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Presidential Documents

Title 3—

The President

Proclamation 8466 of December 16, 2009

Wright Brothers Day, 2009

By the President of the United States of America

A Proclamation

For 12 seconds on December 17, 1903, a wooden aircraft took to the skies above Kitty Hawk, North Carolina, lifting two brothers from Dayton, Ohio, to their place in history. Their singular triumph triggered a revolution in transportation that would bridge the vast distances between continents and forever alter our world. Today, we honor the enduring American spirit of creativity and innovation that made the Wright Brothers' maiden flight possible.

Self-taught and financed by the proceeds of their bicycle shop, the Wright Brothers' success embodies our Nation's proud tradition of entrepreneurship. In pursuit of the ageless dream of controlled flight, they persevered through great challenges. Early design failures, a skeptical public, and the sheer danger of their endeavors often tempted the brothers to quit, but they forged ahead with firm resolve and bold experimentation to complete their ascent to greatness.

In these challenging times, the story of Orville and Wilbur Wright reminds us of what can be accomplished when imagination is joined with tenacity. Their spirit lives on in every garage and basement workshop where American innovators still tinker, invent, and discover. The next Wright Brothers are among us today, working tirelessly toward a breakthrough that will spark a new industry and improve countless lives.

We must do all we can to support our Nation's entrepreneurs. As we work toward a bright future powered by cutting-edge ideas and new technologies, we celebrate this day by looking back to the Wright Brothers, whose achievements affirm the limitless potential of American ingenuity.

The Congress, by a joint resolution approved December 17, 1963, as amended (77 Stat. 402; 36 U.S.C. 143), has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim December 17, 2009, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. E9–30548
Filed 12–21–09; 8:45 am]
Billing code 3195–W0–P

Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

[FNS–2009–0001]

RIN 0584–AD71

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Vendor Cost Containment; Approval of Information Collection Request

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; notice of approval of Information Collection Request (ICR).

SUMMARY: The final rule entitled Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Vendor Cost Containment was published on October 8, 2009. The Office of Management and Budget cleared the associated information collection requirements (ICR) on November 2, 2009. This document announces approval of the ICR.

DATES: The ICR associated with the final rule published in the **Federal Register** on October 8, 2009, at 74 FR 51745, was approved by OMB on November 2, 2009, under OMB Control Number 0584–0043.

FOR FURTHER INFORMATION CONTACT: Sandra Clark, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746, or *Sandy.Clark@fns.usda.gov*.

Dated: December 3, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–30345 Filed 12–21–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 273 and 274

Food Stamp Program

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 210 to 299, revised as of January 1, 2009, on page 778, in § 273.9, in paragraph (c)(8), move the last sentence in front of the sentence before it, and on page 892, in § 274.12, remove paragraphs (c)(1)(i) and (c)(1)(ii).

[FR Doc. E9–30502 Filed 12–21–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 1, 208, 209, 212, 214, 217, 235, 245, 274a, 286, and 299

[CIS No. 2460–08; DHS Docket No. USCIS–2008–0039]

RIN 1615–AB77

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1001, 1208, 1209, 1212, 1235, 1245 and 1274a

[EOIR Docket No. 169 AG Order No. 3120–2009]

RIN 1125–AA67

Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands

AGENCY: U.S. Citizenship and Immigration Services, DHS; Executive Office for Immigration Review, DOJ.

ACTION: Interim final rule; correcting amendment.

SUMMARY: With this amendment, the Department of Homeland Security (DHS) corrects an inadvertent error that was made in the interim final rule, Application of Immigration Regulations to the Commonwealth of the Northern Mariana Islands, published in the **Federal Register** on October 28, 2009, at 74 FR 55725.

DATES: This rule is effective December 22, 2009.

FOR FURTHER INFORMATION CONTACT: Fred Ongcapin, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529–2211, telephone (202) 272–8221 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Need for Correction

On October 28, 2009, the Department of Homeland Security, and Department of Justice, published an interim rule in the **Federal Register** at 74 FR 55725, implementing conforming amendments to their respective regulations to comply with the Consolidated Natural Resources Act of 2008 (CNRA). The CNRA extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI).

In the amendment to 8 CFR 299.1 and 8 CFR 299.5, DHS inadvertently omitted the edition date and OMB Control Number for the new Form I–9 CNMI, ''CNMI Employment Eligibility Verification.''

Correction of Publication

■ Accordingly, title 8, part 299 is corrected as follows:

PART 299—IMMIGRATION FORMS

§ 299.1 [Corrected]

■ 1. In § 299.1, in the table, revise the edition date for the ''Form I–9 CNMI'' from ''xx–xx–xx'' to read: ''11–12–09''.

§ 299.5 [Corrected]

■ 2. In § 299.5, in the table, revise the currently assigned OMB control number for ''Form I–9 CNMI'' from ''1615–XXXX'' to read ''1615–0112''.

Christina E. McDonald,

Deputy Associate General Counsel for Regulatory Affairs, Department of Homeland Security.

[FR Doc. E9–30287 Filed 12–21–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF ENERGY

10 CFR Part 1045

Nuclear Classification and Declassification

CFR Correction

In Title 10 of the Code of Federal Regulations, Part 500 to End, revised as

of January 1, 2009, on page 979, in § 1045.14, in paragraph (a)(1) introductory text, remove ''DOE Director of Declassification'' and add in its place ''Director of Classification''.

[FR Doc. E9–30495 Filed 12–21–09; 8:45 am]
BILLING CODE 1505–01–D

FARM CREDIT ADMINISTRATION

12 CFR Part 617

RIN 3052–AC45

Borrower Rights; Effective Interest Rates

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or we) issues a final rule amending the disclosure requirements governing what initial and subsequent disclosures a Farm Credit System (FCS or System) qualified lender must make to a borrower when the borrower's adjustable rate loan's interest rate is directly tied to a widely publicized external index. The final rule requires qualified lenders to include, in the initial disclosure to borrowers (at loan closing), how and where to obtain information on changes to the external index. The final rule also requires qualified lenders to make the disclosures to ''existing'' borrowers with adjustable rate loans directly tied to a widely publicized external index who had not previously been given the ''new'' initial disclosures. In addition, the final rule allows qualified lenders to send written notices of subsequent rate changes to borrowers within 45 days after the effective date of the change or as part of the borrower's first regularly scheduled billing statement affected by the rate change.

DATES: *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jacqueline R. Melvin, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434, or Howard Rubin, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this final rule is to ensure that borrowers with loans directly tied to a widely publicized external index receive appropriate disclosure of interest rate changes in accordance with statutory requirements while allowing System institutions to provide the notices in a more efficient manner.

II. Background

Section 4.13(a)(4) of the Farm Credit Act of 1971, as amended (Act), requires qualified lenders to provide borrowers, for all loans not subject to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), ''meaningful and timely disclosure'' of any change in the interest rate applicable to the borrower's loan within a ''reasonable time after the effective date'' of a change.[1] Under our current rules, where the borrower's interest rate is directly tied to a widely publicized external index, qualified lenders must provide a written notice to the borrower within 45 days after the effective date of the change; where the borrower's rate is not directly tied to a widely publicized external index, qualified lenders must send written notice within 10 days.[2]

On June 19, 2009 (74 FR 29143), the FCA published a proposed rule in the **Federal Register** that would amend two sections of the disclosure requirements in part 617 of FCA's regulations. First, we proposed enhancing the initial information a qualified lender gives to borrowers with loans directly tied to a widely publicized external index. Second, we proposed that the subsequent disclosure notifying the borrower of changes in the external index be included in the first regularly scheduled billing statement after the effective date of the change. However, if the borrower's loan closed before the proposed new initial disclosures became effective, the qualified lender would be required to provide written notice of the rate change within 45 days after the effective date of change.

[1] 12 U.S.C. 2199(a)(4). ''Qualified lenders'' include System lenders (except for a bank for cooperatives), and non-System lenders (other financing institutions (OFIs)) for loans that OFIs make with funding from a Farm Credit bank. *See* 12 U.S.C. 2202a(a)(6).

[2] 12 CFR 617.7135(a). FCA considers the nationally published commercial bank Prime Rate and the London Interbank Offered Rate (LIBOR) to be the primary examples of widely publicized external indexes. Other rates may also meet the criteria, but the qualified lender must ensure that the rate is published in a source readily available to its borrowers. *See* 68 FR 5587 (Feb. 4, 2003).

III. Summary of Comments on the Proposed Rule

The FCA received comments from two Farm Credit banks and one agricultural credit association on the proposed rule. Commenters expressed concern that the new rule would add burden by requiring a ''dual'' disclosure regime (one disclosure system for new borrowers and one for existing borrowers). Commenters also requested clarification on what information a qualified lender must provide to a borrower with the initial disclosure.

IV. Summary of Changes to the Final Rule

After careful review of comments received, the final rule eliminates the need for a ''dual'' notice regime by revising § 617.7135 to require that the new § 617.7130(b)(6) disclosures be provided to all borrowers with a loan interest rate directly tied to a widely publicized external index. The final rule gives qualified lenders the option of continuing to give borrowers the 45-day rate change notice required under the current rule or to give notice of the rate change as part of the borrower's first regularly scheduled billing statement affected by the rate change. In addition, we also added a provision to § 617.7135 that requires qualified lenders to provide a one-time notice to applicable borrowers with adjustable rate loans directly tied to a widely publicized external index who did not previously receive the initial disclosures required by new § 617.7130(b)(6). We also made changes to the language of final § 617.7130(b)(6)(i) and (ii); these clarifications are consistent with the intent of the proposed rule and do not represent substantive changes. The comments and corresponding changes to the final rule are more fully discussed in the section-by-section analysis below.

V. FCA's Section-by-Section Analysis of Comments With FCA's Response

A. Initial Disclosure Requirement

Comment: One commenter requested more guidance as to the FCA's expectations on the level of detail that qualified lenders will be required to provide to borrowers to satisfy the initial disclosures. For example, the commenter wanted to know whether a reference to the *Wall Street Journal* or a single Web site would satisfy the requirements of the proposed rule.

Response: Section 617.7130(b)(1) through (b)(5) of our regulations provides qualified lenders the level of information that must be given to borrowers at loan closing regarding adjustable rate loans. We proposed

revising § 617.7130 by adding paragraph (b)(6) to ensure that borrowers have adequate knowledge, at loan closing, of how and where they may access information on adjustable rate loans that are directly tied to a widely publicized external index. The FCA expects the qualified lender to make an independent assessment of information availability in the community that it serves in determining whether a single financial news source or a single Web site reference is sufficient for borrowers to obtain information on the external index. For example, if the institution publicizes index change information on its Web site and the institution's borrowers have reasonable access to that Web site, a qualified lender may direct their borrowers to the institution's Web site.

Comment: A commenter requested clarification of how and where the borrower may ''track'' changes to the index. For example, the commenter wanted to know whether qualified lenders will only be required to tell the borrowers where they will be able to find changes in the index as the changes occur or will qualified lenders also be expected to tell borrowers where they can find a history of the changes to the index.

Response: To avoid confusion, the FCA is eliminating the term ''track'' changes. To ensure that the regulation is clear, the final rule will require qualified lenders to provide information on how and where the borrower may ''obtain'' information on changes to the index. Qualified lenders will be required to tell borrowers where they can get current information on index rates so that borrowers can stay informed about interest rate changes that affect them. Qualified lenders will not be expected to tell borrowers where they can find historical data on index rates.

B. Subsequent Disclosure Requirement

Comment: A commenter stated that, while proposed § 617.7135(a)(2) would create a new disclosure system for loans going forward, qualified lenders would be required to maintain the old disclosure system for existing loans. The commenter also stated that besides the additional expense in maintaining two systems simultaneously, ''we are unclear as to whether or not this would be feasible with our current infrastructure.'' Furthermore, the commenter stated that a ''dual'' disclosure system will also be confusing to borrowers with existing loans that thereafter close a second loan under the proposed rule because the borrowers would presumably receive different notices depending on when the loan was booked.

A second commenter similarly stated that the proposed regulations set up two separate classes of loans with different compliance requirements with respect to notices of interest rate changes. The commenter also stated that the additional compliance requirements would be burdensome for qualified lenders to manage. Instead of two separate disclosure systems, the commenter suggested that FCA allow institutions to establish one process for all loans with interest rates directly tied to a widely publicized external index. Another commenter requested the flexibility to have the new notice requirement for subsequent disclosures apply to the existing loans if the qualified lender provided the enhanced disclosures to the existing borrowers, telling them how and where they may track changes to the index.

Response: Upon consideration, we believe the commenters' concerns are well-founded and we have changed the final rule as suggested to allow for comparable treatment for all borrowers. The FCA's intention was to make the subsequent disclosure requirements for notifying borrowers of changes in the external index more flexible. This flexibility was intended to satisfy the statutory requirements for disclosure within a ''reasonable time after the effective date'' of a change. However, after consideration of the comments, we see the challenge that qualified lenders would face in managing two systems instead of one. We therefore agree with the commenters that subsequent notice of the enhanced disclosure information to existing borrowers is appropriate to allow qualified lenders to begin providing the same subsequent interest rate change notice to all borrowers.

The final rule allows an institution to select one of two options for notifying borrowers of changes in the external index. Since either method complies with regulatory requirements, a qualified lender may choose to use either or both methods. However, unlike the proposed rule, the final rule does not require a ''dual'' notice system and therefore whichever system is selected, the process can be the same for all borrowers regardless of when the loan closed.

