statement must also report the date of death as the acquisition date and must report adjusted basis in accordance with the instructions and valuations provided by an authorized representative of the estate. The proposed regulations require that the selling broker take these basis adjustments into account in reporting adjusted basis upon the subsequent sale or other disposition of these securities.

When covered securities are transferred to a different owner as a gift, the proposed regulations require the statement to indicate that the transfer consists of gifted securities and to state the adjusted basis of the securities in the hands of the donor and the donor's original acquisition date of the securities. The transfer statement must also report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable). Upon the subsequent sale or other disposition of these securities, the selling broker must apply the relevant basis rules for gifts when reporting adjusted basis.

Commentators opposed subjecting transfers of gifted and inherited securities to the requirements of transfer reporting because the substantive rules governing basis computation for these securities are complex. The proposed rules do not exclude transfers of gifted and inherited securities, however, because these transfers fall within the plain language of the statute. The proposed regulations provide workable rules to minimize complexity.

Issuers and transfer agents commented that they often do not know the reason for the transfer of shares from one owner to another. The proposed regulations provide that, if the request to transfer ownership between different people is silent as to the reason for the transfer, the transfer should generally be treated as a gift.

Commentators expressed concern regarding gifted and inherited securities about the potential burden to value privately traded securities or other securities for which fair market value is not easily determined. For inherited securities, the proposed regulations allow the applicable person effecting the transfer to rely on the authorized estate representative to provide the instructions and valuations necessary to report correct basis for any transferred securities. If the applicable person effecting the transfer does not receive instructions and valuations from the authorized estate representative, the applicable person must request this information from the authorized estate representative before preparing the transfer statement. If this information is not provided before the transfer statement is prepared, then the transfer statement must indicate that the transfer consists of an inherited security but must report the security as a noncovered security. If this information is provided after the transfer statement is sent, the applicable person effecting the transfer must send a corrected transfer statement.

For gifted securities, the proposed regulations only require the applicable person effecting the gift transfer to report the date of the gift if known at the time the transfer statement is prepared and the fair market value of the securities on the date of the gift if known or readily ascertainable at that time. However, the proposed regulations provide that, if the gifted securities are subsequently transferred to a different account of the same owner, the applicable person must include the date of the gift on the subsequent transfer statement and, if known or readily ascertainable at the time the subsequent transfer statement is prepared, the fair market value of the securities as of the date of the gift. The proposed regulations provide a special reporting rule for brokers that applies on the sale of a gifted security when the security's adjusted basis depends upon its fair market value as of the date of the gift but the transfer statement received by the selling broker does not report this amount and this amount is not readily ascertainable by the broker. Under these circumstances, the proposed regulations provide that the broker must report adjusted basis equal to the gross proceeds from the sale.

c. Reporting Required in Connection With Transfers of Borrowed Securities

To facilitate the correct reporting of short sales involving transfers of borrowed securities, the proposed regulations require the transfer statement to indicate that the transferred securities are borrowed and provide instructions on how the receiving broker can provide information to the applicable person effecting the transfer about any short position potentially being closed by the transfer or other sale of the securities. This information is required to alert the receiving broker that, if the transferred securities are used to satisfy a short sale obligation, the short sale remains open and should not be reported as closed to the IRS or to the customer.

*16. Reporting by Issuers of Actions Affecting Basis of Securities*

If an organizational action (such as a stock split or a merger or acquisition) by an issuer affects the basis of a specified security, new section 6045B requires the issuer to file a return with the IRS and furnish to each nominee (or to each certificate holder if there is no nominee) a written statement regarding the action. The return filing and information statement requirements may be waived under section 6045B(e) if the issuer makes the information about the action publicly available, in the form and manner determined by the Secretary.

The proposed regulations require a reporting issuer to identify itself and the security on the return and provide information about the organizational action and the quantitative effect on the basis resulting from the action. The proposed regulations also require the issuer to assign and report a sequential number determined separately by security for each information report the issuer files.

The proposed regulations require a domestic or foreign issuer to furnish a written statement to each holder of record that is not an exempt recipient as defined in § 1.6045B–1(b)(5) as of the record date of the corporate action and all subsequent holders of record through the date the issuer furnishes the statement. The Treasury Department and IRS request comments as to the extent to which foreign issuers will be able to comply with such a reporting

requirement, and whether it may be appropriate to limit foreign issuers' reporting requirements (such as, for example, limiting foreign issuers' reporting requirements to securities that are traded on a securities exchange in the United States).

If the security is held in the name of someone other than the holder of record on the books of the issuer, the proposed regulations require the issuer to furnish the statement to the nominee listed on its books unless such nominee is the issuer or the issuer's agent. For example, an issuer must furnish statements to the participants of the issuer's direct stock purchase plan even if the plan is listed as a nominee for the participants. The proposed regulations permit an issuer to furnish to its holders and nominees a copy of the return that it files with the IRS.

The proposed regulations provide that both the return filing and information statement requirements under section 6045B are waived if an issuer posts a statement with the required information in a readily accessible format in an area of its primary public website dedicated to this purpose by the same due date for reporting the organizational action to the IRS and keeps the form accessible to the public. Under the proposed regulations, this public reporting relieves the issuer of its duty both to file the return with the IRS and to furnish the statement to its nominees and certificate holders.

Commentators have questioned how issuers could report the effect on basis within 45 days of a corporate action when the effect may not be determinable until the conclusion of other events such as the end of the issuer's fiscal year. Any request to extend the due date was not adopted as inconsistent with the 45-day statutory due date. The proposed regulations provide that an issuer may make reasonable assumptions about facts that cannot be determined prior to this due date and must file a corrected return once the facts are determined if necessary to report the correct quantitative effect on basis. Under the proposed regulations, it is expected that an issuer will treat a payment that may be a dividend consistently with its treatment of the payment under section 6042(b)(3) and § 1.6042–3(c).

Some commentators suggested that the IRS establish a central repository on its website for posting information statements from issuers that wish to report publicly in lieu of filing returns. This suggestion was not adopted in the proposed regulations due to IRS resource and system constraints. The Treasury Department and IRS request comments on the definition of public reporting including rules about retaining the returns on the website and alternatives other than the use of a central repository.

Commentators requested that the proposed regulations except actions by S corporations from reporting under section 6045B because adjustments are specific to the shareholder and are reported on Schedule K–1 (Form 1120S), ''Shareholder's Share of Income, Deductions, Credits, etc.'' The proposed regulations do not except reporting by S corporations, but deem an S corporation to satisfy the requirements under section 6045B if it reports the effect of the organizational action on the proper Schedule K–1 for each shareholder, timely files the schedules with the IRS, and timely furnishes the schedules to all proper parties.

*17. Penalty Provisions*

The current regulations impose penalties on brokers for failing to file or furnish complete and correct returns and statements after the sale of a security. The proposed regulations expand the list of required statements and returns filed with the IRS in § 301.6721–1 and the list of required statements furnished to payees in § 301.6722–1 to include the new penalties associated with the new transfer statements and issuer statements. The proposed regulations also update the full list of returns and statements included in section 6724(d).

Commentators expressed concern that the IRS would assert penalties against a broker for reporting an incorrect adjusted basis or incorrectly reporting whether any gain or loss on a sale is long-term or short-term after relying on incorrect information provided by others. Under the proposed regulations, brokers generally must adjust basis reported for covered securities to reflect: (1) Information received on any transfer statement under section 6045A; and (2) information reported by the issuer under section 6045B regarding the effect on basis of any organizational actions. The proposed regulations provide that any failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause with respect to the penalties under sections 6721 and 6722.

The proposed regulations permit, but do not require, a broker to adjust the reported basis in accordance with information that is not reflected on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. The proposed regulations deem that a broker that takes into account information received from a customer or third party other than information reflected on a transfer statement or issuer statement relies upon such information in good faith in accordance with existing rules found in § 301.6724–1(c)(6) if the broker neither knows nor has reason to know that the information is incorrect.

**Proposed Effective and Applicability Dates**

These regulations are proposed to take effect when published in the **Federal Register** as final regulations except as follows. The regulations regarding reporting basis and whether any gain or loss on a sale is long-term or short-term under section 6045(g) are proposed to apply to: (1) Any share of stock other than RIC stock or DRP stock acquired on or after January 1, 2011; and (2) any share of RIC stock or DRP stock acquired on or after January 1, 2012. The regulations regarding the determination of basis under section 1012 are proposed to apply for taxable years beginning after the date the regulations are published as final regulations in the **Federal Register**. However, the rules in § 1.1012–1(e)(1)(i), in part, apply to stock acquired on or after January 1, 2011, the rules in § 1.1012–1(e)(2) and (e)(9), in part, apply to stock acquired on or after January 1, 2012, and the rules in § 1.1012–1(e)(7)(i), in part, and in § 1.1012–1(e)(10), in part, apply to sales, exchanges, or other dispositions of stock on or after January 1, 2012.

The regulations regarding transfer statement reporting under section 6045A are proposed to apply to: (1) Transfers of stock other than RIC stock or DRP stock that occur on or after January 1, 2011; and (2) transfers of RIC stock or DRP stock that occur on or after January 1, 2012. The regulations regarding issuer reporting under section 6045B are proposed to apply to: (1) Organizational actions affecting basis of stock other than RIC stock that occur on or after January 1, 2011; and (2) organizational actions affecting basis of RIC stock that occur on or after January 1, 2012. The regulations regarding the timing for reporting short sales of securities under section 6045 and for collecting backup withholding in connection with short sales under section 3406 are proposed to apply to short sales opened on or after the date the final regulations are published in the **Federal Register** but no earlier than January 1, 2010.

**Effect on Other Documents**

Rev. Rul. 67–436 will be obsoleted as of the date these regulations are

published as final regulations in the **Federal Register**.

**Special Analyses**

It has been determined that this notice of proposed rulemaking 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 this regulation.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities, because any effect on small entities by the rules proposed in this document flows directly from section 403 of the Energy Improvement and Extension Act of 2008, Division B of Public Law 110–343 (122 Stat. 3765, 3854 (2008)).

Section 403(a) of the Act modifies section 6045 to require that brokers report the adjusted basis of the securities and whether any gain or loss with respect to the securities is long-term or short-term when reporting the sale of a covered security. It is anticipated that this statutory requirement will fall only on financial services firms with annual receipts greater than $7 million and, therefore, on no small entities. Further, in implementing the statutory requirement, the regulation proposes to limit reporting to the information described in the Act: Adjusted basis and whether any gain or loss with respect to the securities is long-term or short-term.

Section 403(c) of the Act adds new section 6045A, which requires applicable persons to furnish a transfer statement in connection with the transfer of custody of a covered security. In implementing this statutory requirement, the regulation proposes to define applicable person to include brokers, professional custodians of securities, and issuers of securities. This definition effectuates the Act by giving the broker who receives the transfer statement the information necessary to determine and report adjusted basis and whether any gain or loss with respect to the security is long-term or short-term as required by section 6045 when the security is subsequently sold. Consequently, the regulation does not add to the impact on small entities imposed by the statutory scheme. Instead, it limits reporting to only these necessary entities. It also limits the information to be reported to only those items necessary to effectuate the statutory scheme.

Section 403(d) of the Act adds new section 6045B, which requires issuer reporting by all issuers of specified securities regardless of size and even when the securities are not publicly traded. In implementing this statutory requirement, the regulation proposes to limit reporting to those items necessary to meet the Act's requirements. Additionally, the regulation proposes to mitigate the burden imposed by the Act by providing rules to permit issuers to report each action publicly as permitted by the Act instead of filing a return and furnishing each nominee or holder a statement about the action. The regulation therefore does not add to the statutory impact on small entities but instead eases this impact to the extent the statute permits.

Therefore, because this regulation will not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis is not required. The Treasury Department and IRS request comments on the accuracy of this statement. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The Treasury Department and IRS request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 17, 2010, beginning at 10 a.m., in the auditorium of the IRS New Carrollton Federal Building, 5000 Ellin Road, Lanham, Maryland 20706. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by February 8, 2010 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by February 8, 2010. A period of ten minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

**Drafting Information**

The principal authors of these proposed regulations are Edward C. Schwartz, Amy J. Pfalzgraf, and William L. Candler, Office of Associate Chief Counsel (Income Tax and Accounting), and Stephen Schaeffer, Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

*26 CFR Part 301*

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

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 31, and 301 are proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.6045A–1 also issued under 26 U.S.C. 6045A(a), (b), (c).

Section 1.6045B–1 also issued under 26 U.S.C. 6045B(a), (c), (e). * * *

**Par. 2.** Section 1.408–7 is amended by adding two new sentences at the end of paragraph (d)(2) to read as follows:

**§ 1.408–7 Reports on distributions from individual retirement plans.**

* * * * *

(d) * * *

(2) * * * However, if the statement is furnished in a consolidated reporting

statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

**Par. 3.** Section 1.1012–1 is amended by:

1. Revising paragraphs (c)(1), (c)(4), (c)(7)(ii), and (c)(7)(iii)(*a*).
2. Adding new paragraphs (c)(8), (c)(9), and (c)(10).
3. Revising the heading of paragraph (e), and paragraphs (e)(1), (e)(2), (e)(3), (e)(4), (e)(6), and (e)(7).
4. Revising the heading of paragraph (e)(5).
5. Adding new paragraphs (e)(8), (e)(9), (e)(10), (e)(11), and (e)(12).

The additions and revisions read as follows:

**§ 1.1012–1 Basis of property.**

* * * * *

(c) *Sale of stock*—(1) *In general.* Except as provided in paragraph (e)(2) of this section (dealing with stock for which the average basis method is permitted), if a taxpayer sells or transfers shares of stock in a corporation that the taxpayer purchased or acquired on different dates or at different prices and the taxpayer does not adequately identify the lot from which the stock is sold or transferred, the stock sold or transferred is charged against the earliest lot the taxpayer purchased or acquired to determine the basis and holding period of the stock for purposes of subchapter P, chapter 1 of the Internal Revenue Code. If the earliest lot purchased or acquired is held in a stock certificate that represents multiple lots of stock, and the taxpayer does not adequately identify the lot from which the stock is sold or transferred, the stock sold or transferred is charged against the earliest lot included in the certificate. See paragraphs (c)(2), (c)(3), and (c)(4) of this section for rules on what constitutes an adequate identification.

* * * * *

(4) *Stock held by a trustee, executor, or administrator.* (i) A trustee or executor or administrator of an estate holding stock (not left in the custody of a broker) makes an adequate identification if the trustee, executor, or administrator—

(*a*) Specifies in writing in the books and records of the trust or estate the particular stock to be sold, transferred, or distributed;

(*b*) In the case of a distribution, furnishes the distributee with a written document identifying the particular stock distributed; and

(*c*) In the case of a sale or transfer through a broker or other agent, specifies to the broker or agent the particular stock to be sold or transferred, and within a reasonable time thereafter the broker or agent confirms the specification in a written document.

(ii) The stock the trust or estate identifies under paragraph (c)(4)(i) of this section is the stock treated as sold, transferred, or distributed, even if the trustee, executor, or administrator delivers stock certificates from a different lot.

* * * * *

(7) * * *

(ii) In applying paragraph (c)(3)(i)(*b*) of this section to a sale or transfer of a book-entry security pursuant to a taxpayer's written instruction, a confirmation is made by furnishing to the taxpayer a written advice of transaction from the Reserve Bank or other person through whom the taxpayer sells or transfers the securities. The confirmation document must describe the securities and specify the date of the transaction and amount of securities sold or transferred.

(iii) * * *

(*a*) For purposes of this paragraph (c), the term *book-entry security* means a transferable Treasury bond, note, certificate of indebtedness, or bill issued under the Second Liberty Bond Act (31 U.S.C. 774(2)), as amended, or other security of the United States (as defined in paragraph (c)(7)(iii)(*b*) of this section) in the form of an entry made as prescribed in 31 CFR Part 306, or other comparable Federal regulations, on the records of a Reserve Bank.