The final rule also requires that the initial disclosures be made to applicable borrowers with adjustable rate loans directly tied to a widely publicized external index who were not previously provided with the disclosures in § 617.7130(b)(6). This subsequent disclosure must be made no later than the qualified lender's next regularly scheduled correspondence to those borrowers after April 1, 2010. The April 1, 2010 date will provide a transition period after the effective date of the final rule. Providing the new disclosure, which could be sent with planned mail (or e-mail in accordance with FCA's e-commerce rules) communication, such as a 45-day notice, a billing statement, or some other form of communication directly to the borrower—but not advertisements or other generic communications sent to all customers—would eliminate the need for a ''dual'' notice requirement.

Comment: A commenter noted that the existing § 617.7130(b) requires the qualified lender to ''provide'' information for adjustable rate loans to borrowers. However, proposed § 617.7130(b)(6)(ii) would require disclosure of when the borrower would ''receive'' notice of changes in the borrower's interest rate. The commenter stated that since the qualified lender has little control over when the notice of the rate change is actually received by the borrower the qualified lender should not be required to include a statement to this effect.

Response: We agree with the commenter that, as proposed, the term ''receive'' places responsibility on the qualified lender when there is little control over the outcome. Therefore, the final rule requires that the qualified lender disclose to the borrower when the qualified lender will ''provide'' written notice of the rate change.

C. Billing Statements

Comment: A commenter stated that the proposed regulation provides for the submission of a rate change notice no later than the borrower's first billing statement which, in the case of monthly pay loans where monthly statements are sent 20 days prior to the due date, would reduce the time for notice from 45 days to 10 days. The commenter also stated that the proposed process would be further complicated by the possibility of multiple changes in a given month. In addition, the commenter stated that for annual payment loans, the proposed regulation is unclear as to whether qualified lenders should provide the latest change immediately prior to the annual payment or all of the changes throughout the year in the billing statement. As such, the commenter urged FCA to consider amending the rule to provide System institutions the ability to ''opt out'' and continue using the existing disclosure methodology for all loans. Another commenter had similarly requested clarification about the billing statement schedule.

Response: Generally, we expect that a borrower's billing statement would disclose the interest rate being charged in connection with the payment due. Proposed § 617.7135(a)(2) required disclosure as part of the borrower's first regularly scheduled billing statement ''after the effective date of the change.'' To clarify our intent and the qualified lender's responsibility, the language of final § 617.7135 is revised to require disclosure as part of the borrower's first regularly scheduled billing statement ''affected by the rate change.'' Therefore, if the qualified lender elects to provide the subsequent disclosure notifications to the borrower as part of the regularly scheduled billing statement, the qualified lender will include all intermittent rate changes as part of the borrower's billing statement. For example, if the borrower's loan was tied to an external index that adjusts monthly and the borrower's regularly scheduled billing statements are provided annually, then the qualified lender must include in the billing statement all of the changes to the external index that occurred throughout the year that affected the borrower's interest rate and the resulting annual payment due from the borrower.

Additionally, as previously discussed, the final rule gives the qualified lender an option of continuing with the current process of the subsequent disclosure notifications to borrowers within 45 days after the effective date of the change.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 617

Agriculture, Banks, Banking, Rural areas.

■ For the reasons stated in the preamble, part 617 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 617—BORROWER RIGHTS

■ 1. The authority citation for part 617 continues to read as follows:

Authority: Secs. 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2243, 2252).

Subpart B—Disclosure of Effective Interest Rates

■ 2. Amend § 617.7130 by revising introductory text of paragraph (b), paragraphs (b)(4) and (b)(5), and adding a new paragraph (b)(6) to read as follows:

§ 617.7130 What initial disclosures must a qualified lender make to a borrower?

* * * * *

(b) *Adjustable rate loans.* A qualified lender must provide the following information for adjustable rate loans in addition to the requirements of paragraph (a) of this section:

* * * * *

(4) Any limitations on the amount or frequency of adjustments;

(5) The specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan; and

(6) If the borrower's interest rate is directly tied to a widely publicized external index:

(i) How and where the borrower may obtain information on changes to the index; and

(ii) When the qualified lender will provide written notice of changes to the borrower's interest rate.

■ 3. Amend § 617.7135 by revising paragraph (a)(2), redesignating existing paragraph (b) as new paragraph (c), and adding a new paragraph (b) to read as follows:

§ 617.7135 What subsequent disclosures must a qualified lender make to a borrower?

(a) * * *

(2) If the borrower's interest rate is directly tied to a widely publicized external index, a qualified lender must provide written notice to the borrower of the rate change either:

(i) Within forty-five (45) days after the effective date of the change; or

(ii) As part of the borrower's first regularly scheduled billing statement affected by the rate change.

* * * * *

(b) *Notice to adjustable rate loan borrowers with interest rates directly tied to a widely publicized external index.* A qualified lender must provide the written disclosure required by § 617.7130(b)(6) to applicable borrowers who were not previously given the disclosure no later than the qualified lender's next regularly scheduled correspondence to those borrowers occurring after April 1, 2010.

* * * * *

Dated: December 16, 2009.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E9–30438 Filed 12–21–09; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations

CFR Correction

In Title 13 of the Code of Federal Regulations, revised as of January 1, 2009, on page 357, in § 121.201, in the table ''Small Business Size Standards by NAICS Industry'', under Sector 54, Subsector 541, remove the three subentries under NAICS code 541712, beginning with the word ''EXCEPT,''.

[FR Doc. E9–30503 Filed 12–21–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 60

Flight Simulation Training Device Initial and Continuing Qualification and Use

CFR Correction

In Title 14 of the Code of Federal Regulations, Parts 60 to 109, revised as of January 1, 2009, make the following corrections:

On page 6, in § 60.5(a), remove the date ''October 30, 2009'' and add in its place the date ''May 30, 2010'';

On page 7, in § 60.7 (b)(5) and (b)(6) (two places), remove the date ''October 30, 2007'' and add in its place the date ''May 30, 2008''; and

On page 11, in § 60.17 (a), (b), and (d), remove the date ''October 30, 2007'' and add in its place the date ''May 30, 2008'' and in (b) also remove the date ''October 30, 2013'' and add in its place the date ''May 30, 2014''.

[FR Doc. E9–30499 Filed 12–21–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9471]

RIN 1545–BH68

Employee Stock Purchase Plans Under Internal Revenue Code Section 423; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9471) that were published in the **Federal Register** on Tuesday, November 17, 2009 (74 FR 59074) providing guidance to assist taxpayers in complying with section 423 in addition to clarifying certain rules regarding options granted under an employee stock purchase plan.

DATES: This correction is effective on December 22, 2009, and is applicable on November 17, 2009.

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

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9471) that are the subject of this document are under sections 421, 422, 423, and 424 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9471) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.423–2 is amended by:

■ 1. Revising the first sentence of paragraph (a)(1).

■ 2. Revising the paragraph (d)(3).

■ 3. Revising the last sentence of paragraph (i)(5) *Example 5.*

The revisions read as follows:

§ 1.423–2 Employee stock purchase plan defined.

* * * * *

(a) * * * (1) The term ''employee stock purchase plan'' means a plan that meets the requirements of paragraphs (a)(2) and (a)(3) of this section. * * *

* * * * *

(d) * * *

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

* * * * *

(i) * * *

(5) * * *

Example 5. * * * On August 31, 2012, Q may purchase under the option an amount of FF stock equal to the difference between $75,000 in fair market value of FF stock (determined at the time the option was granted) and the fair market value of FF stock (determined at the time of grant of the option) purchased during year 2011.

* * * * *

LaNita Van Dyke,

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

[FR Doc. E9–30350 Filed 12–21–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9470]

RIN 1545–BH69

Information Reporting Requirements Under Internal Revenue Code Section 6039; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (TD 9470) that were published in the **Federal Register** on Tuesday, November 17, 2009 (74 FR 59087) relating to the return and information statement requirements under section 6039 of the Internal Revenue Code.

DATES: This correction is effective on December 22, 2009, and is applicable on November 17, 2009.

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

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9470) that are the subject of this document are under section 6039 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9470) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6039–2 is amended as follows:

■ 1. Revising the heading of paragraph (b).

■ 2. Revising the first and second sentences of paragraph (e)(2).

The revisions read as follows:

§ 1.6039–2 Statements to persons with respect to whom information is reported.

* * * * *

(b) *Requirement of statement with respect to stock purchased under an employee stock purchase plan under section 6039(b).*

* * * * *

(e) * * *

(2) * * * Notwithstanding § 1.6039–1(f), corporations must furnish information statements to employees in accordance with this section for stock transfers that are subject to § 1.6039–1(a) and (b), and occur during the 2007, 2008 and 2009 calendar years. For purposes of furnishing information statements for stock transfers that occur during the 2007 or 2008 calendar years, taxpayers may rely on § 1.6039–1 of the 2004 final regulations (69 FR 46401) or § 1.6039–2 of the 2008 proposed regulations (REG–103146–08) (73 FR 40999). * * *

* * * * *

LaNita Van Dyke,

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

[FR Doc. E9–30348 Filed 12–21–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9470]

RIN 1545–BH69

Information Reporting Requirements Under Internal Revenue Code Section 6039; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 9470) that were published in the **Federal Register** on Tuesday, November 17, 2009 (74 FR 59087) relating to the return and information statement requirements under section 6039 of the Internal Revenue Code.

DATES: This correction is effective on December 22, 2009, and is applicable on November 17, 2009.

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

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9470) that are the subject of this document are under section 6039 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9470) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9470), which were the subject of FR Doc. E9–27451, is corrected as follows:

1. On page 59087, column 3, in the preamble, under the caption ''DATES:'', the language ''*Applicability Date:* For dates of applicability, *see* §§ 1.6039–1(g) and 1.6039–2(e).'' is corrected to read ''*Applicability Date:* For dates of applicability, *see* §§ 1.6039–1(f) and 1.6039–2(e).''.

2. On page 59089, column 3, in the preamble, under the paragraph heading ''c. Requirement of Return and Information Statement Under Section 6039(a)(2) and (b)'', first paragraph of the column, second through eighth lines, the language ''423(c) relates to the exercise price of the option (as evidenced by the parenthetical phrase in 6039(a)(2) following the reference to section 423(c)) rather than whether or not the shares are disposed of in a qualifying disposition as also described in 423(c).'' is corrected to read ''section 423(c) relates to the exercise price of the option (as evidenced by the parenthetical phrase in section 6039(a)(2) following the reference to section 423(c)) rather than whether or not the shares are disposed of in a qualifying disposition as also described in section 423(c).''.

LaNita Van Dyke,

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

[FR Doc. E9–30349 Filed 12–21–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0863]

RIN 1625–AA09

Drawbridge Operation Regulation; Bonfouca Bayou, Slidell, LA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the State Route (SR) 433 Swing Span Bridge across Bonfouca Bayou, mile 7.0, at Slidell, St. Tammany Parish, Louisiana. The Louisiana Department of Transportation and Development (LDOTD) requested that the operating regulation of the SR 433 Swing Span Bridge be changed in order to allow for signaled openings to begin later in the mornings and later in the evenings during the months of daylight savings time. This change allows the bridge to open on signal, except that from 9 p.m. to 7 a.m., from March 1 through October 30, the draw shall open on signal if at least two hours' notice is given. From November 1 through February 28 or 29, the bridge will revert to the two-hour notice requirement from 6 p.m. to 6 a.m.

DATES: This rule is effective December 22, 2009. Submit comments by January 21, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0863 using one of the following methods:

(1) *Federal rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

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

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard will consider all comments from the public before issuing a Final Rule for this change. We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0863), indicate the specific section of this document to which each comment applies, and give the reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2009–0863'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0863'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard is issuing this interim final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it has been brought to the Coast Guard's attention that recreational boaters are not easily able to access their berthing facilities upstream of the bridge in the afternoons because of the two-hour notice requirement that starts at 6 p.m. each day. Most recreational boaters who are underway at extended distances from the bridge are unable to determine an exact time of arrival at the bridge in order to request the required two-hour notice. Others may not have long range VHF–FM radios capable of contacting the bridge while underway at great distances from the bridge in order to request the two-hour notice. Thus, many boaters are required to end their activities early, several hours prior to sundown during the months that daylight savings time is in effect, in order to get through the bridge before 6 p.m. Additionally, the Coast Guard was provided a copy of a letter to LDOTD from an individual, listing four businesses, including his own, stating that the businesses are losing money from boaters who are afraid of being restricted from returning to their homes by the two-hour notice requirement. The Coast Guard finds good cause to issue this interim final rule without prior notice and opportunity to comment because the delay is impracticable and unnecessary and not in the best public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The delay in publishing a Notice of Proposed Rule Making and allowing 30 days for comments before issuing a Final Rule will extend the hardship on the recreational boater and the businesses upstream of the bridge. Recreational boaters are not easily able to access their berthing facilities upstream of the bridge in the afternoons because of the two-hour notice requirement that starts at 6 p.m. each day. Most recreational boaters who are underway at extended distances from the bridge are unable to determine an exact time of arrival at the bridge in order to request the required two-hour notice. Thus, many boaters are required to conclude their activities earlier than necessary in order to get through the bridge before 6 p.m. without a two-hour delay. Furthermore, businesses that are located upstream of the bridge are suffering economically due to the lack of recreational boaters who would normally patronize their businesses if the boaters were able to get past the bridge later in the afternoons without the two-hour delay.