(8) *Time for making identification.* For purposes of this paragraph (c), an adequate identification of stock is made at the time of sale, transfer, delivery, or distribution if the identification is made no later than the earlier of the settlement date or the time for settlement required by Rule 15c6–1 under the Securities Exchange Act of 1934, 17 CFR 240.15c6–1 (or its successor). A standing order or instruction for the specific identification of stock is treated as an adequate identification made at the time of sale, transfer, delivery, or distribution.

(9) *Method of writing.* A written confirmation, record, document, instruction, or advice includes a writing in electronic format.

(10) *Effective/applicability date.* Paragraphs (c)(1), (c)(4), (c)(8) and (c)(9) of this section apply for taxable years beginning after these regulations are published as final regulations in the **Federal Register**.

* * * * *

(e) *Election to use average basis method*—(1) *In general.* Notwithstanding paragraph (c) of this section, and except as provided in paragraph (e)(8) of this section, a taxpayer may use the average basis method described in paragraph (e)(7) of this section to determine the cost or other basis of identical shares of stock if—

(i) The taxpayer leaves shares of stock in a regulated investment company (as defined in paragraph (e)(5) of this section) or shares of stock acquired after December 31, 2010, in connection with a dividend reinvestment plan (as defined in paragraph (e)(6) of this section) with a custodian or agent in an account maintained for the acquisition or redemption, sale, or other disposition of shares of the company; and

(ii) The taxpayer acquires identical shares of stock at different prices or bases in the account.

(2) *Determination of method.* (i) If a taxpayer places shares of stock described in paragraph (e)(1)(i) of this section acquired on or after January 1, 2012, in the custody of a broker (as defined by section 6045(c)(1)), including by transfer from an account with another broker, the basis of the shares is determined in accordance with the broker's default method, unless the taxpayer notifies the broker that the taxpayer elects another permitted method. The taxpayer must report gain or loss using the method the taxpayer elects or, if the taxpayer fails to make an election, the broker's default method.

(ii) The provisions of this paragraph (e)(2) are illustrated by the following example:

*Example.* (i) In connection with a dividend reinvestment plan, Taxpayer B acquires 100 shares of G Company in 2012 and 100 shares of G Company in 2013, in an account B maintains with R Broker. B notifies R in writing that B elects to use the average basis method to compute the basis of the shares of G Company. In 2014, B transfers the shares of G Company to an account with S Broker. B does not notify S of the basis determination method B chooses to use for the shares of G Company, and S's default method is first-in, first-out. In 2015, B instructs S to sell 100 shares of G Company.

(ii) Because B does not notify S of a basis determination method for the shares of G Company, under paragraph (e)(2)(i) of this section, the basis of the 100 shares of G Company S sells for B in 2015 must be determined under S's default method, first-in, first-out.

(3) *Shares of stock.* For purposes of this paragraph (e), securities issued by unit investment trusts (as defined in the Investment Company Act of 1940, as amended) are treated as shares of stock

and the term *share* or *shares* includes fractions of a share.

(4) *Identical stock.* For purposes of this paragraph (e), *identical shares of stock* means stock with the same Committee on Uniform Security Identification Procedures (CUSIP) number or other security identifier number as permitted in published guidance of general applicability, see § 601.601(d)(2) of this chapter. However, shares of stock in a dividend reinvestment plan are not identical to shares of the same stock that are not in a dividend reinvestment plan even if the shares have the same CUSIP number.

(5) *Regulated investment company.* * * *

(6) *Dividend reinvestment plan*—(i) *In general.* For purposes of this paragraph (e), the term *dividend reinvestment plan* means any written plan, arrangement, or program under which at least 10 percent of every dividend on any share of stock is reinvested in stock identical to the stock on which the dividend is paid. A plan is a dividend reinvestment plan if the plan documents require that at least 10 percent of any dividend paid is reinvested in identical stock even if the plan includes stock on which no dividends have ever been declared or paid or on which an issuer ceases paying dividends. A plan that holds one or more different stocks may permit a taxpayer to reinvest a different percentage of dividends in the stocks held. The term dividend reinvestment plan includes both issuer administered dividend reinvestment plans and non-issuer administered dividend reinvestment plans.

(ii) *Acquisition of stock.* Stock is acquired in connection with a dividend reinvestment plan if the stock is acquired under that plan, arrangement, or program, or if the dividends paid on the stock are subject to that plan, arrangement, or program. Shares of stock acquired in connection with a dividend reinvestment plan include the initial purchase of stock in the dividend reinvestment plan, transfers of identical stock into the dividend reinvestment plan, additional periodic purchases of identical stock in the dividend reinvestment plan, and identical stock acquired through reinvestment of the dividends paid under the plan.

(iii) *Dividends paid after reorganization.* For purposes of this paragraph (e)(6), dividends declared before or pending a corporate action (such as a merger, consolidation, acquisition, split-off, or spin-off) involving the issuer of the dividend and subsequently paid and reinvested in shares of stock in the successor entity or entities are treated as reinvested in shares of stock identical to the shares of stock of the issuer of the dividends.

(iv) *Withdrawal from or termination of plan.* If a taxpayer withdraws stock from a dividend reinvestment plan or the plan administrator terminates the dividend reinvestment plan, the shares of identical stock the taxpayer acquires after the withdrawal or termination are not acquired in connection with a dividend reinvestment plan. The taxpayer may not use the average basis method after the withdrawal or termination but may use any other permissible basis determination method. See paragraph (e)(7)(v) of this section for the basis of the shares after withdrawal or termination.

(7) *Computation of average basis*—(i) *In general.* Average basis is determined by averaging the basis of all shares of identical stock in an account regardless of holding period. The basis of each share of identical stock in the account is the aggregate basis of all shares of that stock in the account divided by the aggregate number of shares. A taxpayer may not average together the basis of identical stock held in separate accounts that the taxpayer sells, exchanges, or otherwise disposes of on or after January 1, 2012.

(ii) *Order of disposition of shares sold or transferred.* In the case of the sale or transfer of shares of stock to which the average basis method election applies, shares sold or transferred are deemed to be the shares first acquired. Thus, the first shares sold or transferred are those with a holding period of more than 1 year (long-term shares) to the extent that the account contains long-term shares. If the number of shares sold or transferred exceeds the number of long-term shares in the account, the excess shares sold or transferred are deemed to be shares with a holding period of 1 year or less (short-term shares). Any gain or loss attributable to shares held for more than 1 year constitutes long-term gain or loss, and any gain or loss attributable to shares held for 1 year or less constitutes short-term gain or loss. For example, if a taxpayer sells 50 shares from an account containing 100 long-term shares and 100 short-term shares, the shares sold or transferred are all long-term shares. If, however, the account contains 40 long-term shares and 100 short-term shares, the taxpayer has sold 40 long-term shares and 10 short-term shares.

(iii) *Transition rule from double category method.* This paragraph (e)(7)(iii) applies to stock for which a taxpayer uses the double-category method under § 1.1012–1(e)(3) (April 1, 2009) that the taxpayer acquired before the date these regulations are published as final regulations in the **Federal Register** and the taxpayer sells, exchanges, or otherwise disposes of after that date. The taxpayer must calculate the average basis of this stock by averaging together all identical shares of stock in the account on the date these regulations are published as final regulations in the **Federal Register** regardless of holding period.

(iv) *Wash sales.* A taxpayer must apply section 1091 and the associated regulations (dealing with wash sales of substantially identical securities) in computing average basis regardless of whether the stock or security sold or otherwise disposed of and the stock acquired are in the same account or in different accounts.

(v) *Basis after change from average basis method.* Unless a taxpayer revokes an average basis method election under paragraph (e)(9)(iii) of this section, if a taxpayer changes from the average basis method to another basis determination method (including a change resulting from a withdrawal from or termination of a dividend reinvestment plan), the basis of each share of stock immediately after the change is the same as the basis immediately before the change. See paragraph (e)(9)(iv) of this section for rules for changing from the average basis method.

(vi) The provisions of this paragraph (e)(7) are illustrated by the following examples:

*Example 1.* (i) In 2011, Taxpayer C acquires 100 shares of H Company and enrolls them in a dividend reinvestment plan administered by T Custodian. C elects to use the average basis method for the shares of H Company enrolled in the dividend reinvestment plan. T also acquires for C's account 50 shares of H Company and does not enroll these shares in the dividend reinvestment plan.

(ii) Under paragraph (e)(4) of this section, the 50 shares of H Company not in the dividend reinvestment plan are not identical to the 100 shares of H Company enrolled in the dividend reinvestment plan, even if they have the same CUSIP number. Accordingly, under paragraphs (e)(1) and (e)(7)(i) of this section, C may not average the basis of the 50 shares of H Company with the basis of the 100 shares of H Company. Under paragraph (e)(1)(i) of this section, C may not use the average basis method for the 50 shares of H Company because the shares are not acquired in connection with a dividend reinvestment plan.

*Example 2.* (i) Taxpayer D enters into an agreement with W Custodian establishing an account for the periodic acquisition of shares of L Company, a regulated investment company. W acquires for D's account shares of L Company stock on the following dates and amounts:

| Date | Number of shares | Cost |
|---|---|---|
| January 8, 2009 ..... | 25 shares .... | $200 |
| February 8, 2009 .... | 24 shares .... | 200 |
| March 8, 2009 ..... | 20 shares .... | 200 |
| April 8, 2009 ..... | 20 shares .... | 200 |

(ii) At D's direction, W sells 40 shares from the account on January 15, 2010, for $10 per share or a total of $400. D elects to use the average basis method for the shares of L Company. The average basis for the shares sold on January 15, 2010, is $8.99 (total cost of shares, $800, divided by the total number of shares, 89).

(iii) Under paragraph (e)(7)(ii) of this section, the shares sold are the shares first acquired. Thus, D realizes $25.25 ($1.01 * 25) long-term capital gain for the 25 shares acquired on January 8, 2009, and $15.15 ($1.01 * 15) short-term capital gain for 15 of the shares acquired on February 8, 2009.

*Example 3.* (i) The facts are the same as in *Example 2*, except that on February 8, 2010, D changes to the first-in, first-out basis determination method. W purchases 25 shares of L Company for D on March 8, 2010, at $12 per share. D sells 40 shares on May 8, 2010, and 34 shares on July 8, 2011.

(ii) Because D uses the first-in, first-out method, the 40 shares sold on May 8, 2010 are 9 shares purchased on February 8, 2009, 20 shares purchased on March 8, 2009, and 11 shares purchased on April 8, 2009. Because, under paragraph (e)(7)(v) of this section, the basis of the shares D owns when D changes from the average basis method remains the same, the basis of the shares sold on May 8, 2010, is $8.99 per share, not the original cost of $8.34 for the shares purchased on February 8, 2009, or $10 per share for the shares purchased on March 8, 2009, and April 8, 2009. The basis of the shares sold on July 8, 2011, is $8.99 for 9 shares purchased on April 8, 2009, and $12 per share for 25 shares purchased on March 8, 2010.

(8) *Limitation on use of average basis method for certain gift shares.* (i) Except as provided in paragraph (e)(8)(ii) of this section, a taxpayer may not use the average basis method for shares of stock a taxpayer acquires by gift after December 31, 1920, if the basis of the shares (adjusted for the period before the date of the gift as provided in section 1016) in the hands of the donor or the last preceding owner by whom the shares were not acquired by gift was greater than the fair market value of the shares at the time of the gift. This paragraph (e)(8)(i) does not apply to shares the taxpayer acquires as a result of a taxable dividend or capital gain distribution on the gift shares.

(ii) Notwithstanding paragraph (e)(8)(i) of this section, a taxpayer may use the average basis method if the taxpayer states in writing that the taxpayer will treat the basis of the gift shares as the fair market value of the shares at the time the taxpayer acquires the shares. The taxpayer must provide this statement when the taxpayer makes the election under paragraph (e)(9) of this section or when transferring the shares to an account for which the taxpayer has made this election, whichever occurs later. The statement must be effective for any gift shares identical to the gift shares to which the average basis method election applies that the taxpayer acquires at any time and must remain in effect as long as the election remains in effect.

(iii) The provisions of this paragraph (e)(8) are illustrated by the following examples:

*Example 1.* (i) Taxpayer E owns an account for the periodic acquisition of shares of M Company, a regulated investment company. On April 15, 2010, E acquires identical shares by gift and transfers those shares into the account. These shares had an adjusted basis in the hands of the donor that was greater than the fair market value of the shares on that date. On June 15, 2010, E sells shares from the account and elects to use the average basis method.

(ii) Under paragraph (e)(8)(ii) of this section, E may elect to use the average basis method for shares sold or transferred from the account if E includes a statement with E's election that E will treat the basis of the gift shares in the account as the fair market value of the shares at the time E acquired them. *See* paragraph (e)(9)(ii) of this section.

*Example 2.* (i) The facts are the same as in *Example 1*, except E acquires the gift shares on April 15, 2012, transfers those shares into the account, and used the average basis method for sales of shares of M Company before acquiring the gift shares. E sells shares of M Company on June 15, 2012.

(ii) Under paragraph (e)(8)(ii) of this section, the basis of the gift shares may be averaged with the basis of the other shares of M Company in E's account if, when E transfers the gift shares to the account, E provides a statement to E's broker that E will treat the basis of the gift shares in the account as the fair market value of the shares at the time E acquired them. See paragraph (e)(9)(i) of this section.

(9) *Time and manner for making the average basis method election*—(i) *In general.* A taxpayer makes an election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that are covered securities (within the meaning of section 6045(g)(3)) by notifying the custodian or agent in writing by any reasonable means. The taxpayer may make the average basis method election at any time, effective for sales or other dispositions of stock occurring after the taxpayer notifies the custodian or agent. The taxpayer makes the election separately for each account holding stock for which the average basis method is permissible. If the election applies to gift shares, the taxpayer must provide the statement required by paragraph (e)(8)(ii) of this section, if applicable, to the custodian or agent with the taxpayer's election.

(ii) *Average basis method election for securities that are noncovered securities.* A taxpayer makes an election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that are noncovered securities (as described in § 1.6045–1(a)(16)) on the taxpayer's income tax return for the first taxable year for which the election applies. A taxpayer may make the election on an amended return filed no later than the time prescribed (including extensions) for filing the original return for the taxable year for which the election applies. The taxpayer must indicate on the return that the taxpayer used the average basis method in reporting gain or loss on the sale or other disposition. A taxpayer must attach to the return the statement described in paragraph (e)(8)(ii) of this section, if applicable. A taxpayer making the election must maintain records necessary to substantiate the average basis reported.

(iii) *Revocation of election.* A taxpayer may revoke an election under paragraph (e)(9)(i) of this section by the earlier of one year after the taxpayer makes the election or the date of the first sale or other disposition of that stock following the election. A custodian or agent may extend the one-year period but a taxpayer may not revoke an election after the first sale or other disposition of the stock. A revocation applies to all stock the taxpayer holds in an account that is identical to the shares of stock for which the taxpayer revokes the election. A revocation is effective when the taxpayer notifies, by any reasonable means, the custodian or agent holding the stock to which the revocation applies. After revocation, the taxpayer's basis in the shares of stock to which the revocation applies is determined using another permissible basis determination method.

(iv) *Change from average basis method.* (*a*) A taxpayer may change basis determination methods from the average basis method to another method prospectively at any time. A change from the average basis method applies to all identical stock the taxpayer sells or otherwise disposes of before January 1, 2012, that was held in any account. A change from the average basis method applies on an account by account basis (within the meaning of paragraph (e)(10) of this section) to all identical stock the taxpayer sells or otherwise disposes of on or after January 1, 2012. Unless paragraph (e)(9)(iii) of this section applies, the basis of each share of stock

to which the change applies is the basis immediately before the change. See paragraph (e)(7)(v) of this section.

(*b*) Unless paragraph (e)(9)(iii) of this section applies, a change in basis determination method is a change in method of accounting to which the provisions of sections 446 and 481 and the associated regulations apply. A taxpayer that wishes to change its basis determination method must obtain the consent of the Commissioner in accordance with applicable administrative procedures, *see* § 601.601(d)(2) of this chapter.