Background and Purpose

The LDOTD requested that the operating regulation of the SR 433 Swing Span Bridge across Bonfouca Bayou, mile 7.0 at Slidell, Louisiana be changed in order to allow for signaled openings to begin later in the mornings and later in the evenings during the months of daylight savings time from March 1 through October 30 each year. LDOTD indicated that extending the morning requirement for a two-hour notice by one hour will not affect mariners passing through the bridge because few mariners do so in the morning. Bridge tender logs indicate that more recreational vessels transit the bridge during spring, summer and fall months than during the winter months of November through February. The logs also show that most of the recreational boaters do not signal for an opening prior to 7 a.m. By extending the time for the bridge to open on signal to 9 p.m., during the months of daylight savings time, mariners are afforded the opportunity to extend their activities for the full period of daylight each day. The additional hour requiring a two-hour notice in the morning is advantageous to the bridge owner by not having to continuously man the bridge for that additional hour.

Presently, the bridge opens on signal, except that from 6 p.m. to 6 a.m. the draw shall open on signal if at least two hours notice is given. On Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m. This interim final rule allows the bridge to open on signal, except that from March 1 through October 30, the regular boating season, the draw shall open on signal if at least two hours notice is given from 9 p.m. to 7 a.m. During the winter months of November 1 through February 28 or 29, the bridge will revert to the two–hour notice requirement from 6 p.m. to 6 a.m. To continue to accommodate rush hour vehicular traffic the bridge will continue to remain closed to navigation, Monday through Friday, except Federal holidays,

from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m.

Discussion of Rule

This rule changes the time during which a mariner must request a two-hour notice for the bridge to open, from 6 p.m. to 6 a.m., to 9 p.m. to 7 a.m. The reason for this change is to allow recreational boaters a longer period of time to remain underway during daylight hours during daylight savings time and be able to request an opening on signal so that they can safely arrive at their berth before dark during the regular boating season. The change will only affect the period from March 1 through October 30 each year, the regular boating season. During the period from November 1 through February 28 or 29, the bridge will operate as it currently does, requiring a two-hour notice for opening between the hours of 6 p.m. and 6 a.m. The morning and afternoon closure times of from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m. will remain unchanged. The Coast Guard will evaluate comments received from the public before issuing a Final Rule for this change.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The boating public will benefit from the change by being allowed more time to remain underway without having to pass through the bridge prior to 6 p.m. The change will actually enhance the economic impact to businesses upstream of the bridge. The rule change will not inconvenience mariners in any way.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on small entities. The small entities that will be positively affected are: The owners of recreational boats who normally transit the waterway out to Lake Pontchartrain and four businesses that exist upstream of the bridge. The businesses upstream of the bridge are expected to benefit from the rule change because boaters will be able to transit the waterway and access the facilities more easily.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 117.433 is revised to read as follows:

§ 117.433 Bonfouca Bayou.

The draw of the S433 Bridge, mile 7.0, at Slidell, shall open on signal, except that from 6 p.m. to 6 a.m. from November 1 through February 28 or February 29, the draw shall open on signal if at least two hours notice is given. From March 1 through October 30, from 9 p.m. to 7 a.m. the draw shall open on signal if at least two hours notice is given. On Monday through Friday, except Federal holidays, throughout the year, the draw need not open for the passage of vessels from 7 a.m. to 8 a.m. and from 1:45 p.m. to 2:45 p.m.

Dated: November 25, 2009.

Mary E. Landry,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. E9–29750 Filed 12–21–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 565

[Docket No. NHTSA 2008–0022]

RIN 2127–AK63

Vehicle Identification Number Requirements; Technical Amendment

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

ACTION: Final rule; technical amendments.

SUMMARY: NHTSA published in the **Federal Register** of April 30, 2008, a final rule making certain changes in the 17-character vehicle identification number (VIN) system so that the system will remain viable for at least another 30 years. The effective date of that final rule was October 27, 2008. The agency published a correction document on May 16, 2008. Today's document makes further correction of several typographic errors in the regulatory text adopted by the April 2008 final rule.

DATES: *Effective Date:* December 22, 2009.

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).

SUPPLEMENTARY INFORMATION: NHTSA published a final rule in the **Federal Register** of April 30, 2008, (73 FR 23367; NHTSA Docket 2008–0022) that amended 49 CFR Part 565, making certain changes in the 17-character vehicle identification number (VIN) system so that there will be a sufficient number of unique manufacturer identifiers and VINs to use for at least another 30 years. A May 16, 2008, document corrected several typographical errors that appeared in the regulatory text of the April 30, 2008 final rule (73 FR 28370, Docket 20008–0022). Today's document corrects several additional errors, primarily incorrect references to sections of the CFR that have been renumbered.

List of Subjects in 49 CFR Part 565

Motor vehicle safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 565 as follows:

PART 565—VEHICLE IDENTIFICATION NUMBER (VIN) REQUIREMENTS

■ 1. The authority citation for part 565 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30141, 30146, 30166, and 30168; delegation of authority at 49 CFR 1.50.

Subpart B—VIN Requirements

■ 2. Section 565.13 is amended by revising paragraphs (a) and (g) to read as follows:

§ 565.13 General requirements.

(a) Each vehicle manufactured in one stage shall have a VIN that is assigned by the manufacturer. Each vehicle manufactured in more than one stage shall have a VIN assigned by the incomplete vehicle manufacturer. Vehicle alterers, as specified in 49 CFR 567.7, shall utilize the VIN assigned by the original manufacturer of the vehicle.

* * * * *

(g) Each character in each VIN shall be one of the letters in the set: [ABCDEFGHJKLMNPRSTUVWXYZ] or a numeral in the set: [0123456789] assigned according to the method given in § 565.15.

* * * * *

Subpart C—Alternative VIN Requirements in Effect for Limited Period

■ 3. Section 565.23 is amended by revising paragraphs (a) and (g) to read as follows:

§ 565.23 General requirements.

(a) Each vehicle manufactured in one stage shall have a VIN that is assigned by the manufacturer. Each vehicle manufactured in more than one stage shall have a VIN assigned by the incomplete vehicle manufacturer. Vehicle alterers, as specified in 49 CFR 567.7, shall utilize the VIN assigned by the original manufacturer of the vehicle.

* * * * *

(g) Each character in each VIN shall be one of the letters in the set: [ABCDEFGHJKLMNPRSTUVWXYZ] or a numeral in the set: [0123456789] assigned according to the method given in § 565.25.

* * * * *

Issued: December 11, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–30027 Filed 12–21–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0908191244–91427–02]

RIN 0648–XR08

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2010 Summer Flounder, Scup, and Black Sea Bass Specifications; Preliminary 2010 Quota Adjustments; 2010 Summer Flounder Quota for Delaware

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

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2010 summer flounder, scup, and black sea bass fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including commercial scup possession limits. This action prohibits Federally permitted commercial vessels from landing summer flounder in Delaware in 2010 due to continued quota repayment from previous years' overages.

The actions of this final rule are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The intent of this action is to establish harvest levels and other management measures to ensure that target fishing mortality rates (F) or exploitation rates, as specified for these species in the FMP, are not exceeded. In addition, this action implements measures that ensure continued rebuilding of these three stocks that are currently under rebuilding plans.

DATES: Effective January 1, 2010, through December 31, 2010.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment (EA), Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and Scientific and Statistical Committee are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov.* The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2298.

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

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the FMP developed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35° 13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. The Council prepared the FMP under the authority of the Magnuson-Stevenson Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing U.S. fisheries also appear at 50 CFR part 600. States manage summer flounder within 3 nautical miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the exclusive economic zone (EEZ), as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The regulations outline the process for specifying the annual catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (*e.g.,* mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual F targets set forth for each species in the FMP. Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2010 specifications for these fisheries was provided in the proposed specifications (74 FR 57134; November 4, 2009). That information is not repeated here.

NMFS will establish the 2010 recreational management measures (i.e., minimum fish size, possession limits, and fishing seasons) for summer flounder, scup, and black sea bass by publishing proposed and final rules in the **Federal Register** at a later date, following receipt of the Council's recommendations as specified in the FMP.

Summer Flounder

This final rule implements the specifications contained in the November 4, 2009, proposed rule: A summer flounder Total Allowable Landings (TAL) of 22.13 million lb (10,038 mt) for 2010, inclusive of 663,900 lb (301 mt) set aside for

research. Summer flounder remain under a stock rebuilding program and must achieve the rebuilding biomass target (*i.e.,* $B_{MSY(Maximum\ Sustainable\ Yield)}$) by January 1, 2013. Analysis conducted by the Southern Demersal Working Group (SDWG) indicates that the 2010 summer flounder TAL implemented by this rule is projected to provide the necessary stock growth to achieve the rebuilding objective within the specified timeframe. This TAL also satisfies a 2000 Federal Court Order (*Natural Resources Defense Council* v. *Daley,* Civil No. 1:99 CV 00221 (JLG)) which requires the annual summer flounder TAL to have at least a 50-percent probability of success. This TAL has a 50-percent probability of constraining fishing mortality below the management target of $F_{40\ percent} = 0.255$ and a 95-percent probability of constraining fishing mortality below the overfishing threshold of $F_{MSY} = F_{35\ percent} = 0.310$.

Three research projects that would utilize the full summer flounder research set-aside (RSA) of 663,900 lb (301 mt) have been conditionally selected by NMFS and are currently awaiting notice of award. If a proposed project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the summer flounder TAL through publication in the **Federal Register**. After deducting the 2010 RSA, the TAL is divided into an initial commercial quota of 13,278,000 lb (6,023 mt) and a recreational harvest limit of 8,852,000 lb (4,015 mt).

Consistent with the revised quota setting procedures for the FMP (67 FR 6877, February 14, 2002), summer flounder overages are determined based upon landings for the period January–October 2009, plus any previously unaccounted for overages from January–December 2008. Table 1 summarizes, for each State, the commercial summer flounder percent shares as outlined in § 600.100(d)(1)(I), the resultant 2010 commercial quota (both initial and less the RSA), the quota overages as described above, and the final adjusted 2010 commercial quota, less the RSA.

TABLE 1—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2010

State	Percent Share	Initial quota		Initial quota, less RSA		2009 Quota overages (through 10/31/09)[1]		Adjusted quota, less RSA	
		lb	kg	lb	kg	lb	kg	lb	kg
ME	0.04756	6,315	2,864	6,126	2,779	0	0	6,126	2,779
NH	0.00046	61	28	59	27	0	0	59	27
MA	6.82046	905,621	410,790	878,452	398,466	31,785	14,417	846,667	398,466
RI	15.68298	2,082,386	944,570	2,019,915	916,233	0	0	2,019,915	916,233
CT	2.25708	299,695	135,942	290,704	131,863	0	0	290,704	131,863
NY	7.64699	1,015,367	460,571	984,906	446,754	0	0	984,906	446,754
NJ	16.72499	2,220,744	1,007,330	2,154,122	977,110	0	0	2,154,122	977,110
DE	0.01779	2,362	1,071	2,291	1,039	55,687	25,259	−53,396	−24,220
MD	2.03910	270,752	122,813	262,629	119,129	0	0	262,629	119,129
VA	21.31676	2,830,439	1,283,887	2,745,526	1,245,371	0	0	2,745,526	1,245,371
NC	27.44584	3,644,259	1,653,036	3,534,931	1,603,445	0	0	3,534,931	1,603,445
Total[2]	100.00	13,278,001	6,022,901	12,879,661	5,842,214	87,472	39,677	12,792,189	5,802,439

[1] 2009 quota overage is determined through comparison of landings for January through October 2009, plus any landings in 2008 in excess of the 2008 quota (that were not previously addressed in the 2009 specifications) for each State. For Delaware, includes continued repayment of overharvest from 2009 and previous years.

[2] Total quota is the sum of all States having allocation. A State with a negative number has a 2010 allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding.

The Commission has established a system whereby 15 percent of each State's quota may be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery in a State has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while ensuring that the State's overall quota is not exceeded. These Commission set-asides are not included in these 2010 final summer flounder specifications because NMFS does not have authority to establish such subcategories.

Delaware Summer Flounder Closure

Table 1 indicates that, for Delaware, the amount of the 2009 summer flounder quota overage (inclusive of overharvest from previous years) is greater than the amount of commercial quota allocated to Delaware for 2010. As a result, there is no quota available for 2010 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any State that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2010, landings of summer flounder in Delaware by vessels holding commercial Federal summer flounder fisheries permits are prohibited for the 2010 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from Federally permitted vessels that land in Delaware for the 2010 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Scup

This final rule implements the specifications contained in the November 4, 2009, proposed rule: A 17.09-million-lb (7,752-mt) scup TAC and an 14.11-million-lb (6,400-mt) scup TAL. The TAC is divided into commercial (78 percent) and recreational (22 percent) allocations, in accordance with the FMP; the respective discard estimates are then subtracted to yield the preliminary TAL. After deducting 423,300 lb (192 mt) of RSA for the three conditionally selected research projects, the initial TAL is a commercial quota of 10,675,626 lb (4,842 mt) and a recreational harvest limit of 3,011,074 lb (1,366 mt). If a proposed project is not approved by the NOAA Grants Office, the research quota

associated with the disapproved proposal will be restored to the scup TAL through publication in the **Federal Register**.

The commercial TAC, discards, and TAL (commercial quota) are allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January–April)—45.11 percent; Summer (May–October)—38.95 percent; and Winter II (November–December)—15.94 percent. The recreational harvest limit is allocated on a coastwide basis. Consistent with the revised quota setting procedures established for the FMP (67 FR 6877, February 14, 2002), scup overages are determined based upon landings for the Winter I and Summer 2009 periods, plus any previously unaccounted for landings from the 2008 Winter II period. Table 2 presents the final 2010 commercial scup quota for each period and the reported landings for the 2009 Winter I and Summer periods. There were no overages of the 2009 Winter I or Summer Period quotas or previously unaccounted for overages of any 2008 quota periods; therefore, no adjustment to the 2010 scup specifications is required in this final rule. Any overage of the 2009 Winter II period will be addressed in July 2010, prior to the 2010 Winter II fishery.