(v) *Example.* The provisions of this paragraph (e)(9) are illustrated by the following example:

*Example.* (i) Taxpayer F enters into an agreement with W Custodian establishing an account for the periodic acquisition of shares of N Company, a regulated investment company. W acquires for F's account shares of N Company on the following dates and amounts:

| Date | Number of shares | Cost |
|---|---|---|
| January 8, 2012 ..... | 25 shares .... | $200 |
| February 8, 2012 .... | 24 shares .... | 200 |
| March 8, 2012 ..... | 20 shares .... | 200 |

(ii) F elects, under paragraph (e)(9)(i) of this section, to use the average basis method for the shares of N Company. On May 8, 2012, F revokes the average basis method election under paragraph (e)(9)(iii) of this section. On June 1, 2012, F sells 60 shares of N Company using the first-in, first-out basis determination method.

(iii) Under paragraph (e)(9)(iii) of this section, the basis of the N Company shares upon revocation, and for purposes of determining gain on the sale, is $8.00 per share for each of the 25 shares purchased on January 8, 2012, $8.34 per share for each of the 24 shares purchased on February 8, 2012, and $10 per share for the remaining 11 shares purchased on March 8, 2012.

(10) *Application of average basis method account by account*—(i) *In general.* For sales, exchanges, or other dispositions on or after January 1, 2012, of any stock described in paragraph (e)(1)(i) of this section, the average basis method applies on an account by account basis. A taxpayer may use the average basis method for stock in a regulated investment company or stock acquired in connection with a dividend reinvestment plan in one account but use a different basis determination method for the identical stock in a different account. If a taxpayer uses the average basis method for a stock described in paragraph (e)(1)(i) of this section, the taxpayer must use the average basis method for all identical stock within that account. The taxpayer may use different basis determination methods for stock within an account that is not identical. Except as provided in paragraph (e)(10)(ii) of this section, a taxpayer must make separate elections to use the average basis method for stock held in separate accounts.

(ii) *Account rule for stock sold before 2012.* A taxpayer's election to use the average basis method for shares of stock described in paragraph (e)(1)(i) of this section that a taxpayer sells, exchanges, or otherwise disposes of before January 1, 2012, applies to all identical shares of stock the taxpayer holds in any account.

(iii) *Separate account.* Unless the single-account election described in paragraph (e)(11)(i) of this section applies, any stock described in paragraph (e)(1)(i) of this section that a taxpayer acquires before January 1, 2012, is treated as held in a separate account from any stock acquired on or after that date, and any stock that is a covered security (within the meaning of section 6045(g)(3)) is treated as held in a separate account from any stock that is a noncovered security (as described in § 1.6045–1(a)(16)) regardless of when acquired.

(iv) *Examples.* The provisions of this paragraph (e)(10) are illustrated by the following examples:

*Example 1.* (i) In 2012, Taxpayer G enters into an agreement with Y Broker establishing three accounts (G–1, G–2, and G–3) for the periodic acquisition of shares of P Company, a regulated investment company. Y makes periodic purchases of P Company for each of G's accounts. G elects to use the average basis method for account G–1. On July 1, 2013, G sells shares of P Company from account G–1.

(ii) G is not required to use the average basis method for the shares of P Company that G holds in accounts G–2 and G–3 because, under paragraph (e)(10)(i) of this section, the average basis method election applies to shares sold after 2011 on an account by account basis.

*Example 2.* The facts are the same as in *Example 1,* except that G also instructs Y to acquire shares of Q Company, a regulated investment company, for account G–1. Under paragraph (e)(10)(i) of this section, G may use any permissible basis determination method for the shares of Q Company because, under paragraph (e)(4) of this section, the shares of Q Company are not identical to the shares of P Company.

*Example 3.* (i) The facts are the same as in *Example 1,* except that G establishes the accounts in 2011 and Y sells shares of P Company from account G–1 on July 1, 2011.

(ii) G must use the average basis method for the shares of P Company in accounts G–2 and G–3 because, under paragraph (e)(10)(ii) of this section, for sales before 2012, G's election applies to all accounts in which G holds identical stock. G must average together the basis of the shares in all accounts.

*Example 4.* (i) In 2011, Taxpayer H acquires 80 shares of R Company and enrolls them in R Company's dividend reinvestment plan. In 2012, H acquires 50 shares of R Company in the dividend reinvestment plan. H elects to use the average basis method for the shares of R Company in the dividend reinvestment plan. R Company does not make the single-account election under paragraph (e)(11)(i) of this section.

(ii) Under paragraph (e)(10)(iii) of this section, the 80 shares acquired in 2011 are treated as held in a separate account from the 50 shares acquired in 2012. H must make a separate average basis method election for each account and must average the basis of the shares in each account separately from the shares in the other account.

*Example 5.* (i) B, a broker within the meaning of section 6045(c)(1), maintains an account for Taxpayer J for the periodic acquisition of shares of S Company, a regulated investment company. In 2013, B purchases shares of S Company for J's account that are covered securities within the meaning of section 6045(g)(3). On April 15, 2014, J inherits shares of S Company that are noncovered securities and transfers the shares into the account with B.

(ii) Under paragraph (e)(10)(iii) of this section, J must treat the purchased shares and the inherited shares of S Company as held in separate accounts. J may elect to apply the average basis method to all the shares of S Company, but must make a separate election for each account, and must average the basis of the shares in each account separately from the shares in the other account.

(11) *Single-account election*—(i) *In general.* Paragraph (e)(10)(iii) of this section does not apply if a regulated investment company or dividend reinvestment plan elects to treat all identical shares of stock described in paragraph (e)(1)(i) of this section as held in a single account (single-account election). The single-account election applies only to stock for which a taxpayer elects to use the average basis method that is held in separate accounts or treated as held in separate accounts maintained for the taxpayer. If a broker (as defined by section 6045(c)(1)) holds the stock as a nominee, the broker, and not the regulated investment company or dividend reinvestment plan, makes the election. The single-account election is irrevocable.

(ii) *Scope of election.* A company, plan, or broker may make a single-account election for one or more taxpayers for which it maintains an account, and for one or more stocks it holds for a taxpayer. The company, plan, or broker may make the election only for the shares of stock for which it has accurate basis information. A company, plan, or broker has accurate basis information if the company, plan, or broker neither knows nor has reason to know that the basis information is inaccurate. See also section 6724 and the regulations thereunder regarding standards for relief from information

reporting penalties. Stock for which accurate basis information is unavailable may not be included in the single-account election and must be treated as held in a separate account.

(iii) *Effect of single-account election.* If a company, plan, or broker makes the single-account election, the basis of all identical shares of stock to which the election applies must be averaged together regardless of when the taxpayer acquires the shares, and all the shares are treated as covered securities. Once made, the single-account election applies to all identical stock a taxpayer later acquires in the account that is a covered security (within the meaning of section 6045(g)(3)). A company, plan, or broker may make another single-account election if a taxpayer acquires identical stock in the account that is a noncovered security (as described in § 1.6045–1(a)(16)) for which the company, plan, or broker has accurate basis information.

(iv) *Time and manner for making the single-account election.* A company, plan, or broker makes the single-account election by clearly noting it on its books and records. The books and records must reflect the date of the election; the taxpayer's name, account number, and taxpayer identification number; the stock subject to the election; and the taxpayer's basis in the stock. The company, plan, or broker must provide copies of the books and records regarding the election to the taxpayer upon request. A company, plan, or broker may make the single-account election at any time.

(v) *Notification to taxpayer.* A company, plan, or broker making the single-account election must use reasonable means to notify the taxpayer of the election. Reasonable means include mailings, circulars, or electronic mail sent separately to the taxpayer or included with the taxpayer's account statement, or other means reasonably calculated to provide actual notice to the taxpayer. The notice must identify the securities subject to the election and advise the taxpayer that the securities will be treated as covered securities regardless of when acquired.

(vi) *Examples.* The provisions of this paragraph (e)(11) are illustrated by the following examples:

*Example 1.* (i) C Broker maintains an account for Taxpayer K for the acquisition and disposition of shares of T Company, a regulated investment company, and shares of V Company that K enrolls in C's dividend reinvestment plan. In 2011, C purchases for K's account 100 shares of T Company in multiple lots and 80 shares of V Company in multiple lots that are enrolled in the dividend reinvestment plan. C has accurate basis information for all 100 shares of T Company and 80 shares of V Company. In 2012, C acquires for K's account 150 shares of T Company and 160 shares of V Company that are enrolled in the dividend reinvestment plan. K elects to use the average basis method for all the shares of T Company and V Company.

(ii) Under paragraphs (e)(11)(i) and (ii) of this section, C may make a single-account election for the T Company stock or the V Company stock, or both. After making a single-account election for each stock, under paragraph (e)(11)(iii) of this section, the basis of all T Company stock is averaged together and the basis of all V Company stock is averaged together, regardless of when acquired, and all the shares of T Company and V Company are covered securities.

*Example 2.* The facts are the same as in *Example 1*, except that K transfers the 100 shares of T Company acquired in 2011 from an account with another broker into K's account with C. C does not have accurate basis information for 30 of the 100 shares of T Company, which K had acquired in two lots. Under paragraph (e)(11)(ii) of this section, C may make the single-account election only for the 70 shares of T Company stock for which C has accurate basis information. The 30 shares of T Company for which C does not have accurate basis information must be treated as held in a separate account. K may use the average basis method for the 30 shares of T Company, but must make a separate average basis method election for these shares and must average the basis of these shares separately from the 70 shares subject to C's single-account election.

*Example 3.* The facts are the same as in *Example 1*, except that in 2013 K acquires additional shares of T Company that are covered securities in K's account with C. Under paragraph (e)(11)(iii) of this section, these shares of T Company are subject to C's single-account election.

*Example 4.* The facts are the same as in *Example 1*, except that following C's single-account election, in 2013, K inherits shares of T Company that are noncovered securities and transfers the shares into the account with C. C has accurate basis information for these shares. Under paragraph (e)(11)(iii) of this section, C may make a second single-account election to include the inherited T Company shares.

(12) *Effective/applicability date.* Except as otherwise provided in paragraphs (e)(1), (e)(2), (e)(7), (e)(9), and (e)(10) of this section, this paragraph (e) applies for taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

**Par. 4.** Section 1.6039–2 is amended by adding two new sentences at the end of paragraph (c)(1) to read as follows:

**§ 1.6039–2 Statements to persons with respect to whom information is reported.**

* * * * *

(c) * * *

(1) * * * However, if the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

**Par. 5.** Section 1.6042–4 is amended by adding two new sentences at the end of paragraph (e)(1) to read as follows:

**§ 1.6042–4 Statements to recipients of dividend payments.**

* * * * *

(e) * * *

(1) * * * If the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

**Par. 6.** Section 1.6044–5 is amended by adding two new sentences at the end of paragraph (b) to read as follows:

**§ 1.6044–5 Statements to recipients of patronage dividends.**

* * * * *

(b) * * * If the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

**Par. 7.** Section 1.6045–1 is amended by:

1. Revising paragraphs (a)(1) and (a)(9), and adding paragraphs (a)(14), (a)(15), and (a)(16).

2. Revising paragraphs (c)(2), (c)(3)(i)(B)(*1*), and (c)(3)(i)(C).

3. Removing paragraph (c)(3)(xii) and redesignating paragraph (c)(3)(xi) as (c)(3)(xii) and adding a new paragraph (c)(3)(xi).

4. Adding *Examples 7, 8, 9, 10,* and *11* to paragraph (c)(4).

5. Revising paragraphs (d)(1), (d)(2), and (d)(5).

6. Redesignating paragraphs (d)(6) and (d)(7) as (d)(8) and (d)(9) respectively and adding new paragraphs (d)(6) and (d)(7).

7. Revising newly designated paragraphs (d)(8) and (d)(9).

8. Revising paragraphs (e)(2)(i), (f)(1), (f)(2)(i), (k)(1), and (k)(2).

9. Redesignating paragraph (k)(3) as (k)(4) and adding a new paragraph (k)(3).

10. Removing paragraphs (p) and (q) and redesignating paragraph (r) as (p).

The additions and revisions read as follows:

**§ 1.6045–1 Returns of information of brokers and barter exchanges.**

(a) * * *

(1) The term *broker* means any person (other than a person who is required to report a transaction under section 6043), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. A broker includes an obligor that regularly issues and retires its own debt obligations or a corporation that regularly redeems its own stock. However, with respect to a sale (including a redemption or retirement) effected at an office outside the United States, except as otherwise provided in a withholding agreement with the Internal Revenue Service under § 1.1441–1(e)(5)(iii), a broker includes only a person described as a U.S. payor or U.S. middleman in § 1.6049–5(c)(5). In addition, a broker does not include an international organization described in § 1.6049–4(c)(1)(ii)(G) that redeems or retires an obligation of which it is the issuer.

* * * * *

(9) The term *sale* means any disposition for cash of securities, commodities, regulated futures contracts, or forward contracts, and includes redemptions of stock, retirements of indebtedness, and enterings into short sales when these actions are conducted for cash. In the case of a regulated futures contract or a forward contract, the term ''sale'' means any closing transaction. When a closing transaction in a regulated futures contract involves making or taking delivery, the profit or loss on the contract is a sale, and, if delivery is made, such delivery is a separate sale. When a closing transaction in a forward contract involves making or taking delivery, the delivery is a sale without separation of the profit or loss on the contract from the profit or loss on the delivery, except that taking delivery for United States dollars is not a sale. The term ''sale'' does not include grants or purchases of options, exercises of call options, or enterings into contracts that require delivery of personal property or an interest therein. For purposes of this section only, the term ''sale'' does not include a constructive sale under section 1259 or a mark to fair market value under section 475.

* * * * *

(14) The term *specified security* means any share of stock (including a certificate of beneficial interest) in a corporation (foreign or domestic) described in § 301.7701–2(b) of this chapter. Solely for purposes of this paragraph (a)(14), a security classified as stock by the issuer is treated as stock. If no issuer classification has been made, the security is not treated as stock unless the broker knows, or has reason to know, that the security is reasonably classified as stock under general Federal tax principles.

(15) The term *covered security* means the following specified securities:

(i) Any specified security acquired through a sale transaction in an account on or after January 1, 2011, except for stock in a regulated investment company (as described in § 1.1012–1(e)(5)) and stock that is considered acquired in connection with a dividend reinvestment plan (as described in § 1.1012–1(e)(6)) on the date of acquisition.

(ii) Stock in a regulated investment company if acquired through a sale transaction in an account on or after January 1, 2012.

(iii) Stock acquired in connection with a dividend reinvestment plan if acquired through a sale transaction in an account on or after January 1, 2012.

(iv) Any specified security transferred to an account in a non-sale transaction provided that the broker or other custodian of the account receives a transfer statement (as described in § 1.6045A–1) reporting the security as a covered security.

(16) The term *noncovered security* means any security that is not a covered security.

* * * * *

(c) * * *

(2) *Sales required to be reported.* Except as provided in paragraphs (c)(3), (c)(5), and (g) of this section, a broker is required to make a return of information with respect to each sale by a customer of the broker if, in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others, the broker effects the sale or closes the short position opened by the sale.

(3) * * *

(i) * * *

(B) * * *

(*1*) A corporation as defined in section 7701(a)(3), whether domestic or foreign, except that this exclusion does not apply to sales of covered securities acquired on or after January 1, 2012, by a corporation for which an election under section 1362(a) is in effect;

* * * * *

(C) *Exemption certificate.* A broker may treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on a properly completed exemption certificate (as provided in § 31.3406(h)–3 of this chapter), on the broker's actual knowledge that the payee is a person described in paragraph (c)(3)(i)(B) of this section, or on the applicable indicators described in § 1.6049–4(c)(1)(ii)(A) through (M), except a broker must not treat a person described in paragraph (c)(3)(i)(B) of this section as an exempt recipient based on the indicator described in § 1.6049–4(c)(1)(ii)(A) (relating to corporations) with respect to sales of covered securities acquired on or after January 1, 2012. A broker may require an exempt recipient to file a properly completed exemption certificate and may treat an exempt recipient that fails to do so as a recipient that is not exempt.

* * * * *

(xi) *Short sales.* A return of information for a short sale of a security entered into on or after January 1, 2010, is not made until the year in which securities are acquired or delivered to close the short sale. The return must be made without regard to the constructive sale rule in section 1259 and, if the short sale remains open, without regard to section 1233(h). The return is required to include the following information:

(A) With respect to short sales closed by covered securities (other than short sales described in paragraph (c)(3)(xi)(C) of this section), a broker is required to report, on a single return of information, the information required by paragraph (d)(2)(i) of this section including the relevant information regarding the securities sold to open the short sale and the adjusted basis for the securities acquired or delivered to close the short sale and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222).

(B) With respect to short sales closed by noncovered securities (other than short sales described in paragraph (c)(3)(xi)(C) of this section), a broker is required to report the relevant information required by paragraph (d)(2)(i) of this section for the securities sold to open the short sale. Adjusted basis and whether any gain or loss on the closing of a short sale is long-term or short-term (within the meaning of section 1222) are not reportable for short sales closed before January 1, 2011. With respect to short sales closed on or after January 1, 2011, a broker is not required to report adjusted basis and whether any gain or loss on the closing of the short sale is long-term or short-term for noncovered securities acquired or delivered to close a short sale provided that the broker indicates on Form 1099 or any successor form that the securities acquired or delivered to

close a short sale are noncovered securities. A broker that chooses to report this information with respect to short sales closed by noncovered securities is not subject to penalties under section 6721 or 6722 for any failure to report such information correctly, provided that the broker indicates on Form 1099 or any successor form that securities acquired or delivered to close a short sale are noncovered securities.

(C) With respect to short sales closed by securities transferred into a customer's account accompanied by a transfer statement (as described in § 1.6045A–1) indicating that the securities were borrowed from or through the applicable person effecting the transfer (within the meaning of § 1.6045A–1(a)(3)), the broker receiving custody of the securities must not file a return of information. In this situation, the broker receiving custody of the securities must furnish a statement to the applicable person effecting the transfer that reports the amount of gross proceeds received from the short sale, the date the short sale was opened, and the CUSIP or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) of the securities that opened the short sale. The statement must also contain the date that the transfer was initiated as reported on the transfer statement and the name and contact information of the broker receiving custody of the securities, the applicable person that effected the transfer, and the customer. The applicable person that effected the transfer must take the information furnished by the broker receiving custody of the securities under this paragraph (c)(3)(xi)(C) into account when making the return of information required by this section at the time the short sale is closed unless the applicable person that effected the transfer knows that the information on the statement is incorrect. Any failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause with respect to penalties under sections 6721 and 6722. *See* § 301.6724–1(a)(1) of this chapter. This paragraph (c)(3)(xi)(C) applies only if a short sale is not considered closed under section 1233 by the delivery of property borrowed from a lender.

(4) * * *

* * * * *

*Example 7.* On April 17, 2009, H, an individual who is not an exempt recipient, opens a short sale of stock in an account with M, a broker. Because the short sale is entered into prior to January 1, 2010, paragraph (c)(3)(xi) of this section does not apply. Under paragraphs (c)(2) and (j) of this section, M must make a return of information for the year of the sale regardless of when the short sale is closed.

*Example 8.* (i) On June 24, 2010, H opens a short sale of stock in an account with M, a broker. H closes the short sale with M on August 25, 2010, by purchasing stock of the same corporation in the account in which H opened the short sale.

(ii) Because the short sale is entered into on or after January 1, 2010, under paragraphs (c)(2) and (c)(3)(xi) of this section, the broker closing the short sale must make a return of information reporting the sale for the year in which the short sale is closed. Thus, M is required to report the sale for 2010.

(iii) Because the stock used to close the short sale was acquired before January 1, 2011, the stock is a noncovered security under paragraph (a)(16) of this section, and paragraph (c)(3)(xi)(B) of this section applies. Under paragraph (c)(3)(xi)(B) of this section, because the short sale was closed prior to January 1, 2011, M must report the relevant information for the sold stock. The adjusted basis and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222) are not reportable for transactions occurring prior to January 1, 2011.

*Example 9.* (i) On December 20, 2010, H opens a short sale of stock that is not stock in a regulated investment company in an account with M, a broker. H closes the short sale with M on January 20, 2011, by purchasing stock of the same corporation in the account in which H opened the short sale. The purchased stock is not considered to be acquired in connection with a dividend reinvestment plan.

(ii) Because the short sale is entered into on or after January 1, 2010, under paragraphs (c)(2) and (c)(3)(xi) of this section, the broker closing the short sale must make a return of information reporting the sale for the year in which the short sale is closed. Thus, M is required to report the sale for 2011.

(iii) Because the stock used to close the short sale is not stock in a regulated investment company or acquired in connection with a dividend reinvestment plan and was acquired on or after January 1, 2011, the stock is a covered security under paragraph (a)(15)(i) of this section, and paragraph (c)(3)(xi)(A) of this section applies. Under paragraph (c)(3)(xi)(A) of this section, M must report on a single return the relevant information for the sold stock, the adjusted basis of the acquired stock, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222). Thus, M must report the information about the transactions opening and closing the short sale on a single return for taxable year 2011.

*Example 10.* Assume the same facts as in *Example 9* except that H satisfies the short sale obligation with M by delivering stock of the same corporation that H acquired on December 29, 2010. Because the stock used to close the short sale was acquired before January 1, 2011, the stock is a noncovered security under paragraph (a)(16) of this section and paragraph (c)(3)(xi)(B) of this section applies. Under paragraph (c)(3)(xi)(B) of this section, because the short sale was closed on or after January 1, 2011, M must report the relevant information for the sold stock and is permitted to report the adjusted basis of the stock acquired to close the short sale, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222). Whether M chooses to report the last two items or to leave these two fields blank, M will not be subject to penalties for failing to report the correct adjusted basis or whether any gain or loss on the closing of the short sale is long-term or short-term provided that M indicates on Form 1099 or any successor form that the securities acquired or delivered to close the short sale are noncovered securities.

*Example 11.* Assume the same facts as in *Example 9* except that H satisfies the short sale obligation with M by borrowing stock of the same corporation from another broker, N, and transferring the borrowed stock from the custody of N to M. N indicates on the transfer statement that the transferred stock was borrowed from or through N. Because H is not considered to have closed H's short sale under section 1233, under paragraph (c)(3)(xi)(C) of this section, M is not permitted to file the return of information required under this section. Instead, M must furnish a statement to N that reports the gross proceeds from the short sale, the date the short sale was opened, and the CUSIP number or other security identifier number for the sale of the stock borrowed from M to open the short sale on December 20, 2010, along with the date N initiated the transfer as reported by N on the transfer statement and the name and contact information of H, M, and N. N must report the gross proceeds from the short sale, the date the short sale was opened, the adjusted basis of the stock acquired to close the short sale, and whether any gain or loss on the closing of the short sale is long-term or short-term (within the meaning of section 1222) on the return of information N is required to file under paragraph (c)(2) of this section when H closes the short sale in the account with N.

* * * * *

(d) *Information required*—(1) *In general.* A broker that is required to make a return of information under paragraph (c) of this section during a reporting period is required to report on a separate Form 1096, ''Annual Summary and Transmittal of U.S. Information Returns,'' or any successor form for each filing group, showing such information as may be required by Form 1096, in the form, manner, and number of copies required by Form 1096.

(2) *Transactional reporting*—(i) *Required information.* For each sale for which a broker is required to make a return of information under this section, the broker, except as provided in paragraph (c)(5) of this section, must report on Form 1099 or any successor form the name, address, and taxpayer identification number of the customer, the property sold, the Committee on

Uniform Security Identification Procedures (CUSIP) number of the security sold (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), the adjusted basis of the security sold, whether any gain or loss with respect to the security sold is long-term or short-term (within the meaning of section 1222), the gross proceeds of the sale, the sale date, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

(ii) *Specific identification of securities.* In the case of a sale of securities acquired on different dates or at different prices but involving less than the entire position of the security held in an account, a broker must report the sale on a first-in, first-out basis within the account unless the customer notifies the broker by means of making an adequate and timely identification of the securities to be sold. If the customer makes an adequate and timely identification of the securities to be sold, the broker must report the sale consistently with the customer's identification. For rules governing the requirements and timing for making an adequate identification, *see* § 1.1012–1(c).

(iii) *Sales of noncovered securities and certain excepted securities.* In the case of a sale of a noncovered security, reporting of the adjusted basis of the security sold and whether any gain or loss with respect to the security sold is long-term or short-term (within the meaning of section 1222) is not required provided that a broker indicates on Form 1099 or any successor form that the sale is a sale of a noncovered security. A broker that chooses to report this information with respect to a noncovered security is not subject to penalties under section 6721 or 6722 for any failure to report such information correctly, provided that the broker indicates on Form 1099 or any successor form that the sale is a sale of a noncovered security. For purposes of this paragraph (d)(2)(iii), a security that was excepted from all reporting under this section as described in paragraph (c)(3) of this section at the time of its acquisition is treated in the same manner as a noncovered security.

(iv) *Information from other parties and other accounts*—(A) *Transfer and issuer statements.* When reporting the sale of a covered security, a broker must take into account all information reported on any transfer statement (as described in § 1.6045A–1) received in connection with the transfer of the security to the customer's account with the broker, and all information reported on any issuer statement (as described in § 1.6045B–1) regarding the effect on the security of any organizational actions prior to the sale of the security unless the broker knows that the information presented on the transfer statement or issuer statement is incorrect. With respect to penalties under sections 6721 and 6722, any failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause. *See* § 301.6724–1(a)(1) of this chapter.

(B) *Other information.* A broker is permitted, but not required, to take into account any information with respect to a covered security that is not reflected on a transfer statement or issuer statement, including any information the broker has about securities held by the same customer in other accounts with the broker. With respect to penalties under sections 6721 and 6722, a broker that takes into account information received from a customer or third party other than information reflected on a transfer statement or issuer statement is deemed to have relied upon it in good faith if the broker neither knows nor has reason to know that the information is incorrect. *See* § 301.6724–1(c)(6) of this chapter.

(v) *Failures by other parties.* A broker that does not receive a complete transfer statement by the transfer statement due date (as described in § 1.6045A–1(a)(5) and (b)) in connection with the receipt of transferred securities must notify the person effecting the transfer and request a complete statement. The broker is not required to make this request more than once. If the broker does not receive a complete transfer statement after making the request, the broker may treat the security as noncovered when sold. If the broker receives a complete transfer statement after the sale indicating that the security was a covered security, the broker must file a corrected Form 1099 within thirty days of receiving the statement unless the required information was reported on the original Form 1099 consistently with the complete transfer statement. Similarly, if an issuer does not furnish a complete issuer statement (as described in § 1.6045B–1) regarding a corporate organizational action that occurs prior to the sale of a covered security until after the broker has reported the sale of the security, the broker must file a corrected Form 1099 within thirty days of receiving the statement unless the required information was reported on the original Form 1099 consistently with the complete issuer statement.

(vi) *Examples.* The following examples illustrate the rules of this paragraph (d)(2):

*Example 1.* (i) J is an organization exempt from taxation under section 501(a). On February 22, 2012, J purchases stock in an account with F, a broker. On October 1, 2012, J loses its exemption under section 501(a). On January 15, 2013, J sells the shares of stock.

(ii) Because J was exempt from reporting under section 6045 at the time it acquired the shares of stock, under paragraph (d)(2)(iii) of this section, F is not required to report the adjusted basis of the stock and whether any gain or loss on the sale is long-term or short-term (within the meaning of section 1222). Whether F chooses to report this information or to leave these fields blank, under paragraph (d)(2)(iii) of this section, F is not subject to penalties for failing to report the correct adjusted basis or whether any gain or loss on the sale is long-term or short-term provided that F indicates on Form 1099 that the sale is a sale of a noncovered security.

*Example 2.* (i) On March 1, 2012, K sells 100 shares of stock of C, a corporation, at a loss in an account held with F, a broker. On March 15, 2012, K purchases 100 shares of stock of the same corporation in an account with G, a different broker. Because the shares purchased on March 15, 2012, are acquired through a sale transaction in an account after January 1, 2012, under paragraph (a)(15) of this section, the shares are covered securities. K asks G to increase K's adjusted basis in the shares to account for the application of the wash sale rules under section 1091 to the loss transaction in the account held with F.

(ii) Under paragraph (d)(2)(iv)(B) of this section, G is not required to take into account the information provided by K when subsequently reporting the adjusted basis and whether any gain or loss on the sale is long-term or short-term (within the meaning of section 1222). If G chooses to take this information into account, under paragraph (d)(2)(iv)(B) of this section, G is deemed to have relied upon the information received from K in good faith on any subsequent reporting for purposes of penalties under section 6721 and 6722 if G neither knows nor has reason to know that the information provided by K is incorrect.

*Example 3.* (i) L purchases shares of stock of the same corporation in an account with F, a broker, on November 21, 1962, November 21, 2012, November 21, 2013, and November 21, 2014. In January 2015, L sells all the stock.

(ii) Under paragraph (d)(2)(i) of this section, F must separately report the gross proceeds and adjusted basis attributable to those shares purchased in 2014, for which the gain or loss on the sale is short-term, and the combined gross proceeds and adjusted basis attributable to those shares purchased in 2012 and 2013, for which the gain or loss on the sale is long-term. Under paragraph (d)(2)(iii) of this section, F must also separately report the gross proceeds attributable to the shares purchased in 1962 as the sale of noncovered securities in order to avoid treatment of this sale as the sale of covered securities.

*Example 4.* (i) On June 1, 2015, M makes a gift to N of shares of stock originally purchased by M on March 1, 2013, in an account with F, a broker. In connection with the transfer, F provides a complete transfer statement (as described in § 1.6045A–1) to G, N's broker, stating that the shares are covered securities. N subsequently sells the shares.

(ii) Because G received a complete transfer statement stating that the shares are covered securities, under paragraph (d)(2)(iv)(A) of this section, G must take into account the information reported on the transfer statement in reporting N's subsequent sale of the shares unless G knows that the information is incorrect. Under paragraph (d)(2)(iv)(A) of this section, any failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause.

*Example 5.* Assume the same facts as in *Example 4* except that G does not receive a complete transfer statement by the transfer statement due date. Under paragraph (d)(2)(v) of this section, G must notify F and request a complete statement. If G still does not receive a complete statement, G may treat the securities as noncovered securities at the time of sale.

* * * * *

(5) *Gross proceeds.* For purposes of this section, *gross proceeds* on a sale are the total amount paid to the customer or credited to the customer's account as a result of such sale reduced by the amount of any interest reported under paragraph (d)(3) of this section and increased by any amount not so paid or credited by reason of repayment of margin loans. In the case of a closing transaction which results in a loss, gross proceeds are the amount debited from the customer's account. A broker may, but is not required to, take commissions into account in determining gross proceeds, provided the treatment chosen is consistent with the books of the broker. For securities sold pursuant to the exercise of an option granted or acquired before January 1, 2013, a broker may, but is not required to, take the option premiums into account in determining the gross proceeds of the securities sold pursuant to the exercise of the option, provided the treatment chosen is consistent with the books of the broker.

(6) *Adjusted basis*—(i) *In general.* For purposes of this section, the adjusted basis of a security is determined from the basis determined under paragraph (d)(6)(ii) of this section as of the date the security is acquired in an account, increased by the commissions and transfer taxes related to its sale to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. When reporting adjusted basis, a broker must take into account organizational actions affecting the basis of the security if reported on any issuer statement (as described in § 1.6045B–1) but is not otherwise required to consider transactions, elections, or events occurring outside the account.

(ii) *Initial basis*—(A) *Cost basis.* For a security acquired through a sale transaction in an account, the initial basis is the total amount paid by the customer or credited against the customer's account for the security, increased by the commissions and transfer taxes related to its acquisition to the extent not accounted for in gross proceeds as described in paragraph (d)(5) of this section. For securities purchased or acquired pursuant to the exercise of an option granted or acquired before January 1, 2013, a broker may, but is not required to, take option premiums into account in determining the adjusted basis of the securities purchased or acquired pursuant to the exercise of the option. A broker may, but is not required to, take into account income recognized upon the exercise of a compensatory option or other equity-based compensation arrangement before January 1, 2013, in determining adjusted basis.