Per the quota accounting procedures, after June 30, 2010, NMFS will compile all available landings data for the 2009 Winter II quota period and compare the landings to the 2009 Winter II quota period allocation, inclusive of any transfer from the 2009 Winter I quota period. Any overages will be determined, and deductions, if needed, will be made to the Winter II 2010 allocation and published in the **Federal Register**.

TABLE 2—SCUP PRELIMINARY 2009 COMMERCIAL LANDINGS BY QUOTA PERIOD

Quota period	2009 Quota		Reported 2009 landings through 10/31/09		Preliminary overages as of 10/31/09	
	lb	mt	lb	mt	lb	mt
Winter I	3,777,443	1,713	3,758,754	1,402	0	0
Summer	2,930,733	1,329	2,876,619	1,073	0	0
Winter II	Overage adjustment, if necessary, occurs in 2010					
Total	6,708,176	2,502	6,635,373	2,475	N/A	N/A

Table 3 presents the commercial scup percent share, 2010 TAC, projected discards, 2010 initial quota (with and without the RSA deduction), overage deductions (as necessary), and initial possession limits, by quota period.

This final rule continues the status quo Winter I period (January–April) per-trip possession limit of 30,000 lb (13.6 mt), and a Winter II period (November-December) initial per-trip possession limit of 2,000 lb (907 kg). The Winter I per-trip possession limit will be reduced to 1,000 lb (454 kg) when 80 percent of the commercial quota allocated to that period is projected to be harvested.

TABLE 3—INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2010 BY QUOTA PERIOD

	Total allowable catch	Discards	Initial quota	Initial quota less overages (through 10/31/2008) [1]	Adjusted quota less overages and RSA	Possession Limits (per trip) [2]							
						Quota period	Percent share	lb	mt	lb	mt	lb	mt
Winter I	45.11	6,013,253	2,728	1,048,537	476	4,964,716	2,252	N/A	N/A	4,815,775	2,184	30,000	13,608
Summer	38.95	5,192,113	2,355	905,354	411	4,286,759	1,944	N/A	N/A	4,158,156	1,886	N/A	N/A
Winter II	15.94	2,124,834	964	370,509	168	1,754,325	168	N/A	N/A	1,701,695	775	2,000	907
Total [3]	100.0	13,330,200	6,046	2,324,400	1,054	11,005,800	4,992	N/A	N/A	10,675,626	4,842	N/A	N/A

[1] *See* Table 1 for explanation of overages.
[2] The Winter I possession limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation. The Winter II possession limit may be adjusted (in association with a transfer of unused Winter I quota to the Winter II period) via notification in the FEDERAL REGISTER.
[3] Metric tons are as converted from pounds and may not necessarily add due to rounding.
N/A=Not applicable.

Consistent with the unused Winter I commercial scup quota rollover provisions at § 648.120(a)(3), this final rule maintains the Winter II possession limit-to-rollover amount ratios that have been in place since the 2007 fishing year, as shown in Table 4. The Winter II possession limit will increase by 1,500 lb (680 kg) for each 500,000 lb (227 mt) of unused Winter I period quota transferred, up to a maximum possession limit of 8,000 lb (3,629 kg).

TABLE 4—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	0–499,999	0–227	0	0	2,000	907

TABLE 4—POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD—Continued

Initial Winter II possession limit		Rollover from Winter I to Winter II		Increase in initial Winter II possession limit		Final Winter II possession limit after rollover from Winter I to Winter II	
lb	kg	lb	mt	lb	kg	lb	kg
2,000	907	500,000–999,999	227–454	1,500	680	3,500	1,588
2,000	907	1,000,000–1,499,999	454–680	3,000	1,361	5,000	2,268
2,000	907	1,500,000–1,999,999	680–907	4,500	2,041	6,500	2,948
2,000	907	2,000,000–2,500,000	907–1,134	6,000	2,722	8,000	3,629

Black Sea Bass

This final rule implements the specification contained in the November 4, 2009, proposed rule: A 2.3-million-lb (1,043-mt) black sea bass TAL. This is the *status quo.* The FMP specifies that the annual TAL is allocated 49 percent to the commercial sector and 51 percent to the recreational sector. After deducting 69,000 lb (31 mt) of RSA for the three conditionally selected research projects, the TAL is divided into a commercial quota of 1,093,190 lb (456 mt) and a recreational harvest limit of 1,137,810 lb (516 mt).

If a proposed project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the black sea bass TAL through publication in the **Federal Register**. Consistent with the revised quota setting procedures for the FMP, black sea bass overages are determined based upon landings for the period January–September 2009, plus any previously unaccounted for landings from January–December 2008. There were no overages for either period; thus, no overage deduction adjustment to the 2010 commercial quota is necessary.

Comments and Responses

NMFS received 18 comments during the 15-day comment period for the November 4, 2009, proposed rule. The majority of the comments applicable to the proposed specifications pertained to the catch levels recommended by the Council's Scientific and Statistical Committee (SSC) for scup and black sea bass. The majority of the applicable comments submitted raised the same or similar issues; therefore, the significant issues and concerns are summarized and responded to here.

Most comments pertained to a recent NMFS emergency action closure of the recreational black sea bass fishery in the EEZ (74 FR 51092; October 5, 2009). These comments are outside the scope of the proposed specifications and will be considered as comments on the emergency rule. NMFS will take these comments into consideration if the initial emergency action is extended beyond April 12, 2010, the date on which the 180-day closure is due to expire. NMFS will also take these comments into consideration during the development of the 2010 recreational management measures proposed rule, to be published in the spring of 2010, after the Council deliberates on such measures in early December 2009.

Comment 1: Some commenters stated that a 15-day comment period, beginning on the date of the proposed rule publication in the **Federal Register** on November 4, 2009, and ending on November 19, 2009, was too short. One U.S. Representative to Congress specifically requested that NMFS extend the proposed rule comment period beyond 15 days.

Response: NMFS has, for the past several years, utilized a 15-day comment period when publishing proposed specifications for summer flounder, scup, and black sea bass in order to ensure that NMFS satisfies a standing court order [1] that requires NMFS to implement the annual specifications for summer flounder effective on or before January 1 of each year. NMFS gave careful consideration to extending the comment period for the proposed 2010 summer flounder, scup, and black sea bass specifications, but determined that extending the comment period would likely jeopardize complying with this court order, as the time required to address comments, develop, and publish a final rule would not occur before January 1. Were specifications not in place for scup and black sea bass on January 1, no quotas would be established, nor would trip limits be in place for scup. Absence of quotas for the commercial fisheries was determined to be inconsistent with the goals and objectives of the FMP that are designed to prevent overfishing by establishment of both trip limits and a total quota level for the year that is related to an overall mortality objective for the stocks. A situation wherein there were no quotas established would allow uncontrolled harvest and prevent NMFS from enforcing possession limits or, if necessary, closing the fishery to ensure catch levels were not exceeded. Therefore, NMFS has determined that a 15-day comment period is reasonable under these circumstances.

Comment 2: Some commenters stated that the proposed rule only contained tables detailing commercial fishery quotas and that recreational anglers were disadvantaged by not being able to comment, presumably on the quotas for the recreational fishing sector.

Response: The proposed rule contains clear text descriptions of the proposed recreational harvest limit values and invites comment on all proposed measures. These values are not presented in tabular form because, unlike the commercial quotas, the recreational harvest limits are not subdivided into State allocations or fishing period allocations, and do not have applicable possession limits established through the specifications rule.

The November 4, 2009, proposed rule provided notice that the rule pertains to the 2010 proposed specifications, which are described as the commercial quotas and commercial management measures, such as trip limits, and the proposed 2010 recreational harvest limits. The proposed rule further clarified that the Council will consider recreational management measures (*i.e.,* minimum fish sizes, possession limits, and fishing seasons) at its December 2009 meeting.

The proposed 2010 recreational harvest level for summer flounder is found in the text on page 57136 of the November 4, 2009, proposed rule in the second paragraph of the third column; the proposed recreational harvest limit for scup is found in the text on page 57138 in the first paragraph of the second column; and the proposed recreational harvest limit for black sea bass is found in the text on page 57139 in the third paragraph of the first column.

[1] *North Carolina Fisheries Assoc. Inc. et al.* v. *Daley* Civil NO. 2:97cv339 (RGD).

Comment 3: Several commenters suggested that NMFS has misinterpreted requirements of the Magnuson-Stevens Act that Councils develop annual catch limits for each of their managed fisheries that may not exceed the fishing level recommendations of their SSC. One commenter stated that a citation to this aspect of the Magnuson-Stevens Act section 302(h)(6)) in the proposed rule, and previous statements by NMFS personnel that the 2010 catch levels could not exceed the Acceptable Biological Catch (ABC) levels recommended by the Council's SSC, purposefully and egregiously misled the public and, by inference, the Council, that the ABC represented a hard ceiling of catch levels that the Council could not exceed in recommending specification levels. In support of these commenters' positions, some referenced an October 22, 2009, letter from NOAA Administrator Dr. Jane Lubchenco to U.S. Senator Olympia Snowe, wherein Dr. Lubchenco stated, in regard to Atlantic herring, ''Because Atlantic herring is not subject to overfishing, a mechanism for specifying annual catch limits (ACLs) does not need to be implemented until 2011.'' The commenters reason that, by the logic in this statement, the Council could have recommended catch levels (*i.e.,* specifications) higher than the ABC levels recommended by the SSC, and that NMFS's advice to the contrary was incorrect.

Response: NMFS agrees that, for stocks not subject to overfishing, ACLs need not be established until 2011 and that there are not ACL mechanisms in the summer flounder, scup, or black sea bass regulations; however, the requirement that SSCs establish annual ABCs became effective when the Magnuson-Stevens Act was reauthorized in 2007. The SSC recommendation is a thorough scientific review process which examines best available scientific information. In order to be approvable, all actions taken under the Magnuson-Stevens Act must be consistent with all 10 National Standards, as well as applicable law. National Standard 2 requires that conservation and management measures shall be based on the best scientific information available. Thus, even in the absence of ACLs, were a Council inclined to ignore the ABC advice of its SSC and set catch levels higher than the recommended ABC level, substantial explanation and documentation would be necessary to substantiate why the SSC's ABC recommendation did not reflect the best scientific information available and to demonstrate that doing so is consistent with National Standard 2. Dr. Lubchenco's letter to Senator Snowe contains the following important information which was not cited by the commenters:

> * * * effective in January 2007, the Magnuson-Stevens Act enhanced the role of SSCs, mandating that they shall provide ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (Magnuson-Stevens Act § 302(g)(1)(B)). We [NMFS] have advised the Council that their recommendations for Atlantic herring catch limits will have to fully consider all Magnuson-Stevens Act requirements, including preventing overfishing (National Standard 1) and using best scientific information available (National Standard 2).

The Council has provided a catch recommendation for 2010 consistent with the ABC recommendation of its SSC; no alternative catch levels have been recommended. Thus, through this final rule, NMFS is implementing the 2010 recommendations of the Council, consistent with National Standard 2.

Comment 4: Several comments stated that the Council must direct its SSC to reconsider the 2010 ABCs for scup and black sea bass. Among the issues raised by the commenters were allegations that the SSC ignored all but the most precautionary statements of the 2008 Data Poor Stocks Working Group (DPSWG) peer-reviewed assessment for the two species, that the SSC overstepped its bounds and acted inappropriately setting the 2010 ABC with too much precaution, that the circumstances surrounding the 2009 ABC for black sea bass were not adequately considered (*i.e.,* the stock conditions for the 2009 recommendation were significantly different than for the 2010 recommendation), and that both species stocks are rebuilt, not overfished, nor experiencing overfishing, and that NMFS must increase the quotas above the level recommended by the SSC and, subsequently, the Council.

Response: The Council considered a motion to require the SSC to reconvene and reconsider its 2010 scup and black sea bass ABC recommendations during its August 2009 meeting in Alexandria, VA. The motion failed. The SSC is a formal standing committee of the Council, and only the Council may ask the SSC to reconvene or reconsider its recommendations. NMFS does not have the authority to task the SSC to convene or consider specific topics.

As indicated in numerous comments, NMFS agrees that the stock status for both scup and black sea bass are much improved based on the results of the DPSWG assessments and 2009 stock assessment updates. As stated, both stocks are rebuilt and not experiencing overfishing. The revised National Standard 1 guidance (74 FR 51092; January 16, 2009) contemplates the type of situation that has occurred for the 2010 ABC recommendations for scup and black sea bass: In situations where there are large amounts of either scientific or management uncertainty, or a combination of both, catch levels should be reduced from the overfishing level by an amount that adequately compensates for the uncertainties. The SSC had a thorough, deliberative discussion in making the 2010 ABC recommendations for scup and black sea bass, and best available scientific information regarding stock status was not ignored. Instead, the SSC found the statements from the DPSWG and the peer-review panel on the level of scientific uncertainties associated with the new assessments and the suggestions to proceed cautiously in increasing catches for either stocks compelling (See Northeast Fisheries Science Center Reference Documents 09–02a (DPSWG final report), 09–16 (2009 black sea bass stock status update), and 09–18 (2009 scup stock status update), all available at *http://www.nefsc.noaa.gov* for more information). For both stocks, the SSC expressed numerous concerns with the reliability and accuracy of the information that the new stock assessment models provide for making catch recommendations. The SSC recommendations, though conservative, are consistent with the National Standard 1 Guidelines (74 FR 3178; January 16, 2009), all of the other National Standards, and the FMP.