(B) *Transferred basis*—(*1*) *In general.* In the case of a security acquired through a non-sale transfer, the initial basis is generally the basis reported on the transfer statement (as described in § 1.6045A–1).

(*2*) *Securities acquired by gift.* If the transfer statement indicates that the security is acquired as a gift, the broker must apply the relevant basis rules under this Title for property acquired by gift in determining the initial basis, except that the broker is not required to account for adjustments to basis arising solely from gift tax paid with respect to the gift. If the application of the relevant basis rules for property acquired by gift prevents both gain and loss from being recognized, or if the initial basis of the security depends upon its fair market value as of the date of the gift but the transfer statement does not report its fair market value as of the date of the gift and this amount is not readily ascertainable by the broker, the broker must treat the initial basis as equal to the gross proceeds from the sale determined under paragraph (d)(5) of this section.

(iii) *Adjustments for wash sales.* A broker must apply the wash sale rules under section 1091, but only if both the sale and purchase transactions occur with respect to covered securities in the same account with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter). When reporting the sale transaction that triggered the wash sale, the broker must report the amount of loss that is disallowed by section 1091 in addition to gross proceeds and adjusted basis for the sale transaction. Additionally, the broker must take the amount of loss disallowed on the sale transaction into account in determining the adjusted basis of the purchased securities.

(iv) *No constructive sale or mark-to-market adjustments.* A broker must report adjusted basis for a security without regard to the provisions of section 1259 (regarding constructive sales) or section 475 (regarding the mark-to-market method of accounting).

(v) *Average basis method adjustments.* For securities for which basis may be determined by the average basis method, a broker must compute basis using the average basis method if the owner validly elects that method for the securities sold or, in the absence of any instruction from the customer, if the broker chooses that method as its default basis determination method. *See* § 1.1012–1(e).

(vi) *Examples.* The following examples, in which all the securities are covered securities, illustrate the rules of this paragraph (d)(6):

*Example 1.* (i) M makes a gift to N of shares of stock which M holds in an account with F, a broker. The shares are stock of a publicly traded company with a readily ascertainable fair market value. In connection with the transfer, F provides a transfer statement (as described in § 1.6045A–1) to G, N's broker, reporting that the transfer was a gift of covered securities originally acquired on April 2, 2012. G receives custody of the shares on June 4, 2015. G sells the shares on March 24, 2016.

(ii) Because the transfer statement reported the transfer as a gift, under paragraph (d)(6)(ii)(B)(*2*) of this section, G must apply the relevant basis rules for property acquired by gift in determining adjusted basis when reporting the sale of the shares. Depending on the gross proceeds of the sale, G may determine the reported adjusted basis from the basis reported on the transfer statement, the fair market value of the gifted shares on June 4 that G determines from readily ascertainable records, or the gross proceeds determined from the sale.

*Example 2.* Assume the same facts as in *Example 1* except that the shares are stock of a privately held company with no readily ascertainable fair market value and the transfer statement did not report a fair market value of the securities as of the date of the gift to N. Under paragraph (d)(6)(ii)(B)(*2*) of this section, if G must determine the reported adjusted basis from the fair market value of the shares, G must treat the gross proceeds from the sale as the adjusted basis. Under paragraph (d)(2)(iv)(B) of this section, G may

instead rely on a fair market value provided by N in determining basis under the relevant basis rules for property acquired by gift and is deemed to have relied upon the fair market value provided by N in good faith on any subsequent reporting for purposes of penalties under sections 6721 and 6722 if G neither knows nor has reason to know that the fair market value provided by N is incorrect.

*Example 3.* (i) On September 21, 2012, P purchases 100 shares of common stock of C, a corporation, in an account with J, a broker. In the same account with J, on December 14, 2012, P purchases 50 shares of C common stock. All of the C common stock purchased by P has the same CUSIP number. On January 4, 2013, P sells the 100 shares purchased on September 21, 2012 at a loss.

(ii) J must apply the rules of paragraph (d)(6)(iii) of this section for reporting the basis of the covered securities sold in a wash sale when reporting the January 4, 2013 sale of the shares purchased on September 21, 2012, because this sale and the purchase of shares on December 14, 2012, occurred with respect to covered securities in the same account with the same CUSIP number.

(iii) Under the rules of paragraph (d)(6)(iii) of this section for reporting the basis of covered securities sold in a wash sale, for the January 4, 2013 sale, J must report the amount of the disallowed loss determined under section 1091 in addition to gross proceeds and adjusted basis of the September 21, 2012 stock. If P later sells the shares acquired on December 14, 2012, J must take the amount of loss disallowed on the January 4, 2013 sale transaction into account in determining adjusted basis.

*Example 4.* Assume the same facts as in *Example 3* except that the December 14, 2012 purchase occurs in another account maintained by P with J. Because the December 14, 2012 purchase did not occur in the same account as the sale of the September 21, 2012 stock, under paragraph (d)(6)(iii) of this section, J is not required to apply the wash sale reporting rules to determine amounts to be reported for the sale of stock acquired on September 21, 2012, or December 14, 2012. Under paragraph (d)(2)(iv)(B) of this section, J may choose to apply the wash sale rules as if the transactions occurred in the same account and report the sales of the securities as in *Example 3.*

*Example 5.* On January 20, 2012, Q purchases shares of stock of C, a corporation, in an account with K, a broker. In 2014, C makes a distribution to shareholders that it classifies as a nondividend (nontaxable) distribution on an issuer statement (as described in § 1.6045B–1). On July 1, 2015, Q sells the shares. Under section (d)(6)(i) of this section, K must take into account the reduction to adjusted basis based on the 2014 distribution when reporting the sale of the shares.

*Example 6.* (i) L, a regulated investment company, offers two funds for sale, Fund D and Fund E. On April 22, 2012, R purchases shares of Fund D and pays a separate load charge. By reason of the payment of the load charge, R acquires a reinvestment right in shares of Fund E. On April 23, 2012, at the request of R, Fund D redeems the shares. R uses the proceeds to purchase shares of Fund E in a separate account. As a result of the reinvestment right acquired by R, R pays no load charge on the purchase of shares of Fund E. Without the reinvestment right, R would have paid a load charge on the purchase of the shares of Fund E.

(ii) Under paragraph (d)(6)(i) of this section, when reporting adjusted basis at the time of sale, L is not required to take into account any deferral of the load charge under section 852(f), because the transactions concerning Fund D and Fund E occur in separate accounts. Under paragraph (d)(2)(iv)(B) of this section, L may choose to apply the provisions of section 852(f).

*Example 7.* S, an employee of C, a corporation, participates in C's stock option plan. On April 2, 2012, C grants S a nonstatutory option under the plan to buy 100 shares of stock. The option becomes substantially vested on April 2, 2013. On October 2, 2013, S exercises the option and purchases 100 shares. On December 2, 2013, S sells the 100 shares acquired through the plan. Under paragraphs (d)(2)(i) and (d)(6)(ii)(A) of this section, C is required to report adjusted basis based on the amount paid by S under the terms of the option. Under paragraph (d)(6)(ii)(A) of this section, C is not required to take any amount includible as wage income by S with respect to the October 2, 2013, purchase of the shares into account when reporting adjusted basis, but has the choice to take income recognized upon the exercise of the compensatory option into account when determining adjusted basis. The same result would occur if C had granted S a statutory option.

(7) *Long-term or short-term gain or loss*—(i) *In general.* For purposes of this section, a broker determines whether any gain or loss on the sale of a security is long-term or short-term within the meaning of section 1222. In making this determination, a broker is not required to consider transactions, elections, or events occurring outside the account except for the following:

(A) Information reported on the transfer statement (as described in § 1.6045A–1), if any, received in connection with a non-sale transfer of a security to the account. For a security acquired from a decedent, a broker must apply the relevant rules under this Title for property acquired from a decedent. For a security acquired (or treated as acquired) as a gift, a broker must apply the relevant rules under this Title for property acquired by gift in coordination with the application of the rules in paragraph (d)(6) of this section.

(B) Information reported on any issuer statement (as described in § 1.6045B–1) regarding the effect on the security of any organizational actions.

(ii) *Adjustments for wash sales.* When reporting the sale of a security whose acquisition triggers a wash sale, a broker must apply section 1091 when determining whether any gain or loss on the sale of a security is long-term or short-term within the meaning of section 1222, but only if both the sale and purchase transactions occur with respect to covered securities in the same account with the same CUSIP number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter).

(iii) *No constructive sale or mark-to-market adjustments.* A broker must determine whether any gain or loss on the sale of a security is long-term or short-term within the meaning of section 1222 without regard to the provisions of section 1259 (regarding constructive sales) or section 475 (regarding the mark-to-market method of accounting).

(iv) *Examples.* The following examples illustrate the rules of this paragraph (d)(7):

*Example 1.* (i) M makes a gift to N of shares of stock that M holds in an account with F, a broker. The shares are stock of a publicly traded company with a readily ascertainable fair market value. In connection with the transfer, F provides a transfer statement (as described in § 1.6045A–1) to G, N's broker, reporting that the transfer was a gift of covered securities originally acquired on April 2, 2012. G receives custody of the shares on June 4, 2015. N sells the shares on March 24, 2016.

(ii) Because the transfer statement reported the transfer as a gift, under paragraph (d)(7)(i)(A) of this section, G must apply the relevant rules for property acquired by gift in determining whether any gain or loss on the sale is long-term or short-term within the meaning of section 1222 when reporting the sale of the shares and, depending on the gross proceeds of the sale, may determine holding period based on the date M acquired the shares or the June 4, 2015 date of the gift.

*Example 2.* O's aunt dies on May 15, 2013. In her will, she directs that O receive all of her shares of stock in C, a corporation. H, O's broker, receives a transfer statement reporting that the transfer is an inheritance or bequest of covered securities with an original acquisition date of May 15, 2013. O then sells the shares on July 15, 2013. Under paragraph (d)(7)(i)(A) of this section, H must apply the relevant rules for property acquired from a decedent when reporting whether any gain or loss on the sale is long-term or short-term within the meaning of section 1222.

*Example 3.* On June 20, 2012, Y purchases shares of stock in an account with P, a broker. On December 20, 2012, the corporation distributes stock to shareholders. Y receives 10 shares of stock in the distribution. On January 10, 2013, the corporation reports on an issuer statement (as described in § 1.6045B–1) that the distribution is a nondividend (nontaxable) distribution that has resulted in an adjustment to the basis of the shares owned prior to the distribution. On July 1, 2014, Y

sells the distributed stock. Under section (d)(7)(i)(B) of this section, P must apply the relevant holding period rules when reporting whether any gain or loss on the sale is long-term or short-term within the meaning of section 1222.

(8) *Conversion into United States dollars of proceeds paid or received in foreign currency*—(i) *Conversion rules.* When a payment is made or received in a foreign currency, the U.S. dollar amount shall be determined by converting such foreign currency into U.S. dollars on the date of payment at the spot rate (as defined in § 1.988–1(d)(1)) or pursuant to a reasonable spot rate convention. For example, a broker may use a month-end spot rate or a monthly average spot rate. A spot rate convention must be used consistently with respect to all non-dollar amounts reported and from year to year. Such convention cannot be changed without the consent of the Commissioner or his or her delegate.

(ii) *Effect of identification under § 1.988–5(a), (b), or (c) where the taxpayer effects a sale and a hedge through the same broker*—(A) *In general.* In lieu of the amount reportable under paragraph (d)(8)(i) of this section, the amount subject to reporting shall be the integrated amount computed under § 1.988–5(a), (b) or (c) if—

(*1*) A taxpayer effects through a broker a sale or exchange of nonfunctional currency (as defined in § 1.988–1(c)) and hedges all or a part of such sale as provided in § 1.988–5(a), (b) or (c) with the same broker; and

(*2*) The taxpayer complies with the requirements of § 1.988–5(a), (b) or (c) and so notifies the broker prior to the end of the calendar year in which the sale occurs.

(B) *Effective/applicability date.* The provisions of this paragraph (d)(8)(ii) apply to transactions entered into after December 31, 2000.

(9) *Coordination with reporting rules for widely held fixed investment trusts under § 1.671–5.* The information required to be reported under section 6045(a) must be provided with respect to the sale of an interest in a widely held fixed investment trust (as defined under § 1.671–5). To the extent that any additional information reporting is required under section 6045(g), those requirements are deemed to be met through compliance with the rules in § 1.671–5.

(e) * * *

(2) *Exchanges required to be reported*—(i) *In general.* Except as provided in paragraphs (e)(2)(ii) and (g) of this section, a barter exchange shall make a return of information with respect to exchanges of personal property or services through the barter exchange during the calendar year among its members or clients or between such persons and the barter exchange. For this purpose, property or services are exchanged through a barter exchange if payment for property or services is made by means of a credit on the books of the barter exchange or scrip issued by the barter exchange or if the barter exchange arranges a direct exchange of property or services among its members or clients or exchanges property or services with a member or client.

* * * * *

(f) *Information required*—(1) *In general.* A person that is a barter exchange during a calendar year shall report on Form 1096, ''Annual Summary and Transmittal of U.S. Information Return,'' or any successor form showing the information required thereon for such year.

(2) *Transactional reporting*—(i) *In general.* As to each exchange with respect to which a barter exchange is required to make a return of information under this section, the barter exchange shall show on Form 1099, ''U.S. Information Return for Calendar Year 1971,'' or any successor form the name, address, and taxpayer identification number of each member or client providing property or services in the exchange, the property or services provided, the amount received by the member or client for such property or services, the date on which the exchange occurred, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

* * * * *

(k) *Requirement and time for furnishing statement; cross-reference to penalty*—(1) *General requirements.* A broker or barter exchange making a return of information under this section with respect to a transaction shall furnish to the person whose identifying number is (or is required to be) shown on such return a written statement showing the information required by paragraph (c)(5), (d), or (f) of this section and containing a legend stating that such information is being reported to the Internal Revenue Service. If the return of information is not made on magnetic media, this requirement may be satisfied by furnishing to such person a copy of all Forms 1099 or any successor form with respect to such person filed with the Internal Revenue Service Center. A statement shall be considered to be furnished to a person to whom a statement is required to be made under this paragraph (k) if it is mailed to such person at the last address of such person known to the broker or barter exchange.

(2) *Time for furnishing statements.* A broker or barter exchange may furnish the statements required under this paragraph (k) yearly, quarterly, monthly, or on any other basis, without regard to the reporting period elected by the broker or barter exchange, provided that all statements required to be furnished under this paragraph (k) for a calendar year shall be furnished on or before February 15 of the following calendar year.

(3) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements furnished by the same broker to the same customer or same group of customers on the same date that includes a statement required to be furnished under this section. A consolidated reporting statement is limited to those statements furnished to the customer based on the same relationship of broker to customer as the statement required to be furnished under this section. For purposes of this paragraph (k)(3)(i), a broker may treat a shareholder of the broker as a customer of the broker and may treat a grouping of statements for a customer as including a statement required to be furnished under this section if the customer has an account with the broker for which a statement would be required to be furnished under this section had a sale occurred during the year.

(ii) A consolidated reporting statement must be furnished on or before February 15. Any statement that otherwise must be furnished on or before January 31 may be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (k)(3):

*Example 1.* D has a taxable account with B, a broker, consisting solely of shares of stock in a single corporation. D receives reportable dividends from this stock in 2010, and sells the stock in 2010. Under this section and § 1.6042–4, B must furnish a Form 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' and Form 1099–DIV, ''Dividends and Distributions,'' to D in 2011 with respect to the sale and the dividends. Under paragraph (k)(2) of this section, B is required to furnish the required statement under this section to D by February 15, 2011. Under paragraph (k)(3)(ii) of this section, the statement reporting the dividends, if furnished in a consolidated reporting statement as defined in paragraph (k)(3)(i) of this section, must also be furnished by February 15, 2011. Otherwise, the statement reporting the dividends must be furnished by the due date set forth in § 1.6042–4.