Comment 5: Several commenters stated that no catch levels should be implemented for scup and black sea bass until such time that the Council's revised ABC recommendation standard operating procedures, which will change the way the Monitoring Committee and SSC operate in making specification recommendations to the Council, are applied to the 2010 recommendations.

Response: NMFS does not agree that catch limits, through the specifications in this final rule, should not be implemented until the Council has directed its Monitoring Committees and SSC to reconsider the 2010 ABC recommendations. The process wherein the SSC and Monitoring Committees provided advice on scientific and management uncertainty, respectively, in setting 2010 ABC occurred as contemplated both by the Magnuson-Stevens Act, the Council's standard operating procedures as drafted in July

2009, and as outlined in the implementing regulations of the FMP. In the interim since the 2010 ABC recommendations were made, the Council has modified its standard operating procedures for the ABC recommendation process, and it is noted that the Monitoring Committee disagreed with the SSC's black sea bass 2010 ABC recommendation. However, the process did produce a vetted Council recommendation for 2010 catch levels for all three species. Some commenters have indicated that, had the current advice regarding the Council's ability to set catch levels higher than the ABC recommended by the SSC been available, the Council recommendations may have been different (*See* Comment and Response 3 for additional discussion). To date, the Council has not directed either its Monitoring Committee or its SSC to reconsider the proposed specifications for 2010; therefore, NMFS must act on the current recommendations of the Council, as submitted. In this case, NMFS has determined that the catch recommendations forwarded from the Council for 2010 are consistent with the Magnuson-Stevens Act, other applicable law, and the FMP.

Comment 6: Some comments stated that the proposed 2010 catch levels for scup and black sea bass, if implemented, would violate National Standard 1 because they would fail to achieve, on a continuing basis, optimum yield (OY). These comments further elaborate that there are currently no conservation issues with the scup or black sea bass stocks (*i.e.,* rebuilding programs or the need to end overfishing), so the fisheries must be managed to attain OY to provide the greatest benefit to the Nation. Some comments point toward the OY value for the southern stock of black sea bass, as managed in the Snapper-Grouper FMP in the South Atlantic, to make inferences that the northern stock catch for 2010 is being set well below the southern stock's OY.

Response: The commenters have misinterpreted the application of National Standard 1. NMFS interprets ''achieving on a continual basis'' to mean producing a long-term series of catches such that the average catch is equal to OY, overfishing is prevented, and long-term average biomass is near or above B_{MSY}. As such, National Standard 1 does not contemplate that the OY will necessarily be achieved in a single year given the natural fluctuation of fish stocks in response to environmental conditions. In the opinion issued by Judge Robert Doumar in *North Carolina Fisheries Assoc. Inc. et al.* v. *Daley* Civil NO. 2:97cv339 (RGD), the Court found the following in response to the plaintiff's allegation that a quota did not achieve OY for the 1997 fishing year:

''* * * The District of Columbia Circuit has defined optimum yield as ''maximum yield less whatever amount need be conserved for economic, social or ecological reasons.'' [2] This Court has also held that ''optimum yield is not the same as 'maximum yield.' '' [3] Furthermore, optimum yield is measured on a continuing basis, the optimum yield from each fishery, not the optimum yield in a single year.''

Further complicating the arguments presented by commenters is the fact that OY for black sea bass and scup in the Mid-Atlantic region have not been specified as a specific amount based on a reduction of MSY by relevant economic, ecological, and social factors. Under the Magnuson-Stevens Act OY is less than or equal to MSY proxy. While OY is a requirement for all FMPs, to date, information of sufficient quality has not been available to specify MSY or OY for scup or black sea bass. Instead, an MSY proxy has been used for these stocks and the Council has not modified the proxy to specify an OY different from it. The Council will re-evaluate OY specifications for its managed species as part of the Omnibus Amendment being developed to implement ACLs.

It is inappropriate to assume that the OY value of the southern stock of black sea bass is at all informative as a comparison for the northern stock, as was done by a number of the commenters. The species is the same, but the stocks are distinct in many ways and, as such, the MSY and OY values would be expected to differ.

NMFS acknowledges that the 2010 catch level recommendations from the Council, as implemented in this final rule, are conservative relative to the B_{MSY} values for the two stocks; however, the SSC provided clear rationalization for its 2010 ABC recommendation.

The National Standard 1 guidelines (74 FR 3178; January 16, 2009), contemplate reducing catch levels from OY in situations where the uncertainties pertaining to the fishery necessitate so doing. Response to Comment 35 (page 3190 of the January 16, 2009, rule, 74 FR 3178) states,

''NMFS believes that fisheries managers cannot consistently meet the requirements of the Magnuson-Stevens Act to prevent overfishing and achieve, on a continuing basis, OY unless they address scientific and management uncertainty. The reductions in fishing levels that may be necessary in order to prevent overfishing should be only the amount necessary to achieve the results mandated by the Magnuson-Stevens Act. Properly applied, the system described in the guidelines does not result in 'too many deductions,' but rather, sets forth an approach that will prevent overfishing, achieve on a continuing basis OY, and incorporate sufficient flexibility so that the guidelines can be applied in different fisheries.''

Further, the National Standard 1 guidelines, (74 FR 3178; January 16, 2009) on page 3208 in (v) *Specification of OY* states:

''If the estimates of MFMT [Maximum Fishing Mortality Threshold] and current biomass are known with a high level of certainty and management controls can accurately limit catch then OY could be set very close to MSY * * * To the degree that such MSY estimates and management controls are lacking or unavailable, OY should be set further from MSY. If management measures cannot adequately control fishing mortality so that the specified OY can be achieved without overfishing, the Council should reevaluate the management measures and specification of OY so that the dual requirements of NS1 [National Standard 1] (preventing overfishing while achieving, on a continual basis, OY) are met.''

In this instance, the SSC has indicated that substantial uncertainty exists in the new stock assessments for both scup and black sea bass. The biomass estimates provided by the stock assessment are uncertain, as are the MFMT or overfishing threshold levels calculated, as this is the first year of fishing under the information provided by the new assessment methodology and outputs. By inference, the SSC may have been concerned that there is a likelihood that overfishing could occur if catch levels are set too high. The perception from the updated assessments is that both stocks are well above the respective overfishing thresholds; however, the SSC has provided for conservative catches in 2010 in an effort to validate the information provided by the new, as of yet untested, stock assessments. This is a reasonable approach, and consistent with the guidance on setting catches relative to OY/MSY proxy. Presumably, if the stock assessment information is validated by the 2010 catches, overfishing does not occur, and the new model framework performs as expected in response to the 2010 fishing activities, the future management response and catch recommendations could be to increase catches and to move long-term average catches toward OY/MSY proxy levels. Conversely,

[2] *C&W Fish Co., Inc.* v. *Fox,* 289 U.S. App. DC 323, 931 F2d 1556, 1563 (DC Cir. 1991).

[3] *J.H. Miles & co.* v. *Brown,* 910 F. Supp. 1138,1148 (E.D. Va. 1995).

should the updated stock assessment information indicate that the 2010 fishery levels were either too high, the stock information overly optimistic, the MFMT inaccurate, or the stock to be subject to overfishing, the response may be more conservative management in the future until such time that these issues may be resolved. If the confidence in the most recent stock assessments for both species does not improve over time, the Council should consider setting OY below the MSY proxy levels so that the long-term average desired yield is achieved on a continuing basis.

Comment 7: Some commenters did not support the use of RSA in 2010, stating that the 3-percent set aside would be better applied to the recreational fisheries. Specifically, one commenter disagreed with the awarding of RSA to fund a near-shore trawl survey project, stating that NMFS should be obligated to provide funding for and/or conduct near-shore surveys.

Response: NMFS continues to support the use of RSA as a means for the Council and the agency to cooperatively fund research that meets the identified research priorities of the Council. The RSA project selection and approval process is not part of the specification rulemaking process. Inclusion of those projects that have been given a preliminary approval for 2010 RSA award in the proposed rule is done to solicit comment on Exempted Fishing Permits (EFPs) that may be awarded at a later date to support the described research and compensation fishing activities. No specific exceptions to the proposed EFPs were raised in the comments on the proposed rule; rather, the comments are geared toward specific projects that have been preliminarily identified for 2010 RSA award and the overall goals and objectives of the RSA program. NMFS and the Council work cooperatively each year to identify research priorities and to determine which submitted proposals should be selected for eventual RSA funding through the NOAA Grants award process. The commenter's letter has been forwarded to both the Northeast Fisheries Science Center (NEFSC) and the Council's Research Steering Committee, as these groups are involved in the annual RSA project selection process and are better suited to address the concerns raised.

Classification

The Administrator, Northeast Region, NMFS, determined that this final rule is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this rule, to ensure that the final specifications are in place on January 1, 2010. This action establishes specifications (*i.e.,* annual quotas) for the summer flounder, scup, and black sea bass fisheries, and possession limits for the commercial scup fishery.

Preparation of the proposed rule was dependent on the submission of the EA/RIR/IRFA in support of the specifications that is developed by the Council. This document was received by NMFS in mid-September 2009. Documentation in support of the Council's recommended specifications is required for NMFS to provide the public with information from the environmental and economic analyses as required in rulemaking. The proposed rule published on November 4, 2009, with a 15-day comment period ending November 19, 2009. Publication of the adjusted summer flounder quota at the start of the fishing year that begins January 1, 2010, is required by the order of Judge Robert Doumar in *North Carolina Fisheries Association* v. *Daley.*

If the 30-day delay in effectiveness were not waived, the lack of effective quota specifications on January 1, 2010, would present significant difficulties to both NMFS and individual States who manage these species cooperatively through the Commission. The summer flounder, scup, and black sea bass fisheries are all expected, based on historic participation and harvest patterns, to be very active at the start of the fishing season in 2010. Individual States would be unable to set commercial possession and/or trip limits, which apportion the catch over the entirety of the calendar year. NMFS would be unable to control harvest in any way, as there would be no quotas in place for any of the three species until the regulations are effective. NMFS would be unable to control harvest or close the fishery should landings exceed the quotas. In addition, the Delaware summer flounder fishery would be open for fishing, but in a negative quota situation. All of these factors would result in a race for fish wherein uncontrolled landings would occur. Disproportionately large harvest occurring within the first weeks of 2010 would have distributional effects on other quota periods, and would disadvantage some gear sectors or owners and operators of smaller vessels that typically fish later in the fishing season. There is no historic precedent by which to gauge the magnitude of harvest that might occur should quotas for these three species not be in place during the first weeks of 2010. It is reasonable to conclude that the commercial fishing fleet possesses sufficient capacity to exceed the established quotas for these three species before the regulations would become effective, should quotas not be in place on January 1, 2010. Should this occur, the fishing mortality objectives for all three species and the summer flounder rebuilding plan would be compromised.

This final rule is exempt from review under Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This FRFA was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA and a summary of the analyses completed to support the action. No significant issues were raised by the public comments in response to the IRFA. A copy of the EA/RIR/IRFA is available from the Council (*see* **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are contained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

No changes to the proposed rule were required to be made as a result of public comments. None of the comments received raised specific issues regarding the economic analyses summarized in the IRFA. For a summary of the comments received, and the responses thereto, refer to the ''Comments and Responses'' section of this preamble.

Description and Estimate of Number of Small Entities To Which the Rule Will Apply

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal commercial or charter/party permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in State waters. The Council estimates that the 2009 quotas could affect 2,213 vessels

that held a Federal summer flounder, scup, and/or black sea bass permit in 2008, the most recent year for which complete permit data exist. The more immediate impact of this final rule will likely be felt by the 808 vessels that actively participated (*i.e.,* landed these species) in these fisheries in 2008.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken To Minimize Economic Impact on Small Entities

Specification of commercial quotas and possession limits is constrained by the conservation objectives set forth in the FMP and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Act. Economic impacts of changes in year-to-year quota specifications may be offset by adjustments to such measures as commercial fish sizes, changes to mesh sizes, gear restrictions, or possession and trip limits that may increase efficiency or value of the fishery. For 2010, no such adjustments were recommended by the Council; therefore, this final rule contains no such measures. Therefore, the economic impact analysis of the action is evaluated solely on the different levels of quota specified in the alternatives. The ability of NMFS to minimize economic impacts for this action is constrained to approving quota levels that provide the maximum availability of fish while still ensuring that the required objectives and directives of the FMP, its implementing regulations, and the Magnuson-Stevens Act are met. In particular, the Council's SSC has made recommendations for the 2010 ABC level for all three stocks. NMFS considers this recommendation to be consistent with National Standard 2. Establishment of catch levels higher than the SSC ABC recommendations would require substantial, compelling argument and documentation that the recommendations were not, in fact, based on the best available scientific information. NMFS-approved measures for the summer flounder fishery must also ensure that the statutory requirements of the stock rebuilding program are met by the January 1, 2013, rebuilding deadline.

The economic analysis for the 2010 specification assessed the impacts for quota alternatives that achieve the aforementioned objectives. The no action alternative, wherein no quotas are established for 2010, was excluded from analysis because it is not consistent with the goals and objectives of the FMP and the Magnuson-Stevens Act. Implementation of the no action alternative in 2010 would substantially complicate the approved management programs for these three species. NMFS is required under the FMP's implementing regulations to specify and implement a TAL (and TAC for scup) for these fisheries on an annual basis. The no action alternative would result in no fishing limits for 2010, and could result in overfishing of the resources and substantially compromise the mortality and/or stock rebuilding objectives for each species.

Furthermore, Alternative 2 from the Council's analysis contains the most restrictive TAL options (*i.e.,* the lowest catch levels). While this alternative would achieve the required objectives for all three species, it carries the highest potential negative impact on small entities in the form of foregone fishing opportunity. Alternative 2 was not preferred by the Council or NMFS because other alternatives considered have lower impacts on small entities while achieving the stated objectives of the 2010 specification process.

Alternative 3 (least restrictive quotas; highest catch levels) would produce the smallest impact on small entities. For all three species, the respective quotas under Alternative 3 are inconsistent with the SSC's catch level recommendations. For summer flounder, the Alternative 3 measures do not achieve the objectives required under the summer flounder rebuilding program. Because the respective Alternative 3 measures would establish annual fishing limits that are exceed the fishing level recommendations of the Council's SSC, they are inconsistent with the Magnuson-Stevens Act requirements and cannot be implemented for 2010, despite having the lowest associated impact on small entities.

Through this final rule, NMFS implements the summer flounder, scup, and black sea bass TALs contained in Alternative 1, the Council's preferred alternatives, which consist of the quota alternatives that pair the lowest economic impacts to small entities and meet the required objectives of the FMP and the Magnuson-Stevens Act. Relative to 2009, the 2010 commercial quotas and recreational harvest measures in this action would result in the following TAL changes for the commercial and recreational sectors:

(1) A 19.9-percent increase for summer flounder;

(2) A 26.2-percent increase for scup; and

(3) Status quo for black sea bass.

The respective TALs contained in Alternative 1 for all three species were selected because they satisfy NMFS's obligation to implement specifications that are consistent with the goals, objectives, and requirements of the FMP, its implementing regulations, and the Magnuson-Stevens Act. The F rates associated with the TALs for all three species all have very low likelihoods of causing overfishing to occur in 2010. TAL Alternative 1 for summer flounder is also projected to provide the necessary continued stock rebuilding to achieve the SSB_{MSY} by the rebuilding period ending date of January 1, 2013.

The revenue decreases associated with the RSA program are expected to be minimal, and are expected to yield important benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSA program would be sold, and the profits would be used to offset the costs of research. As such, total gross revenues to the industry will not decrease substantially, if at all, as a result of this final rule authorizing RSA for 2010.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (*i.e.,* permit holder letter) are available from NMFS (*see* **ADDRESSES**) and at the following Web site: *http://www.nero.noaa.gov.*

Dated: December 16, 2009.

Samuel D. Rauch III,

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

[FR Doc. E9–30388 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No.0812171612–9134–02]

RIN 0648–XT31

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting the incidental harvest of Pacific sardine off the coasts of Washington, Oregon and California. This action is necessary because the incidental set aside for the third allocation period of the 2009 Pacific sardine season has been reached. From the effective date of this rule until January 1, 2010, Pacific sardine can only be harvested as part of the live bait fishery.

DATES: Effective December 23, 2009 through December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, Southwest Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the Pacific coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). Annual specifications published in the **Federal Register** establish the annual HG and allowable seasonal harvest levels for each Pacific sardine fishing season (January 1 - December 31). If during any of the seasonal allocation periods the applicable adjusted directed harvest allocation is projected to be taken, only incidental harvest is allowed and, for the remainder of the period, any incidental Pacific sardine landings will be counted against that period's incidental set aside. In the event that an incidental set-aside is attained all fisheries will be closed to the retention of Pacific sardine for the remainder of the period.

On September 23, 2009, NMFS closed the directed harvest of Pacific sardine but provided allowance for incidental harvest when sardine was caught incidental to other fisheries (74 FR 48421). This document announces that based on the best available information recently obtained from the fishery the incidental set aside amount for the third allocation period, and therefore the total third period allocation of 14,737 mt (directed HG and incidental set-aside), was reached approximately during the week of November 30 to December 4. All retention and harvest of Pacific sardine is therefore closed until January 1, 2010. From the effective date of this rule until January 1, 2010, Pacific sardine can only be harvested as part of the CPS live bait fishery and can no longer be landed incidental to other CPS fisheries.

Under 50 CFR 660.509 if the total harvest guideline (HG) or seasonal apportionment levels for Pacific sardine are reached at any time, NMFS is required to close the Pacific sardine fishery via appropriate rulemaking and it is to remain closed until it re-opens either per the allocation scheme or the beginning of the next fishing season. In accordance with § 660.509 the Regional Administrator shall publish a notice in the **Federal Register** announcing the date of the closure of fishing for Pacific sardine.

For further background information on this action please refer to the final rule implementing the 2009 HG and management measures (74 FR 31199, June 30, 2009).

Classification

This action is required by 50 CFR 660.509 and is exempt from Office of Management and Budget review under Executive Order 12866.

NMFS finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) for the closure of the 2009 Pacific sardine fishing season. For the reasons set forth below, notice and comment procedures are impracticable and contrary to the public interest. For the same reasons, NMFS also finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effectiveness for this action. This measure responds to the best available information and is necessary for the conservation and management of the Pacific sardine resource. A delay in effectiveness would could cause the fishery to further exceed the seasonal harvest level or total HG. The HG is an important mechanism in preventing overfishing and managing the fishery at optimum yield.

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

Dated: December 16, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30389 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 244
Tuesday, December 22, 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.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1422

RIN 3041–AC78

Standard for Recreational Off-Highway Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of comment period.

SUMMARY: The Commission is extending its comment period to receive information regarding the advance notice of proposed rulemaking concerning Recreational Off-Highway Vehicles (ROVs). The Commission received two letters requesting an extension of the comment period, one from three manufacturers and distributors of Multi-Purpose Off-Highway Utility Vehicles, and the other from a trade association. The letters each requested that the comment period be extended 60 days from the date certain information was received by the companies or became publicly available. The Commission has decided to extend the comment period 75 days after the original comment period of December 28, 2009.

DATES: Written comments in response to this document must be received by the Commission no later than March 15, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0087, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov*.

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper (preferably in five copies), disk, or CD–ROM submissions), to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

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

FOR FURTHER INFORMATION CONTACT: For information about submitting comments, call or write to Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Bethesda, MD 20814; telephone (301) 504–6833.

SUPPLEMENTARY INFORMATION: On October 28, 2009, the Commission published an ANPR in the **Federal Register** concerning ROVs. 74 FR 55495. The ANPR was issued under the authority of the Consumer Product Safety Act (CPSA). The ANPR provided for a 60-day comment period to end December 28, 2009. Three companies that manufacture and/or distribute Multi-Purpose Off-Highway Utility Vehicles (American Honda Motor Co., Inc., Deere & Company and Kawasaki Motors Corp., U.S.A.) and a trade association (Recreational Off-Highway Vehicle Association) have requested that the Commission extend the comment period 60 days after the companies receive certain information or that information becomes publicly available. A portion of this information was publicly released on November 20, 2009. The remainder, which was posted for a period of five days on the Commission's Web site in draft form, was finalized on December 15, 2009, and is now publicly available.[1] Because this information was only recently released, the Commission has decided to extend the comment period to 75 days from the date of the original comment period deadline, or March 15, 2010.

Dated: December 17, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–30378 Filed 12–21–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 41

[Docket No.: PTO–P–2009–0021]

RIN 0651–AC37

Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Request for Comments on Potential Modifications to Final Rule and Notice of Roundtable During Comment Period

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Advance notice of proposed rule making; request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is considering modifications to rules governing practice before the Board of Patent Appeals and Interferences (BPAI) in ex parte patent appeals. Previously submitted comments with regard to an earlier published final rule, particularly those submitted in response to a proposed collection of information, raised some public concerns which have been reconsidered by the Office. After further consideration of these concerns, the Office is issuing this notice seeking further public comment on possible revisions to portions of the final rule. In order to facilitate a full exchange of views, the United States Patent and Trademark Office is also conducting a public session and roundtable in connection with this request for comments. Following the public comment period, if the Office

[1] All of this information will become part of the public record.

determines further action is necessary, a subsequent notice of proposed rule making would be issued to solicit additional comments on specific proposals before any modified final rule would be issued.

DATES: The roundtable is scheduled to be held on January 20, 2010, beginning at 9:30 a.m. and ending at 12:30 p.m. In the event of inclement weather or other reason for cancellation or delay, the public is advised to check the USPTO, Board of Patent Appeals and Interferences Web site for the latest roundtable scheduling information (*http://www.uspto.gov/patents/process/appeal/*).

The deadline for receipt of requests to participate in the roundtable is 5 p.m. Eastern Standard Time on January 8, 2010.

The deadline for receipt of written comments on potential modifications to the final rule is 5 p.m. Eastern Standard Time on February 12, 2010.

Additionally, the USPTO will accept written comments on other matters discussed at the roundtable until 5 p.m. Eastern Standard Time on February 25, 2010.

Because the USPTO is now considering the final rule anew, and in light of potential modifications to the final rule, appeal briefs filed on or after January 21, 2010 must comply with the current rules in effect.

ADDRESSES: The roundtable will be held at the USPTO, in the Madison Auditorium on the concourse level of the Madison Building, which is located at 600 Dulany Street, Alexandria, Virginia.

Requests to participate at the roundtable are required and must be submitted by electronic mail message through the Internet to *linda.horner@uspto.gov*. Requests to participate at the roundtable should indicate the following information: (1) The name of the person desiring to participate and his or her contact information (telephone number and electronic mail address); and (2) the organization(s) he or she represents.

Written comments on potential modifications to the final rule should be sent by electronic mail message over the Internet addressed to *BPAI.Rules@uspto.gov*. Comments on potential modifications to the final rule may also be submitted by mail addressed to: Mail Stop Interference, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Linda Horner, BPAI Rules.'' Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

Written comments on general topics discussed at the roundtable should be sent by electronic mail message over the Internet addressed to *BPAI.Roundtable@uspto.gov*. Comments on general topics discussed at the roundtable may also be submitted by mail addressed to: Mail Stop Interference, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Linda Horner, BPAI Gen. Topics.'' Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The written comments and list of the roundtable participants and their associations will be available for public inspection at the Board of Patent Appeals and Interferences, located in Madison East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web site (address: *http://www.uspto.gov/web/offices/dcom/bpai/*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Linda Horner, Administrative Patent Judge, Board of Patent Appeals and Interferences, by telephone at (571) 272–9797, or by mail addressed to: Mail Stop Interference, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Linda Horner.

SUPPLEMENTARY INFORMATION:

Background

The United States Patent and Trademark Office (USPTO or Office) published a notice of proposed rule making governing practice before the Board of Patent Appeals and Interferences (BPAI) in ex parte patent appeals (72 FR 41,472–41,490 (Jul. 30, 2007)). The notice was also published in the Official Gazette. 1321 Off. Gaz. Pat. Office 95 (Aug. 21, 2007). The public was invited to submit written comments. Comments were to be received on or before September 30, 2007.

A final rule making was then published in the **Federal Register** (73 FR 32937–32977 (Jun. 10, 2008)). The final rule that was published on June 10, 2008, may be viewed at *http://www.uspto.gov/web/offices/com/sol/notices/73fr32938.pdf*. The final rule stated that the effective date was December 10, 2008, and that the final rule would apply to all appeals in which an appeal brief was filed on or after the effective date. On June 9, 2008, the Office published a 60-Day **Federal Register** notice requesting the Office of Management and Budget (OMB) to establish a new information collection for BPAI items in the final rule and requesting public comment on the burden impact of the final rule under the provisions of the Paperwork Reduction Act (PRA). On October 8, 2008, the Office published a 30-Day **Federal Register** notice stating that the proposal for the collection of information under the final rule was being submitted to OMB and requesting that comments on the proposed information collection be submitted to OMB. Because the information collection process had not been completed by the original effective and applicability date of the final rule, the Office published a **Federal Register** notice (73 FR 74972 (December 10, 2008)) notifying the public that the effective and applicability date of the final rule was not December 10, 2008, and that the effective and applicability dates would be identified in a subsequent notice.

Additionally, on January 20, 2009, the Assistant to the President and Chief of Staff instructed agencies via a memorandum entitled, ''Regulatory Review,'' to consider seeking comments for an additional 30 days on rules that were published in the **Federal Register** and had not yet become effective by January 20, 2009. On January 21, 2009, the Office of Management and Budget issued a memorandum, ''Implementation of Memorandum Concerning Regulatory Review,'' which provided agencies further guidance on such rules that had not yet taken effect. For such rules, both memorandums stated that agencies should consider reopening the rule making process to review any significant concerns involving law or policy that have been raised.

The USPTO is now considering further modifications to the rules of practice before the Board of Patent Appeals and Interferences in ex parte appeals and is conducting a roundtable and publishing this request for comments to solicit input from interested members of the public on potential modifications to the final rule. The Office seeks comment both on potential modifications to the final rule and issues of law and policy raised by the final rule.

The Office has further considered the comments thus far submitted and is considering changes to the final rule to significantly reduce any additional burden introduced by the final rule. The

continued delay of the effective and applicability dates and a new comment period are necessary to give the public additional time to comment on potential modifications to the final rule and to permit the Director to evaluate any additional comments to determine if the rules are consistent with administration policy.