*Example 2.* Assume the same facts as in *Example 1* except that D does not sell the stock. B is not required to issue a statement required under this section. However, under paragraph (k)(3)(i) of this section, B may treat a grouping of statements for D as including a required statement under this section because D has an account for which a statement would be required under this section had a sale occurred during the year. The statement reporting the dividends may still be furnished by February 15, 2011, under paragraph (k)(3)(ii) of this section.

*Example 3.* E has a non-taxable IRA account with B, a broker. This account is the only account E holds with B. E sells stock in 2010 in this account. E also receives a cash distribution from the account in 2010. The cash distribution from the IRA is reportable on Form 1099–R, ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.,'' under § 1.408–7. Because the account is not taxable, sales in the account are not subject to reporting under this section. Therefore, because no statement is or would be required under this section, paragraph (k)(3) of this section does not permit B to include any statements to E in a consolidated reporting statement. Additionally, the February 15 due date for furnishing a statement does not apply to the statement reporting the distribution or any other customer statements.

*Example 4.* Assume the same facts as in *Example 3* except that E also has a taxable account with B. Under paragraph (k)(3) of this section, all customer statements that B must otherwise furnish to E on or before January 31, 2011, including the statement reporting the cash distribution from the IRA, may be furnished by February 15, 2011, if furnished on the same date in a consolidated reporting statement with the required statements under this section for any sales in E's taxable account.

*Example 5.* Assume the same facts as in *Example 3* except that E and F have a joint taxable account with B. Because sales in the joint taxable account are subject to reporting under this section, all customer statements that B must otherwise furnish jointly to E and F on or before January 31, 2011, may be furnished by February 15, 2011, under paragraph (k)(3) of this section if furnished on the same date in a consolidated reporting statement with the required statements under this section for any sales in the joint taxable account. However, B may not include any statement with respect to E's IRA account in the consolidated reporting statement furnished jointly to E and F because the statements are not furnished to the same customer or group of customers.

* * * * *

**Par. 8.** Section 1.6045–2 is amended by revising paragraph (d) to read as follows:

**§ 1.6045–2 Furnishing statement required with respect to certain substitute payments.**

* * * * *

(d) *Time for furnishing statements*—(1) *General requirements.* A broker must furnish the statements required by paragraph (a) of this section for each calendar year. Such statements shall be furnished after April 30th of such calendar year but in no case before the final substitute payment for the calendar year is made, and on or before February 15 of the following calendar year.

(2) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements furnished by the same broker to the same customer or same group of customers on the same date that includes a statement required to be furnished under this section. A consolidated reporting statement is limited to those statements furnished to the customer based on the same relationship of broker to customer as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15. Any statement that otherwise must be furnished on or before January 31 may be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

**Par. 9.** Section 1.6045–3 is amended by revising paragraph (e) to read as follows:

**§ 1.6045–3 Information reporting for an acquisition of control or a substantial change in capital structure.**

* * * * *

(e) *Furnishing of forms to customers*—(1) *General requirements.* The Form 1099–B prepared for each customer must be furnished to the customer on or before February 15 of the year following the calendar year in which the customer receives stock, cash or other property.

(2) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements furnished by the same broker to the same customer or same group of customers on the same date that includes a statement required to be furnished under this section. A consolidated reporting statement is limited to those statements furnished to the customer based on the same relationship of broker to customer as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15. Any statement that otherwise must be furnished on or before January 31 may be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

**Par. 10.** Section 1.6045–4 is amended by revising paragraph (m)(2) and adding paragraph (m)(3) to read as follows:

**§ 1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.**

* * * * *

(m) * * *

(2) *Time for furnishing statement.* The statement required under this paragraph (m) must be furnished to the transferor on or after the date of closing and on or before February 15 of the following calendar year.

(3) *Consolidated reporting.* (i) The term *consolidated reporting statement* means a grouping of statements furnished by the same reporting person to the same transferor or same group of transferors on the same date that includes a statement required to be furnished under this section. A consolidated reporting statement is limited to those statements furnished to the transferor based on the same relationship of reporting person to transferor as the statement required to be furnished under this section.

(ii) A consolidated reporting statement must be furnished on or before February 15. Any statement that otherwise must be furnished on or before January 31 may be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

**Par. 11.** Section 1.6045–5 is amended by revising paragraph (a)(3) to read as follows:

**§ 1.6045–5 Information reporting on payments to attorneys.**

(a) * * *

(3) *Requirement to furnish statement*—(i) *General requirements.* A person required to file an information return under paragraph (a)(1) of this section must furnish to the attorney a written statement of the information required to be shown on the return. This requirement may be met by furnishing a copy of the return to the attorney. The written statement must be furnished to the attorney on or before February 15 of the year following the calendar year in which the payment was made.

(ii) *Consolidated reporting.* (A) The term *consolidated reporting statement* means a grouping of statements furnished by the same payor to the same payee or same group of payees on the same date, provided that the grouping of statements includes a statement required to be furnished under this section. A consolidated reporting statement is limited to those statements furnished to the payee based on the same relationship of payor to payee as the statement required to be furnished under this section.

(B) A consolidated reporting statement must be furnished on or

before February 15. Any statement that otherwise must be furnished on or before January 31 may be furnished on or before February 15 if it is furnished in the consolidated reporting statement.

* * * * *

**Par. 12.** Section 1.6045A–1 is added to read as follows:

**§ 1.6045A–1 Statements of information required in connection with transfers of securities.**

(a) *Duty to furnish transfer statement*—(1) *In general.* Every applicable person (as described in paragraph (a)(3) of this section) that transfers to a broker (as described in paragraph (a)(4) of this section) the custody of a specified security in a transaction that is not a sale must furnish to the broker a transfer statement setting forth the information described in paragraph (b) of this section with respect to the transferred securities. Except as provided in paragraph (b)(1)(vii) of this section for certain securities for which basis is determined under an average basis method, a separate statement must be furnished for each security and, if transferring the same security acquired on different dates or at different prices, for each acquisition. For purposes of this section, the terms sale and specified security have the same meaning as in § 1.6045–1(a)(9) and (a)(14).

(2) *Format of transfer statement.* The transfer statement must be furnished in writing unless both the furnishing party and the receiving party agree to a different format or method prior to the transfer. If a transfer occurs between accounts at the same or affiliated entities, the transfer statement is deemed to have been furnished and received if the required information, including any adjustments required under this section to the basis, acquisition date, or date for computing whether any gain or loss with respect to the security is long-term or short-term (within the meaning of section 1222) of the transferred securities, is incorporated into the records for the recipient account.

(3) *Applicable person effecting transfer.* A person effecting a transfer of custody of securities must furnish a transfer statement if the person is an applicable person. *Applicable person* means a broker as described in § 1.6045–1(a)(1), any person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities, and any agent of these persons. Applicable person does not include the beneficial owner of the securities, any governmental unit or agency or instrumentality of a governmental unit with respect to escheated securities, or any person that acts solely as a clearing organization with respect to the transfer.

(4) *Broker receiving custody.* An applicable person must furnish the statement required under this section when transferring securities to the custody of any broker. Solely for purposes of this section, *broker* means any person described in § 1.6045–1(a)(1), any person that acts as a custodian of securities in the ordinary course of a trade or business, any issuer of securities, and any agent of these persons. Broker does not include the beneficial owner of the securities, any governmental unit or agency or instrumentality of a governmental unit with respect to escheated securities, or any person acting solely as a clearing organization with respect to the transfer.

(5) *Time for furnishing statement.* Each transfer statement with respect to a transfer must be furnished not later than fifteen days after the date of settlement for the transfer.

(6) *Examples.* The following examples illustrate the rules of this paragraph (a):

*Example 1.* Q owns securities in an account with J, a broker. J partners with K, a broker, so that K holds custody of the securities of J's customers including Q. Q instructs J to transfer his securities to an account with L, another broker. J informs K of the instruction. K transfers the securities to L. Because K is a broker, K is an applicable person within the meaning of paragraph (a)(3) of this section. Because K effects the transfer of custody, under paragraph (a)(3) of this section, K is the applicable person that must furnish the transfer statement. Because L is the broker receiving custody under paragraph (a)(4) of this section, K must furnish the transfer statement to L.

*Example 2.* R owns securities in an account with L, a broker. R instructs L to transfer the securities to an account with M, a bank that acts as a custodian of securities in the ordinary course of a trade or business but does not stand ready to effect sales of securities. L transfers the securities to M. Because L effects the transfer of custody, under paragraph (a)(3) of this section, L is the applicable person that must furnish the transfer statement. Because M receives custody of the stock and acts as a custodian of securities in the ordinary course of a trade or business, M is the broker receiving custody under paragraph (a)(4) of this section. Therefore, L must furnish the transfer statement to M.

*Example 3.* (i) S owns shares of stock in C, a corporation, in an account with N, a broker. S instructs N to transfer the C shares to C so that ownership is held on the books of the issuer. C uses the services of T, a transfer agent, to keep records of ownership of the company's stock, how that stock is held, and how many shares each investor owns. N transfers the securities to T.

(ii) Because N effects the transfer of custody, under paragraph (a)(3) of this section, N is the applicable person that must furnish the transfer statement. Because T records ownership of S's stock on the books of C and is the agent of C, T is the broker receiving custody under paragraph (a)(4) of this section. Therefore, N must furnish the transfer statement to T.

*Example 4.* Assume the same facts as in *Example 3* except that S later instructs T to transfer the shares back to an account held by S with O, another broker. Because T is an agent of C, the issuer of the securities, T is an applicable person within the meaning of paragraph (a)(3) of this section. Under paragraphs (a)(3) and (a)(4) of this section, T must furnish a transfer statement to O.

(b) *Information required*—(1) *In general.* Each transfer statement must include the information described in this paragraph (b)(1). The applicable person furnishing the transfer statement and the broker receiving the transfer statement may agree to combine the information in any format. For example, a single code representing the broker receiving custody of the security may substitute for a separate listing of the person's name, address, and telephone number.

(i) *Statement dates.* The date the statement is furnished and the date of any previous statement with respect to the same transfer.

(ii) *Applicable person effecting transfer.* The name, address, and telephone number of the applicable person furnishing the statement.

(iii) *Broker receiving custody.* The name, address, and telephone number of the broker receiving custody of the security.

(iv) *Beneficial owners.* The name, address, telephone number, taxpayer identification number, and account number of the beneficial owner or owners of the security prior to the transfer and, if different, the beneficial owner or owners after the transfer.

(v) *Security identifiers.* The Committee on Uniform Security Identification Procedures (CUSIP) number of the security transferred (if applicable) or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), quantity of shares or units, security symbol (if applicable), lot numbers (if applicable), and classification of the security (such as stock).

(vi) *Transfer dates.* The date the transfer was initiated and the settlement date of the transfer (if known when furnishing the statement).

(vii) *Adjusted basis and acquisition date.* The total adjusted basis of the security, the original acquisition date of the security, and the date for computing

whether any gain or loss with respect to the security is long-term or short-term (within the meaning of section 1222) upon the subsequent sale. This information must be determined as provided under § 1.6045–1(d), except that any information reported on any issuer statement (as described in § 1.6045B–1) regarding the effect on the security of any organizational actions does not need to be taken into account. If organizational actions reportable on an issuer statement are taken into account, the transfer statement must include the identifying number of the last issuer statement taken into account to indicate that the organizational action identified and all relevant prior organizational actions reported by the issuer are reflected on the transfer statement. The transfer statement must also identify and describe any other organizational actions reflected on the statement that the applicable person did not derive from an issuer statement. If the basis of the transferred security is determined using an average basis method (as described in § 1.1012–1(e)), any securities acquired more than five years prior to the transfer may be reported on a single statement on which the original acquisition date is reported as ''VARIOUS,'' but only if the other information reported on the statement applies to all of the securities.

(viii) *Examples.* The following examples illustrate the rules of this paragraph (b)(1):

*Example 1.* (i) In a single account with P, a broker, T purchases three lots of 100 shares of stock each in C, a corporation, at different prices on April 2, 2012, July 2, 2012, and October 1, 2012. T instructs P to enroll the shares of the C stock in P's dividend reinvestment plan and to average the basis of the shares of the C stock. All of the C stock purchased by P has the same CUSIP number. On September 13, 2013, less than five years after the acquisition dates for all three lots, T transfers all 300 shares of the C stock to an account with another broker.

(ii) Under paragraphs (a)(1) and (b)(1) of this section, P must furnish three transfer statements in connection with the transfer: One reporting the transfer of 100 shares with an original acquisition date of April 2, 2012; one reporting the transfer of 100 shares with an original acquisition date of July 2, 2012; and one reporting the transfer of 100 shares with an original acquisition date of October 1, 2012.

*Example 2.* Assume the same facts as in *Example 1* except that T transfers the shares to the account with the other broker on September 13, 2017. For the 100 shares purchased on April 2, 2012, and the 100 shares purchased on July 2, 2012, under paragraph (b)(1)(vii) of this section, P may furnish a single transfer statement reporting the transfer of 200 shares with the original acquisition date as ''VARIOUS'' instead of furnishing two separate transfer statements.

*Example 3.* (i) Assume the same facts as in *Example 1* except that, on June 15, 2012, T sells the 100 shares purchased on April 2, 2012 at a loss.

(ii) When reporting the transfer, under paragraph (b)(1)(vii) of this section (incorporating § 1.6045–1(d)(6)(iii) and (d)(7)(ii)), P must determine adjusted basis and the date for computing whether any gain or loss with respect to the stock is long-term or short-term (within the meaning of section 1222) by taking the rules for broker reporting of wash sales into account. On the transfer statement reporting the transfer of the 100 shares purchased on July 2, 2012, P must adjust the basis of this stock for the amount of the loss disallowed under section 1091 on the sale of the 100 shares purchased on April 2, 2012, and must also adjust the date for computing whether any gain or loss with respect to the stock is long-term or short-term (within the meaning of section 1222) in accordance with section 1091.

(2) *Transfers of noncovered or excepted securities.* (i) In the case of a transfer of a specified security that is a noncovered security (as described in § 1.6045–1(a)(16)), reporting of the information described in paragraphs (b)(1)(vii), (b)(3), and (b)(4) of this section is not required provided that the transfer statement indicates that the transfer is a transfer of a noncovered security. An applicable person that chooses to report the information described in paragraphs (b)(1)(vii), (b)(3), and (b)(4) of this section with respect to a noncovered specified security is not subject to penalties under section 6722 for any failure to report such information correctly, provided that the transfer statement indicates that the transfer is a transfer of a noncovered security. For purposes of this paragraph (b)(2)(i), a security that was excepted from all reporting under § 1.6045–1 as described in § 1.6045–1(c)(3) at the time of its acquisition is treated in the same manner as a noncovered security.

(ii) *Example.* The following example illustrates the rules of this paragraph (b)(2):

*Example.* X instructs S, a broker, to give to Z shares of stock that X holds in an account with S. The stock consists of noncovered securities. On X's instruction, S transfers custody of the shares to T, Z's broker. The transfer settles on August 15, 2013. Under paragraph (b)(2)(i) of this section, S is not required to state adjusted basis or acquisition date for the shares, the date of the gift, the fair market value of the shares on that date, or that the shares are gifted securities on the transfer statement, provided that S indicates that the transfer is a transfer of a noncovered security. If the transfer statement fails to indicate that the transfer is a transfer of a noncovered security, the transfer is deemed to be a transfer of covered securities and S is subject to penalties for any failure to report the required information.

(3) *Transfers pursuant to an inheritance*—(i) *In general.* In the case of a transfer of a security described in paragraph (a) of this section from a decedent or decedent's estate, in addition to the information described in paragraph (b)(1) of this section, the transfer statement must indicate that the transfer consists of an inherited security. The transfer statement must also report the date of death as the original acquisition date and must report adjusted basis according to the instructions or valuations provided by an authorized representative of the estate, taking into account any additional adjustments to basis required under this Title for property acquired from a decedent.