On November 20, 2008 [73 FR 70282], the Office published a clarification notice on the effective date provision. *See* Clarification of the Effective Date Provision in the Final Rule for Ex Parte Appeals, 73 FR 70282 (November 20, 2008). The clarification notice states that the Office will not hold an appeal brief as non-compliant solely for following the new format set forth in the notice published on June 10, 2008, in the **Federal Register** (Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Final Rule, 73 FR 32938 (June 10, 2008), 1332 Off. Gaz. Pat. Office 47 (July 1, 2008)). Because the USPTO is now considering the final rule anew, and in light of the potential modifications to the final rule, for purposes of consistency, the Office will now no longer accept appeal briefs in the new format. Therefore, appeal briefs filed on or after 30 days from the publication of this notice must comply with the current 37 CFR 41.37. For clarity, this notice refers to three sets of Board Rules: (1) The ''current board rules'' published in 37 CFR 41.1 *et seq.* (2007); (2) the ''final rule'' published on June 10, 2008 [73 FR 32938], the effective date of which is delayed; and (3) potential modifications to the board rules published in this notice for the purpose of soliciting comments from the public. The current rules in effect are the current board rules as published in 37 CFR 41.1 *et seq.* (2007).

Furthermore, the Office has posted a list of questions and answers on the USPTO Web site (at *http://www.uspto.gov/web/offices/dcom/bpai/rule/faq_121008.html*) regarding the implementation of the Board final rule. These questions and answers will be updated after the Office issues notice of the revised effective and applicability dates for the final rule. Previously submitted comments, particularly those submitted in response to the PRA notice [73 FR 32559], raised some public concerns which have been reconsidered by the Office. After further consideration of these concerns the Office is considering modifications to the final rule as follows below.

Public Participation

In addition to these considerations to modify the final rule, the Office is also seeking comment on those portions of the final rule that are not being specifically considered for modification in this notice. After receiving comments from the public as a result of this notice, the Office would issue a notice of proposed rulemaking seeking additional feedback on proposed rule changes before any modifications to the final rule would take effect.

The date for the roundtable has been set to occur during the comment period so that participants will have time to familiarize themselves with modifications to the final rule that are under consideration in advance of the roundtable so as to provide meaningful input to the USPTO and so that those submitting written comments will have the benefit of the discussion from the roundtable and adequate time after the roundtable to prepare and submit written comments. The public session will also include a presentation by the USPTO of the challenges, including an increased appeal workload, facing the Board of Patents Appeals and Interferences. It will discuss the results it hopes to achieve from any potential modifications to the final rule and will solicit input from the roundtable participants on how, beyond the procedural changes that are under consideration, to meet these challenges.

The number of participants in the roundtable is limited to ensure that all who are speaking will have a meaningful chance to do so. The roundtable is open to the public, but participation in the roundtable is by request, as the number of participants in the roundtable is limited. The USPTO plans to invite a number of participants from patent user, practitioner, industry, and independent inventor organizations, academia, industry, and government. The USPTO also plans to have a few ''at-large'' participants based upon requests received in response to this notice to ensure that the USPTO is receiving a balanced array of views on the potential modifications to the final rule. The USPTO will attempt to provide selected participants with notice at least seven days prior to the roundtable. While members of the public who wish to participate in the roundtable must do so by request, members of the public who wish solely to observe need not submit a request. Any member of the public, however, may submit written comments on issues raised at the roundtable or on potential modifications to the final rule under consideration by the USPTO.

The USPTO plans to make the roundtable available via Web cast. Web cast information will be available on the USPTO's Internet Web site before the roundtable. The written comments and list of the roundtable participants and their associations will be posted on the USPTO's Internet Web site.

This notice is not a publication of a final rule. After the public comment period, if the Office determines further action is necessary, a subsequent notice of proposed rule making will be issued to solicit additional comments on specific proposals before any modified final rule would be issued. The Office is publishing these possible modifications to the final rule for the purpose of soliciting comments from the public on these topics. The Office will also be accepting comments on other matters raised at the public session and roundtable.

Purpose for Potential Modifications to the Final Rule Under Consideration

The Office is considering modifications to the final rule in an effort to efficiently frame any dispute between the appellant and the examiner for the benefit of the Board and the appeal conferees to provide the best opportunity for resolution of the dispute without the necessity of proceeding with the appeal, and in an effort to reduce the number of returns based on defective briefs. The Office is also considering further modifications to the final rule that would reserve (delete) certain sections of the final rule that place a burden on appellants appearing before the BPAI in ex parte appeals. The **SUPPLEMENTARY INFORMATION** in this notice provides: (1) An explanation of the possible modifications to the final rule (referred to herein as the ''potential modifications to the final rule'') under consideration, (2) a discussion of the differences between the potential modified final rule and the existing rule, and (3) a copy of potential modifications to the final rule under consideration.

Explanation of Potential Modifications to the Final Rule

Several changes are being considered to the final rule as compared to the final rule as published in 73 FR 32937 (June 10, 2008). The possible changes under consideration include: (1) Deleting portions of the rule that require the filing of a petition to the Chief Administrative Patent Judge seeking extensions of time to file certain papers after an appeal brief is filed in an ex parte appeal or seeking to exceed a page limit; (2) deleting portions of the rule that require the filing of a jurisdictional statement, table of contents, table of authorities, and statement of facts in appeal briefs, a table of contents, table of authorities, and statement of additional facts in reply briefs, and a table of contents and table of authorities

in requests for rehearing filed in ex parte appeals; (3) deleting portions of the rule that require an appellant to specifically identify which arguments were previously presented to the Examiner and which arguments are new; (4) deleting portions of the rule that require specific formatting requirements and page limits for appeal briefs, reply briefs, and requests for rehearing; and (5) deleting portions of the rule that require appellants to provide a list of technical terms and other unusual words for an oral hearing. The Office is also considering a revision to the final rule so that an examiner may continue to enter a new ground of rejection in an examiner's answer (as is allowed under the current rules). The Office is also considering not allowing an examiner to file a supplemental examiner's answer in response to a reply brief. For reasons of administrative efficiency, the Office is also considering revising the final rule to make clear that the Chief Administrative Patent Judge, rather than the Board, may remand an application to the examiner.

Discussion of Potential Modifications to the Final Rule

What follows is a discussion of the potential modifications to the final rule (text follows) compared to the existing rule, currently in effect, for discussion at the roundtable.

Existing rules in Part 1 are denominated as ''Rule x'' in this **SUPPLEMENTARY INFORMATION**. For example, a reference to Rule 136(a) is a reference to 37 CFR 1.136(a) (2007).

Existing rules in Part 41 are denominated as ''Rule 41.x'' in this **SUPPLEMENTARY INFORMATION**. For example, a reference to Rule 41.3 is a reference to 37 CFR 41.3 (2007).

Potential modifications to the final rule in this request for comments and notice of roundtable are denominated as ''Bd.R. x'' in this **SUPPLEMENTARY INFORMATION**. For example, a reference to Bd.R. 41.3 is a reference to the potential modification of 37 CFR 41.3 (2007), as considered for discussion in this request for comments and notice of roundtable.

Definitions

Bd.R. 41.2 amends Rule 41.2 to eliminate from the definition of ''Board'' any reference to a proceeding under Bd.R. 41.3 relating to petitions to the Chief Administrative Patent Judge. Action by the Chief Administrative Patent Judge is action on behalf of the Director by delegation to the Chief Administrative Patent Judge. *See* MPEP § 1002.02(f) (8th ed., Aug., 2006).

Bd.R. 41.2 also amends Rule 41.2 to eliminate a petition under Bd.R. 41.3 from the definition of contested case. At the present time, there are no petitions authorized in a contested case.

Petitions

Bd.R. 41.3 is amended to include a delegation of authority from the Director to the Chief Administrative Patent Judge to decide certain petitions authorized by Part 41. The delegation of authority would be in addition to that already set out in the MPEP § 1002.02(f) (8th ed., Aug., 2006).

Bd.R. 41.3(b) is amended to define the scope of petitions which can be filed pursuant to the rules. Under Bd.R. 41.3(b), a petition could not be filed to seek review of issues committed by statute to a panel. *See, e.g., In re Dickinson,* 299 F.2d 954, 958 (CCPA 1962).

Timeliness

Bd.R. 41.4(c) is amended to add the phrase ''Except to the extent provided in this part'' and to revise paragraph 2 to read: ''Filing of a notice of appeal, a brief, or a request for oral hearing (*see* §§ 41.31, 41.37, 41.41, 41.47, 41.61, 41.66, 41.67, 41.68, 41.71 and 41.73).'' The amendment makes clear that the Chief Administrative Patent Judge would not determine whether extensions are to be granted for the filing of papers before the Board has jurisdiction.

Citation of Authority

Rule 41.12 currently requires the public to cite to specific reporters, including some parallel citations. The Board, however, no longer follows the practice specified in Rule 41.12, and does not use parallel citations. Accordingly, Bd.R. 41.12 is amended to make the rule consistent with Board practice and minimize the citation burden on the public. Under Bd.R. 41.12, as amended, a citation to a single source, in the priority order set out in the rule, will be sufficient.

Definitions

Bd.R. 41.30 is amended to add a definition of ''Record.'' The Record on appeal would be the official content of the file of an application or reexamination proceeding on appeal. In the rules, a reference to ''Record'' with a capital R is a reference to the Record as defined in Bd.R. 41.30. The definition advises applicants of what documents the Board will consider in resolving the appeal. The definition also makes it clear to any reviewing court what record was considered by the Board.

Appeal to Board

Bd.R. 41.31(a) provides that an appeal is taken from a decision of the examiner to the Board by filing a notice of appeal. The following language would be acceptable under the rule: ''An appeal is taken from the decision of the examiner mailed [specify date appealed rejection was mailed].'' An appeal can be taken when authorized by the statute 35 U.S.C. 134. The provision of Rule 41.31(b) that a notice of appeal need not be signed has been removed. Papers filed in connection with an appeal, including the notice of appeal, would need to be signed in accordance with § 1.33 of this title.

Bd.R. 41.31(b) requires that the notice of appeal be accompanied by the fee required by law and would refer to the rule that specifies the required fee.

Bd.R. 41.31(c) specifies the time within which a notice of appeal would have to be filed in order to be considered timely. The time for filing a notice of appeal appears in Rule 134.

Bd.R. 41.31(d) provides that a request for an extension of time to file a notice of appeal in an application is governed by Rule 136(a). Bd.R. 41.31(d) also provides that a request for an extension of time to file a notice of appeal in an ex parte reexamination proceeding is governed by Rule 550(c).

Bd.R. 41.31(e) defines a ''non-appealable issue'' as an issue that is not subject to an appeal under 35 U.S.C. 134. Non-appealable issues are issues (1) over which the Board does not exercise authority in appeal proceedings, and (2) which are handled by a petition. Non-appealable issues include such matters as an examiner's refusal to (1) enter a response to a final rejection, (2) enter evidence presented after a final rejection, (3) enter an appeal brief or a reply brief, or (4) withdraw a restriction requirement. An applicant or patent owner dissatisfied with a decision of an examiner on a non-appealable issue would be required to seek review by petition before an appeal is considered on the merits. Failure to timely file a petition seeking review of a decision of the examiner related to a non-appealable issue would generally constitute a waiver to have those issues considered. The language ''[f]ailure to timely file'' would be interpreted to mean not filed within the time set out in the rules. For example, Rule 1.181(f) provides that any petition under Rule 181 not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely. The object of the amendment to the rule is to maximize resolution of non-appealable issues

before an appeal is considered on the merits. Under current practice, an applicant or a patent owner often does not timely seek to have non-appealable issues resolved, thereby necessitating a remand by the Board to the examiner to have a non-appealable issue resolved. The remand adds to the pendency of an application or reexamination proceeding and, in some instances, may unnecessarily enlarge patent term adjustment. The Office intends to strictly enforce the waiver provisions of Bd.R. 41.31(e) with the view of making the appeal process administratively efficient. While the Office will retain discretion to excuse a failure to timely settle non-appealable issues, it is expected that exercise of that discretion will be reserved for truly unusual circumstances.

Amendments and Evidence Filed After Appeal and Before Brief

Bd.R. 41.33(a) provides that an amendment filed after the date a notice of appeal is filed and before an appeal brief is filed may be admitted as provided in Rule 116.

Bd.R. 41.33(b), under two circumstances, gives the examiner discretion to enter an amendment filed with or after an appeal brief is filed. A first circumstance would be to cancel claims, provided cancellation of claims does not affect the scope of any other pending claim in the proceedings. A second circumstance would be to rewrite dependent claims into independent form.

Bd.R. 41.33(c) provides that all other amendments filed after the date an appeal brief is filed will not be admitted, except as permitted by (1) Bd. R. 41.39(b)(1) (request to reopen prosecution after entry of new ground of rejection by Examiner), (2) Bd.R. 41.50(b)(1) (request for amendment after remand), (3) Bd.R. 41.50(d)(1) (request to reopen prosecution after entry of new ground of rejection by the Board), and (4) Bd.R. 41.50(e) (amendment after recommendation by the Board).

Bd.R. 41.33(d) provides that evidence filed after a notice of appeal is filed and before an appeal brief is filed may be admitted if (1) the examiner determines that the evidence overcomes at least one rejection under appeal, and (2) appellant shows good cause why the evidence was not earlier presented. The first step in an analysis of whether evidence may be admitted is a showing of good cause why the evidence was not earlier presented. The Office has found that too often an applicant or a patent owner belatedly presents evidence as an afterthought and that the evidence was, or should have been, readily available. Late presentation of evidence is not consistent with efficient administration of the appeal process. Under the rule, the Office would strictly apply the good cause standard. *Cf. Hahn* v. *Wong,* 892 F.2d 1028 (Fed. Cir. 1989). For example, a change of attorneys at the appeal stage or an unawareness of the requirement of a rule would not constitute a showing of good cause. If good cause is not shown, the analysis ends and the evidence would not be admitted. In those cases where good cause is shown, a second analysis will be made to determine if the evidence would overcome at least one rejection. Even where good cause is shown, if the evidence does not overcome at least one rejection, the evidence would not be admitted. Alternatively, the examiner could determine that the evidence does not overcome at least one rejection under appeal and does not necessitate any new ground of rejection, and on that basis alone, could refuse to admit the evidence.