(ii) *Transfers without instructions from the estate.* If the authorized estate representative does not provide complete instructions or valuations to the applicable person effecting the transfer regarding the basis of the transferred security at the time the representative requests the transfer of the security, the applicable person effecting the transfer must ask the representative for instructions or valuations regarding such basis before preparing the transfer statement. The applicable person is not required to make this request more than once for each transferred security. Subsequent to this request, if complete instructions are not received before the transfer statement is prepared, the transfer statement must indicate that the transfer consists of an inherited security but may otherwise report the security as if it were a noncovered security. If the applicable person receives complete instructions or valuations from an authorized estate representative after furnishing a transfer statement for a security that was a covered security in the hands of the decedent, the applicable person must furnish, within fifteen days of receiving the complete instructions or valuations, a corrected statement that no longer reports the security as a noncovered security and includes the information required in paragraph (b)(3)(i) of this section.

(iii) *Transfers of shares to satisfy a cash legacy.* If the security is transferred from a decedent or a decedent's estate in order to satisfy a cash legacy, then the rules of paragraph (b)(1) of this section apply, and paragraphs (b)(3)(i) and (b)(3)(ii) of this section do not apply.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (b)(3):

*Example 1.* V owns shares of stock in C, a publicly traded company, in an account with Q, a broker. The shares of stock are covered securities. V dies on May 15, 2013.

In her will, V directs that W receive all of her shares of stock in C. Following the terms of V's will and upon the instruction of an authorized representative of the estate that the basis of the transferred securities should be adjusted to the fair market value as of the date of V's death, Q transfers custody of the stock to R, W's broker. Under paragraph (b)(3)(i) of this section, the transfer statement must report that the shares are inherited or bequeathed securities with an original acquisition date of May 15, 2013, and an adjusted basis that reflects the instructions of the authorized representative of the estate.

*Example 2.* Assume the same facts as in *Example 1* except that the instruction from the authorized representative of the estate to transfer the securities to W does not include an instruction regarding the basis of the shares of stock in C. Under paragraph (b)(3)(ii) of this section, Q must contact the authorized representative and ask for an instruction or valuation regarding the basis of the shares of stock in C before preparing the transfer statement. Under paragraph (b)(3)(ii) of this section, if Q still does not receive an instruction regarding the basis of the shares of stock in C, Q may treat the shares of stock in C as noncovered securities when transferring the stock. If Q receives complete instructions or valuations from the authorized representative after furnishing the transfer statement, under paragraph (b)(3)(ii) of this section, Q must furnish a corrected statement within fifteen days of receiving the instruction or valuation from the authorized representative that no longer reports the shares of stock in C as a noncovered security and reflects the instruction or valuation from the authorized representative.

*Example 3.* Assume the same facts as in *Example 1* except that V directs in her will that W receive $3,000. To satisfy this legacy, Q transfers custody of the shares of stock in C to R on a date when the stock has a fair market value of $3,000. Because the shares are transferred from V's estate to satisfy a cash legacy, under paragraph (b)(3)(iii) of this section, paragraph (b)(1) of this section applies and paragraphs (b)(3)(i) and (b)(3)(ii) of this section do not apply. Under paragraph (b)(1) of this section, the transfer statement must report that the adjusted basis is $3,000 and that the original acquisition date is the date of settlement for the transfer. Additionally, the transfer statement must not indicate that the securities are inherited or bequeathed securities.

(4) *Gift or deemed gift transfers*—(i) *In general.* In the case of a transfer of securities described in paragraph (a) of this section that effects a change of ownership of a security (other than transfers from a decedent or decedent's estate), in addition to the information described in paragraph (b)(1) of this section, the transfer statement must indicate that the security is a gift and must report the date of the gift (if known when furnishing the statement) and the fair market value of the gift on that date (if known or readily ascertainable at the time the transfer statement is prepared). Additionally, for purposes of paragraph (b)(1) of this section, the adjusted basis and original acquisition date are equal to the adjusted basis and original acquisition date of the security in the hands of the donor. The requirement to identify the security as a gift does not apply to a transfer between persons for whom gift-related basis adjustments are inapplicable or to a transfer between accounts that share at least one common owner.

(ii) *Subsequent transfers of gifts with no change in ownership.* If a security described in paragraph (b)(4)(i) of this section is subsequently transferred to a different account of the same owner, the applicable person effecting the subsequent transfer must include the information described in paragraphs (b)(1) and (b)(4)(i) of this section on the transfer statement. The date of the gift and the fair market value of the gift on that date must be included on the transfer statement unless they are not known or readily ascertainable at the time the transfer statement is prepared and if the applicable person effecting the subsequent transfer has not received a transfer statement that included them.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (b)(4):

*Example 1.* X instructs S, a broker, to give to Y shares of stock in a publicly traded company that X holds in an account with S. The shares of stock are covered securities. On X's instruction, S transfers custody of the stock to T, Y's broker. The transfer settles on August 15, 2013. Under paragraph (b)(4)(i) of this section, S must indicate on the transfer statement that the transfer is a transfer of gifted securities and report X's adjusted basis and original acquisition date. S must also indicate that the date of the gift was August 15, 2013, if the settlement date was known when S furnished the statement, and the fair market value of the shares on that date.

*Example 2.* Assume the same facts as in *Example 1* except that, one year later, Y transfers the shares to an account in his name with U, another broker. Under paragraph (b)(4)(ii) of this section, T must indicate on the transfer statement that the transfer is a transfer of gifted securities and report the adjusted basis and original acquisition date of the shares. Under paragraph (b)(4)(ii) of this section, if the date of the gift and its fair market value were not reported on the initial transfer statement, T must indicate on the transfer statement that the date of the gift was August 15, 2013, and include the fair market value of the shares on that date, if known or readily ascertainable.

(5) *Transfers of borrowed securities.* If the transferred security is borrowed from or through the applicable person effecting the transfer (for example, as part of a transaction to close a short position with the broker receiving custody of the security), the transfer statement must indicate that the transferred security is borrowed and that the adjusted basis of the security is zero. The transfer statement must also instruct the broker receiving custody to provide the applicable person effecting the transfer with information about any short position potentially being closed by the transfer or other disposition of the securities. *See* § 1.6045–1(c)(3)(xi)(C).

(6) *Transfers of less than the entire position of a security in an account.* In the case of a transfer of less than the entire position of a security described in paragraph (a) of this section acquired in an account on different dates or at different prices, the transfer statement must report the transfer on a first-in, first-out basis within the account unless the customer notifies the applicable person furnishing the transfer statement by means of making an adequate and timely identification in the same manner as for a sales transaction under the rules in § 1.1012–1(c).

(7) *Information from other parties and other accounts*—(i) *Prior transfer statements.* When reporting the transfer of a covered security, an applicable person furnishing the transfer statement must take into account all information reported on any transfer statement (as described in this section) received in connection with a previous transfer of the security to the custody of the applicable person and all instructions and valuations provided by an authorized representative of the estate of a decedent unless the applicable person knows that the information presented on the previous transfer statement or by the personal representative is incorrect. With respect to penalties under section 6722, any failure to report correct information that arises solely from this reliance is deemed to be due to reasonable cause. *See* § 301.6724–1(a)(1) of this chapter.

(ii) *Other information.* An applicable person furnishing a transfer statement is permitted, but not required, to take into account any other information that is not reflected on a prior transfer statement within the meaning of paragraph (b)(7)(i) of this section, including any information the applicable person has about securities held by the same customer in the custody of the applicable person furnishing the transfer statement. With respect to penalties under section 6722, an applicable person that takes into account information received from a customer or third party other than information reflected on a prior transfer statement or information received from an authorized representative of the estate of a decedent is deemed to have relied upon the information in good

faith if the applicable person neither knows nor has reason to know that the information is incorrect. *See* § 301.6724–1(c)(6) of this chapter.

(8) *Failure to receive a complete transfer statement.* A broker that receives custody of a security but does not receive a complete transfer statement by the transfer statement due date as described in paragraph (a)(5) of this section must notify the applicable person effecting the transfer and request a complete statement. The broker receiving custody of the security is not required to make this request more than once. If the broker receiving custody of the security does not receive a complete transfer statement after making this request, the broker receiving custody of the security may designate the security as noncovered on any subsequent transfer statement. A transfer statement is incomplete if it fails to include the information described in paragraph (b) of this section. A failure to include the information listed in paragraph (b)(1)(vii) of this section does not make a transfer statement incomplete if the transfer statement reports that the transferred securities are noncovered securities.

(c) *Corrected transfer statements.* If a person that furnishes a transfer statement receives a statement for an earlier transfer of the securities that reports that the transferred securities are covered securities and includes information inconsistent with the subsequent transfer statement, the person that furnished the subsequent transfer statement must furnish a corrected transfer statement within fifteen days of receipt of the prior transfer statement.

(d) *Effective/applicability dates.* This section applies to transfers of specified securities other than shares of stock in a regulated investment company (as described in § 1.1012–1(e)(5)) that occur on or after January 1, 2011, and to transfers of shares of stock in a regulated investment company that occur on or after January 1, 2012.

**Par. 13.** Section 1.6045B–1 is added to read as follows:

**§ 1.6045B–1 Returns relating to actions affecting basis of specified securities.**

(a) *General rule*—(1) *In general.* Any issuer of a specified security (within the meaning of § 1.6045–1(a)(14)) that takes an organizational action that affects the basis of the security must file an issuer return setting forth the following information and any other information specified in the return form and instructions:

(i) *Reporting issuer.* The name and taxpayer identification number of the reporting issuer.

(ii) *Security identifiers.* The identifiers of each security involved in the organizational action including, as applicable, the Committee on Uniform Security Identification Procedures (CUSIP) number or other security identifier number that the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (*see* § 601.601(d)(2) of this chapter), classification of the security (such as stock), account number, serial number, and ticker symbol, as well as any descriptions about the class of security affected.

(iii) *Contact at reporting issuer.* The name, address, e-mail address, and telephone number of a contact person at the issuer.

(iv) *Information about action.* The type or nature of the organizational action including, as applicable, the date of the action or the date against which shareholders' ownership is measured for the action.

(v) *Effect of the action.* The quantitative effect of the organizational action on the basis of the security in the hands of a U.S. taxpayer as an adjustment per share or as a percentage of old basis, including a description of the calculation, the applicable Internal Revenue Code section and subsection upon which the tax treatment is based, the data supporting the calculation such as the market values of securities and valuation dates, any other information necessary to implement the adjustment including the reportable taxable year, and whether any resulting loss may be recognized.

(vi) *Reporting date and sequence number.* A sequential identification number determined separately by security and assigned to each announced organizational action or corrected action for each security prefixed by the year the return is filed (for example, 2013003 for the third issuer return regarding the quantitative effect of a corporate action on the basis of a security with a specific CUSIP number that is reported in 2013).

(2) *Time for filing the return*—(i) *In general.* The issuer return must be filed with the Internal Revenue Service (IRS) pursuant to the prescribed form and instructions on or before the 45th day following the organizational action, or, if earlier, January 15 of the year following the calendar year in which the organizational action occurs. The issuer may file the return prior to the date of the organizational action if the quantitative effect on basis is determinable beforehand.

(ii) *Reasonable assumptions.* In order to report the quantitative effect on basis by the due date in paragraph (a)(2)(i) of this section, an issuer may make reasonable assumptions about facts that cannot be determined prior to this due date and must file a corrected return within forty-five days of determining the facts necessary to report the correct quantitative effect on basis. Under this paragraph (a)(2)(ii), it is expected that an issuer will treat a payment that may be a dividend consistently with its treatment of the payment under section 6042(b)(3) and § 1.6042–3(c).

(3) *Exception for public reporting.* An issuer is not required to file a return with the IRS under this paragraph (a) if, by the due date described in paragraph (a)(2)(i) of this section, the issuer posts the return with the required information in a readily accessible format in an area of its primary public Web site dedicated to this purpose and keeps the return accessible to the public.

(4) *Exception when holders are exempt recipients.* No reporting is required under this paragraph (a) if the issuer reasonably determines that all of the holders of the security are exempt recipients under paragraph (b)(5) of this section.

(b) *Statements to nominees and certificate holders*—(1) *In general.* An issuer required to file an information return under this section must furnish a written statement with the same information to each holder of record of the security or to the holder's nominee, if any. This issuer statement must indicate that the information is being reported to the IRS. An issuer may satisfy this requirement by furnishing a copy of the information return.

(2) *Time for furnishing statements.* The issuer statement must be furnished on or before January 15th of the year following the year of the organizational action. The issuer may furnish the statement prior to the date of the organizational action if the quantitative effect on basis is determinable beforehand.

(3) *Recipients of statements.* An issuer must furnish a separate statement to each holder of record of the security as of the date of the organizational action and all subsequent holders of record up to the date the issuer furnishes the statement required under this section. If the issuer holds the security on its books in the name of a nominee, the issuer must furnish the statement to the nominee recorded on its books unless the nominee is the issuer, an agent of the issuer, or a plan operated by the issuer.

(4) *Exception for public reporting.* An issuer is not required to furnish an

issuer statement under this paragraph (b) if the issuer satisfies the public reporting requirements of paragraph (a)(3) of this section.

(5) *Exempt recipients.* An issuer is not required to furnish an issuer statement under this paragraph (b) to the following holders or to persons serving as nominees solely for the following holders:

(i) Any holder that is an exempt recipient under § 1.6045–1(c)(3)(i)(B) if the issuer has actual knowledge that the holder is described in that section or has a properly completed exemption certificate from the holder asserting that the holder is an exempt recipient (as provided in § 31.3406(h)–3 of this chapter). The issuer may treat a shareholder as an exempt recipient based on the applicable indicators described in § 1.6049–4(c)(1)(ii)(B) through (M).

(ii) Any holder that the issuer, prior to the transaction, associates with documentation upon which the issuer may rely in order to treat payments to the holder as made to a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049–5(d)(1) or presumed to be made to a foreign payee under § 1.6049–5(d)(2) or (3). For purposes of this paragraph (b)(5)(ii), the provisions in § 1.6049–5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) apply. Rules similar to the rules of § 1.1441–1 apply by using the terms ''issuer'' and ''holder'' in place of the terms ''withholding agent'' and ''payee'' and without regard to the limitation to amounts subject to withholding under chapter 3 of the Internal Revenue Code. Rules similar to the rules of § 1.6049–5(d) apply by using the terms ''issuer'' and ''holder'' in place of the terms ''payor'' and ''payee.''

(c) *Special rule for S corporations.* Any corporation for which an election under section 1362(a) is in effect is deemed to have satisfied the requirements of paragraphs (a) and (b) of this section for any organizational action affecting the basis of its stock if the corporation reports the effect of the organizational action on a timely filed Schedule K–1 (Form 1120S), ''Shareholder's Share of Income, Deductions, Credits, etc.,'' for each shareholder and timely furnishes copies of these schedules to all proper parties.

(d) *Successor entities.* A successor entity of an issuer that fails to satisfy the reporting obligations of paragraphs (a) or (b) of this section must satisfy these reporting obligations. If neither the issuer nor the successor entity satisfies these reporting obligations, both parties are jointly and severally liable for any applicable penalties.

(e) *Penalties.* For penalties for failure to comply with the requirements of this section, see sections 6721 through 6724.

(f) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* (i) C, a corporation, distributes stock to shareholders on March 31, 2013.

(ii) Under paragraph (a)(2)(i) of this section, C must file an issuer return with the IRS on or before May 15, 2013, reporting the quantitative effect of this distribution on the basis of C's stock. This date is 45 days after the date of the distribution. Under paragraph (b)(2) of this section, C must furnish issuer statements to its nominees and certificate holders on or before January 15, 2014.

(iii) Alternatively, under paragraphs (a)(3) and (b)(4) of this section, C may post by May 15, 2013, the return with the required information in a readily accessible format in an area of its primary public Web sites dedicated to this purpose and keep the return accessible to the public.

*Example 2.* (i) D, a corporation, makes a cash distribution to shareholders on December 31, 2013.

(ii) Under paragraphs (a)(2)(i) and (b)(2) of this section, D is required to file an issuer return with the IRS and furnish issuer statements to its nominees and certificate holders on or before January 15, 2014.

(iii) On January 15, 2014, D is unsure whether the distribution will exceed its earnings and profits for the fiscal year. For purposes of section 6042(b)(3) and § 1.6042–3(c), the distribution must be treated as a dividend. Therefore, under paragraph (a)(2)(ii) of this section, it is expected that D will treat the distribution as a dividend, and D is therefore not required to file an issuer return. If D later determines that this treatment was incorrect, D must determine and report the correct quantitative effect on basis.

*Example 3.* E, a corporation, undertakes a stock split as of April 1, 2014. E furnishes issuer statements under paragraph (b) of this section on April 1, 2014, at which time the books and records of E show that 90 percent of its outstanding stock is owned by shareholders through a clearing organization as their nominee, 7 percent is owned by 5,000 individuals, and the remaining 3 percent is owned by a dividend reinvestment plan operated by E that has 1,000 members. Under paragraph (b)(3) of this section, E must furnish statements to the clearing organization, the 5,000 individuals, and the 1,000 members of the dividend reinvestment plan.

(g) *Effective/applicability dates.* This section applies to organizational actions affecting the basis of specified securities (as described in § 1.6045–1(a)(14)) other than stock in a regulated investment company (as described in § 1.1012–1(e)(5)) that occur on or after January 1, 2011, and to organizational actions affecting stock in a regulated investment company that occur on or after January 1, 2012.

**Par. 14.** Section 1.6049–6 is amended by adding two new sentences to the end of paragraphs (c) and (e)(2) to read as follows:

**§ 1.6049–6 Statements to recipients of interest payments and holders of obligations for attributed original issue discount.**

* * * * *

(c) * * * However, if the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

(e) * * *

(2) * * * However, if the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii).

* * * * *

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

**Par. 15.** The authority citation for part 31 continues to read in part as follows:

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

**Par. 16.** Section 31.3406(b)(3)–2 is amended by revising paragraph (b)(4) to read as follows:

**§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.**

* * * * *

(b) * * *

(4) *Security short sales*—(i) *Short sales closed before January 1, 2011*—(A) *Amount subject to backup withholding.* The amount subject to withholding under section 3406 with respect to a short sale of securities closed before January 1, 2011, is the gross proceeds (as defined in § 1.6045–1(d)(5) of this chapter) of the short sale. At the option of the broker, however, the amount subject to withholding may be the gain upon the closing of the short sale (if any); consequently, the obligation to withhold under section 3406 is deferred until the closing transaction. A broker may use this alternative method of determining the amount subject to withholding under section 3406 for a short sale only if at the time the short sale is initiated, the broker expects that the amount of gain realized upon the closing of the short sale will be determinable from the broker's records.

If, due to events unforeseen at the time the short sale was initiated, the broker is unable to determine the basis of the property used to close the short sale, the property is assumed for this purpose to have a basis of zero.

(B) *Time of backup withholding.* For short sales closed before January 1, 2011, the determination of whether a short seller is subject to withholding under section 3406 must be made on the date of the initiation or closing, as the case may be, or on the date that the initiation or closing, as the case may be, is entered on the broker's books and records.

(ii) *Short sales closed on or after January 1, 2011.* For short sales closed on or after January 1, 2011, the obligation to withhold under section 3406 is deferred until the short sale is considered closed under section 1233. The determination of whether a short seller is subject to withholding under section 3406 may be made as of either this date or the date that the closing transaction is entered on the broker's books and records. The amount subject to withholding under section 3406 is the gross proceeds (as defined in § 1.6045–1(d)(5) of this chapter) of the short sale. At the option of the broker, however, the amount subject to withholding may be the gain upon the closing of the short sale (if any) if the broker reports both the gross proceeds and basis of the securities on the return of information required by section 6045.

* * * * *

**Par. 17.** Section 31.6051–4 is amended by adding two new sentences at the end of paragraph (d) to read as follows:

**§ 31.6051–4 Statement required in case of backup withholding.**

* * * * *

(d) * * * However, if the statement is furnished in a consolidated reporting statement under section 6045, the February 15 due date set forth in section 6045 applies to the statement. *See* §§ 1.6045–1(k)(3), 1.6045–2(d)(2), 1.6045–3(e)(2), 1.6045–4(m)(3), and 1.6045–5(a)(3)(ii) of this chapter.

* * * * *

## PART 301—PROCEDURE AND ADMINISTRATION

**Par. 18.** The authority citation for part 301 continues to read in part as follows:

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

**Par. 19.** Section 301.6721–1 is amended by revising paragraphs (g)(2) and (g)(3) to read as follows:

**§ 301.6721–1 Failure to file correct information returns.**

* * * * *

(g) * * *

(2) *Statements.* The statements subject to this section are the statements required by—

(i) Section 6041(a) or (b) (relating to certain information at source, generally reported on Form 1099–MISC, ''Miscellaneous Income''; Form W–2, ''Wage and Tax Statement''; Form W–2G, ''Certain Gambling Winnings''; and Form 1099–INT, ''Interest Income'');

(ii) Section 6042(a)(1) (relating to payments of dividends, generally reported on Form 1099–DIV, ''Dividends and Distributions'');

(iii) Section 6044(a)(1) (relating to payments of patronage dividends, generally reported on Form 1099–PATR, ''Taxable Distributions Received From Cooperatives'');

(iv) Section 6049(a) (relating to payments of interest, generally reported on Form 1099–INT or Form 1099–OID, ''Original Issue Discount'');

(v) Section 6050A(a) (relating to reporting requirements of certain fishing boat operators, generally reported on Form 1099–MISC);

(vi) Section 6050N(a) (relating to payments of royalties, generally reported on Form 1099–INT);

(vii) Section 6051(d) (relating to information returns with respect to income tax withheld, generally reported on Form W–2);

(viii) Section 6050R (relating to returns relating to certain purchases of fish, generally reported on Form 1099–MISC);

(ix) Section 110(d) (relating to qualified lessee construction allowances for short-term leases, generally reported by attaching a statement to an income tax return);

(x) Section 408(i) (relating to reports with respect to individual retirement accounts or annuities on Form 1099–R, ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.''); or

(xi) Section 6047(d) (relating to reports by employers, plan administrators, etc., on Form 1099–R).

(3) *Returns.* The returns subject to this section are the returns required by—

(i) Section 6041A(a) or (b) (relating to returns of direct sellers, generally reported on Form 1099–MISC);

(ii) Section 6043A(a) (relating to returns relating to taxable mergers and acquisitions);

(iii) Section 6045(a) or (d) (relating to returns of brokers, generally reported on Form 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' for broker transactions; Form 1099–S, ''Proceeds from Real Estate Transactions,'' for gross proceeds from the sale or exchange of real estate; and Form 1099–MISC for certain substitute payments and payments to attorneys);

(iv) Section 6045B(a) (relating to returns relating to actions affecting basis of specified securities);

(v) Section 6050H(a) or (h)(1) (relating to mortgage interest received in trade or business from individuals, generally reported on Form 1098, ''Mortgage Interest Statement'');

(vi) Section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc., generally reported on Form 8300, ''Report of Cash Payments Over $10,000 Received In a Trade or Business'');

(vii) Section 6050J(a) (relating to foreclosures and abandonments of security, generally reported on Form 1099–A, ''Acquisition or Abandonment of Secured Property'');

(viii) Section 6050K(a) (relating to exchanges of certain partnership interests, generally reported on Form 8308, ''Report of a Sale or Exchange of Certain Partnership Interests'');

(ix) Section 6050L(a) (relating to returns relating to certain dispositions of donated property, generally reported on Form 8282, ''Donee Information Return'');

(x) Section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally reported on Form 1099–C, ''Cancellation of Debt'');

(xi) Section 6050Q (relating to certain long-term care benefits, generally reported on Form 1099–LTC, ''Long Term Care and Accelerated Death Benefits'');

(xii) Section 6050S (relating to returns relating to payments for qualified tuition and related expenses, generally reported on Form 1098–E, ''Student Loan Interest Statement,'' or Form 1098–T, ''Tuition Statement'');

(xiii) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally reported on Form 1099–H, ''Health Coverage Tax Credit (HCTC) Advance Payments'');

(xiv) Section 6052(a) (relating to reporting payment of wages in the form of group-life insurance, generally reported on Form W–2);

(xv) Section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests, generally reported on Form 8921, ''Applicable Insurance Contract Information Return'');

(xvi) Section 6053(c)(1) (relating to reporting with respect to certain tips,

generally reported on Form 8027, ''Employer's Annual Information Return of Tip Income and Allocated Tips'');

(xvii) Section 1060(b) (relating to reporting requirements of transferors and transferees in certain asset acquisitions, generally reported on Form 8594, ''Asset Acquisition Statement''), or section 1060(e) (relating to information required in the case of certain transfers of interests in entities (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xviii) Section 4101(d) (relating to information reporting with respect to fuel oils (effective for information returns required to be filed after November 30, 1990));

(xix) Section 338(h)(10)(C) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss (effective for acquisitions after October 9, 1990, except any acquisition pursuant to a written binding contract in effect on October 9, 1990, and at all times thereafter before such acquisition));

(xx) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally reported on Form 1099–R);

(xxii) Section 6039(a) (relating to returns required with respect to certain options); or

(xxiii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

* * * * *

**Par. 20.** Section 301.6722–1 is amended by revising paragraph (d)(2) to read as follows:

**§ 301.6722–1 Failure to furnish correct payee statements.**

* * * * *

(d) * * *

(2) *Payee statement.* The term *payee statement* means any statement required to be furnished under—

(i) Section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities, generally a Schedule K–1 (Form 1065), ''Partner's Share of Income, Deductions, Credits, etc.,'' for section 6031(b) or (c), a copy of the Schedule K–1 (Form 1041), ''Beneficiary's Share of Income, Deductions, Credits, etc.,'' for section 6034A, and a copy of Schedule K–1 (Form 1120S), ''Shareholder's Share of Income, Deductions, Credits, etc.,'' for section 6037(b));

(ii) Section 6039(b) (relating to information required in connection with certain options);

(iii) Section 6041(d) (relating to information at source, generally the recipient copy of Form 1099–MISC, ''Miscellaneous Income''; Form W–2, ''Wage and Tax Statement''; Form 1099–INT, ''Interest Income''; and the winner's copies of Form W–2G, ''Certain Gambling Winnings'');

(iv) Section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales, generally the recipient copy of Form 1099–MISC);

(v) Section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits, generally the recipient copy of Form 1099–DIV, ''Dividends and Distributions'');

(vi) Section 6043A(b) or (d) (relating to returns relating to taxable mergers and acquisitions);

(vii) Section 6044(e) (relating to returns regarding payments of patronage dividends, generally the recipient copy of Form 1099–PATR, ''Taxable Distributions Received From Cooperatives'');

(viii) Section 6045(b) or (d) (relating to returns of brokers, generally the recipient copy of Form 1099–B, ''Proceeds from Broker and Barter Exchange Transactions,'' for broker transactions; the transferor copy of Form 1099–S, ''Proceeds from Real Estate Transactions,'' for reporting proceeds from real estate transactions; and the recipient copy of Form 1099–MISC for certain substitute payments and payments to attorneys);

(ix) Section 6045A (relating to information required in connection with transfers of covered securities to brokers);

(x) Section 6045B(c) or (e) (relating to returns relating to actions affecting basis of specified securities);

(xi) Section 6049(c) (relating to returns regarding payments of interest, generally the recipient copy of Form 1099–INT or Form 1099–OID, ''Original Issue Discount'');

(xii) Section 6050A(b) (relating to reporting requirements of certain fishing boat operators, generally the recipient copy of Form 1099–MISC);

(xiii) Section 6050H(d) or (h)(2) (relating to returns relating to mortgage interest received in trade or business from individuals, generally the payor copy of Form 1098, ''Mortgage Interest Statement'');

(xiv) Section 6050I(e), (g)(4), or (g)(5) (relating to returns relating to cash received in trade or business, etc., generally a copy of Form 8300, ''Report of Cash Payments Over $10,000 Received In a Trade or Business'');

(xv) Section 6050J(e) (relating to returns relating to foreclosures and abandonments of security, generally the borrower copy of Form 1099–A, ''Acquisition or Abandonment of Secured Property'');

(xvi) Section 6050K(b) (relating to returns relating to exchanges of certain partnership interests, generally a copy of Form 8308, ''Report of a Sale or Exchange of Certain Partnership Interests'');

(xvii) Section 6050L(c) (relating to returns relating to certain dispositions of donated property, generally a copy of Form 8282, ''Donee Information Return'');

(xviii) Section 6050N(b) (relating to returns regarding payments of royalties, generally the recipient copy of Form 1099–MISC);

(xix) Section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities, generally the recipient copy of Form 1099–C, ''Cancellation of Debt'');

(xx) Section 6050Q(b) (relating to certain long-term care benefits, generally the policyholder and insured copies of Form 1099–LTC, ''Long Term Care and Accelerated Death Benefits'');

(xxi) Section 6050R(c) (relating to returns relating to certain purchases of fish, generally the recipient copy of Form 1099–MISC);

(xxii) Section 6051 (relating to receipts for employees, generally the employee copy of Form W–2);

(xxiii) Section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance, generally the employee copy of Form W–2);

(xxiv) Section 6053(b) or (c) (relating to reports of tips, generally the employee copy of Form W–2);

(xxv) Section 6048(b)(1)(B) (relating to foreign trust reporting requirements, generally copies of the owner and beneficiary statements of Form 3520–A, ''Annual Information Return of Foreign Trust With a U.S. Owner'');

(xxvi) Section 408(i) (relating to reports with respect to individual retirement plans on the recipient copies of Form 1099–R, ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.'');

(xxvii) Section 6047(d) (relating to reports by plan administrators on the recipient copies of Form 1099–R);

(xxviii) Section 6050S(d) (relating to returns relating to qualified tuition and related expenses, generally the borrower copy of Form 1098–E, ''Student Loan

Interest Statement,'' or the student copy of Form 1098–T, ''Tuition Statement'');

(xxix) Section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts);

(xxx) Section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals, generally the recipient copy of Form 1099–H, ''Health Coverage Tax Credit (HCTC) Advance Payments'');

(xxxi) Section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements, generally the recipient copy of Form 1099–R); or

(xxxii) Section 6050W (relating to information returns with respect to payments made in settlement of payment card and third party network transactions).

* * * * *

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E9–29855 Filed 12–16–09; 8:45 am]

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Federal Register

Thursday,
December 17, 2009

## Part III

# The President

**Memorandum of December 15, 2009—Directing Certain Actions With Respect to Acquisition and Use of Thomson Correctional Center To Facilitate Closure of Detention Facilities at Guantanamo Bay Naval Base**

Federal Register
Vol. 74, No. 241
Thursday, December 17, 2009

# Presidential Documents

**Title 3—**

**The President**

**Memorandum of December 15, 2009**

## Directing Certain Actions With Respect to Acquisition and Use of Thomson Correctional Center To Facilitate Closure of Detention Facilities at Guantanamo Bay Naval Base

**Memorandum for the Secretary of Defense [and] the Attorney General**

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force (Public Law 107–40, 115 Stat. 224), and in order to facilitate the closure of detention facilities at the Guantanamo Bay Naval Base, I hereby direct that the following actions be taken as expeditiously as possible with respect to the facility known as the Thomson Correctional Center (TCC) in Thomson, Illinois:

1. The Attorney General shall acquire and activate the TCC as a United States Penitentiary, which the Attorney General has determined would reduce the Bureau of Prisons' shortage of high security, maximum custody cell space and could be used for other appropriate inmate or detainee management purposes. The Attorney General shall also provide to the Department of Defense a sufficient portion of the TCC to serve as a detention facility to be operated by the Department of Defense in order to accommodate the relocation of detainees by the Secretary of Defense in accordance with paragraph 2 of this memorandum.

2. The Secretary of Defense, working in consultation with the Attorney General, shall prepare the TCC for secure housing of detainees currently held at the Guantanamo Bay Naval Base who have been or will be designated for relocation, and shall relocate such detainees to the TCC, consistent with laws related to Guantanamo detainees and the findings in, and inter-agency Review established by, Executive Order 13492 of January 22, 2009.

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

The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
*Washington, December 15, 2009*

[FR Doc. E9–30225
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