Bd.R. 41.33(e) provides that evidence filed after an appeal brief is filed will not be admitted except as permitted by (1) Bd.R. 41.39(b)(1) (request to reopen prosecution after entry of new ground of rejection by Examiner), (2) Bd.R. 41.50(b)(1) (request to reopen prosecution after entry of a remand by the Board), and (3) Bd.R. 41.50(d)(1) (request to reopen prosecution after new ground of rejection entered by the Board).

Jurisdiction Over Appeal

Bd.R. 41.35(a) provides that the Board acquires jurisdiction when the Board mails a docket notice. At an appropriate time after proceedings are completed before the examiner, a docket notice identifying the appeal number would be entered in the application or reexamination proceeding file and mailed to the appellant. A new docket notice identifying a new appeal number would be mailed upon return of the case to the Board following remand. By delaying the transfer of jurisdiction until the appeal is fully briefed and the position of the appellant is fully presented for consideration by the examiner and the Office reviewers (appeal conferees), the possibility exists that the examiner will find some or all of the appealed claims patentable without the necessity of proceeding with the appeal and invoking the jurisdiction of the Board. For this reason, jurisdiction transfers to the Board only after (1) the appellant has filed an appeal brief, (2) the examiner's answer has been mailed, and (3) the appellant has filed a reply brief or the time for filing a reply brief has expired. Rule 41.35(a) provides that the Board acquires jurisdiction upon transmittal of the file, including all briefs and examiner's answers, to the Board. Under that practice, however, an appellant may or may not know the date when a file is transmitted to the Board. Most files are now electronic files (Image File Wrapper or IFW file) as opposed to a paper file wrapper. Accordingly, a paper file wrapper is no longer transmitted to the Board. Under current practice, the Board prepares a docket notice which is (1) entered in the IFW file, and (2) mailed to appellant. Upon receipt of the docket notice, appellant knows that the Board has acquired jurisdiction over the appeal. Bd.R. 41.35(a) codifies current practice and establishes a precise date, known to all involved, as to when jurisdiction is transferred to the Board.

Bd.R. 41.35(b) provides that the jurisdiction of the Board ends when (1) the Board mails a remand order (*see* § 41.50(b) or § 41.50(d)(1)), (2) the Board mails a final decision (*see* § 41.50(a) and judicial review is sought or the time for seeking judicial review has expired, (3) an express abandonment is filed which complies with § 1.138 of this title, or (4) a request for continued examination is filed which complies with § 1.114 of this title. The Board knows when it mails a remand order and when it mails a final decision. The Board is not automatically notified when an express abandonment or a request for continued examination is filed. One problem the Board has had in the past is that an appellant does not notify the Board that it has filed an express abandonment or a request for continued examination and the Board continues to work on the appeal. Often failure to notify occurs after oral hearing. Accordingly, an appellant should notify the Board immediately if an express abandonment or a request for continued examination is filed. If any notification reaches the Board after a remand order or a final decision is mailed, the remand order or final decision will not be removed from the file.

There are two occasions when a remand is entered. First, a remand is entered when the Board is of the opinion that clarification on a point of fact or law is needed. *See* Bd.R. 41.50(b). Second, a remand is entered when an appellant elects further prosecution before the examiner following entry of a new ground of rejection by the Board. *See* Bd.R. 41.50(d)(1). Upon entry of a remand, the Board's jurisdiction ends.

The Board also no longer has jurisdiction as a matter of law when an appeal to the Federal Circuit is filed in the USPTO. *See In re Allen,* 115 F.2d

936, 939 (CCPA 1940) and *In re Graves,* 69 F.3d 1147, 1149 (Fed. Cir. 1995). A final decision is a panel decision which disposes of all issues with regard to a party eligible to seek judicial review and does not indicate that further action is needed. *See* Rule 41.2 (definition of ''final''). When a party requests rehearing, a decision becomes final when the Board decides the request for rehearing. A decision including a remand or a new ground of rejection is an interlocutory order and is not a final decision. If an appellant elects to ask for rehearing to contest a new ground of rejection, the decision on rehearing is a final decision for the purpose of judicial review.

Bd.R. 41.35(c) would continue current practice and provide that the Director could sua sponte order an appeal to be remanded to an examiner before entry of a Board decision has been mailed. The Director has inherent authority to order a sua sponte remand to the examiner. Ordinarily, a rule is not necessary for the Director to exercise inherent authority. However, in this particular instance, it is believed that a statement in the rule of the Director's inherent authority serves an appropriate public notice function.

Appeal Brief

Bd.R. 41.37 provides for filing an appeal brief to perfect an appeal and sets out the requirements for appeal briefs. The appeal brief is a highly significant document in an ex parte appeal. Appeal brief experience under Rule 41.37 has been mixed. Bd.R. 41.37 seeks to (1) take advantage of provisions of Rule 41.37 which have proved useful, (2) clarify provisions which have been subject to varying interpretations by counsel, and (3) add provisions which are expected to make the decision-making process more focused and efficient.

Bd.R. 41.37(a) provides that an appeal brief shall be filed to perfect an appeal. Upon a failure to timely file an appeal brief, proceedings on the appeal would be considered terminated. The language ''without further action on the part of the Office'' gives notice that no action, including entry of a paper by the Office, would be necessary for the appeal to be considered terminated. Bd.R. 41.37(a) does not preclude the Office from entering a paper notifying an applicant or patent owner that the appeal has been terminated. Any failure of the Office to enter a paper notifying an applicant or patent owner that an appeal stands terminated would not affect the terminated status of the appeal. The language ''proceedings are considered terminated'' provides notice that when (1) no appeal brief is filed, and (2) no claims are allowed, the time for filing a continuing application under 35 U.S.C. 120 would be before the time expires for filing an appeal brief. The language ''terminated'' is used because proceedings on appeal are over prior to mailing of a docket notice pursuant to Bd.R. 41.35(a). Dismissal of an appeal takes place after a docket notice is mailed since only the Board dismisses an appeal (Bd.R. 41.35(b)(2)).

Bd.R. 41.37(b) provides that the appeal brief shall be accompanied by the fee required by Bd.R. 41.20(b)(2).

Bd.R. 41.37(c) provides that an appellant must file an appeal brief within two months from the filing of the notice of appeal.

Bd.R. 41.37(d) provides that the time for filing an appeal brief is extendable under the provisions of Rule 136(a) for applications and Rule 550(c) for ex parte reexamination proceedings. Consideration was given to proposing a requirement for a petition to extend the time for filing an appeal brief. However, in view of the pre-appeal conference pilot program (*see* Official Gazette of July 12, 2005; *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.uspto.gov/web/offices/com/sol/og/2005/week28/patbref.htm*), and in an effort to encourage continued participation in that pilot program, further consideration on whether to require a petition will be deferred pending further experience by the Office in the pre-appeal conference pilot program.

Bd.R. 41.37(e) provides that an appeal brief must contain, under appropriate headings and in the order indicated, the following items: (1) Statement of the real party in interest, (2) statement of related cases, (3) [reserved], (4) [reserved], (5) [reserved], (6) [reserved], (7) status of amendments, (8) grounds of rejection to be reviewed, (9) [reserved], (10) argument, and (11) an appendix containing (a) claims section, (b) claim support and drawing analysis section, (c) means or step plus function analysis section, (d) evidence section, and (e) related cases section. The items are otherwise defined in other subsections of Bd.R. 41.37.

Bd.R. 41.37(f) requires a ''statement of real party in interest'' which would include an identification of the name of the real party in interest. The principal purpose of an identification of the name of the real party in interest is to permit members of the Board to assess whether recusal is required or would otherwise be appropriate. Another purpose is to assist employees of the Board to comply with the Ethics in Government Act. Since a real party in interest can change during the pendency of an appeal, there would be a continuing obligation to update the real party in interest during the pendency of the appeal. If an appeal brief does not contain a statement of real party in interest, the Office will assume that the named inventors are the real party in interest.

Bd.R. 41.37(g) requires an appeal brief to include a ''statement of related cases.'' The statement of related cases would identify related cases by (1) application number, patent number, appeal number or interference number, or (2) court docket number. The statement would encompass all prior or pending appeals, interferences or judicial proceedings known to any inventors, any attorneys or agents who prepared or prosecuted the application on appeal and any other person who was substantively involved in the preparation or prosecution of the application on appeal. A related case is one which would directly affect, or would be directly affected by or have a bearing on the Board's decision in the appeal. A copy of any final or significant interlocutory decision rendered by the Board or a court in any proceeding identified under this paragraph shall be included in the related cases section in the appendix (Bd.R. 41.37(u)). A significant interlocutory decision would include (1) a decision on a patentability motion in an interference, or (2) a decision in an interference or a court interpreting a claim. A related case includes any continuing application of the application on appeal. If an appellant fails to advise the Board that it has filed a continuing application or a request for continued examination, or that it has filed an express abandonment of the application on appeal and the Board mails a decision on appeal in the application on appeal, the appellant should expect that the decision will not be removed from the file. The time to update a statement of related cases, or notify the Board that an application on appeal has been abandoned, is when the continuing application, request for continued examination, or express abandonment is filed. Appellant would be under a continuing obligation to update a statement of related cases during the pendency of the appeal. If an appeal brief does not contain a statement of related cases, the Office will assume that there are no related cases.

Bd.R. 41.37(h) is reserved.

Bd.R. 41.37(i) is reserved.

Bd.R. 41.37(j) is reserved.

Bd.R. 41.37(k) is reserved.

Bd.R. 41.37(l) requires an appeal brief to indicate the ''status of amendments'' for all amendments filed after final rejection (*e.g.,* entered or not entered). Examples of a status of amendments might read as follows: (1) ''No amendment was filed after final rejection.'' (2) ''An amendment filed October 31, 2006, was not entered by the examiner.'' (3) ''An amendment filed November 1, 2006, was entered by the examiner.'' (4) ''An amendment filed October 31, 2006, was not entered by the examiner, but an amendment filed November 1, 2006, was entered by the examiner.''

Bd.R. 41.37(m) requires an appeal brief to set out the grounds of rejection to be reviewed, including the claims subject to each rejection. Examples might read as follows: (1) ''Rejection of claim 2 as being anticipated under 35 U.S.C. 102(b) over Johnson.'' (2) ''Rejection of claims 2–3 as being unpatentable under 35 U.S.C. 103(a) over Johnson and Young.'' (3) ''Rejection of claim 2 as failing to comply with the written description requirement of the first paragraph of 35 U.S.C. 112.'' (4) ''Rejection of claim 2 as failing to comply with the enablement requirement of the first paragraph of 35 U.S.C. 112.'' (5) ''Rejection of claim 3 under 35 U.S.C. 251 based on recapture.''

Bd.R. 41.37(n) is reserved.

Bd.R. 41.37(o) requires that an appeal brief contain an argument comprising an analysis explaining, as to each rejection to be reviewed, why the appellant believes the examiner erred. The analysis would have to address all points made by the examiner with which the appellant disagrees. The presentation of a concise, but comprehensive, argument in response to the final rejection (1) will efficiently frame any dispute between the appellant and the examiner not only for the benefit of the Board but also for consideration by the examiner and Office reviewers (appeal conferees), and (2) provide the best opportunity for resolution of the dispute without the necessity of proceeding with the appeal.

To promote clarity, Bd.R. 41.37(o) also requires that each rejection for which review is sought shall be separately argued under a separate heading. Also, Bd.R. 41.37(o) provides that any finding made or conclusion reached by the examiner that is not challenged would be presumed to be correct.

Bd.R. 41.37(o)(1) provides that when a ground of rejection applies to two or more claims, the claims may be argued separately (claims are considered by appellant as separately patentable) or as a group (claims stand or fall together). When two or more claims subject to the same ground of rejection are argued as a group, the Board may select a single claim from the group of claims that are argued together and decide the appeal on the basis of the selected claim alone with respect to the group of claims as to the ground of rejection. Any doubt as to whether an election has been made would be resolved against the appellant and the claims would be deemed to have been argued as a group.

For each claim argued separately, a subheading identifying the claim by number would be required. The requirement for a separate subheading in the appeal brief is to minimize any chance the examiner or the Board will overlook an argument directed to the separate patentability of a particular claim. In the past, appellants have been confused about whether a statement of what a claim covers is sufficient to constitute an argument that the claim is separately patentable. It is not. A statement that a claim contains a limitation not present in another claim would not in and of itself be sufficient to satisfy the requirement of Bd.R. 41.37(o)(1) that a separate argument be made. Unless an appellant plans to argue the separate patentability of a claim, the appellant should not discuss or refer to the claim in the argument section of the appeal brief. A copy of the claims will be before the Board in the ''claims section'' (Bd.R. 41.37(p)). In an application containing claims 1–3 where the examiner has made (1) a § 102 rejection, or (2) a § 103 rejection, or (3) both a § 102 and § 103 rejection, examples of a proper statement of ''claims standing or falling together'' would be as follows: (1) ''With respect to the rejection under § 102, claims 1–3 stand or fall together.'' (2) ''With respect to the rejection under § 103, claims 1–2 stand or fall together; claim 3 is believed to be separately patentable.'' (3) ''With respect to the rejection under § 102, claims 1–2 stand or fall together; claim 3 is believed to be separately patentable. With respect to the rejection under § 103, the claims stand or fall together.''

Bd.R. 41.37(o)(2) provides that the Board would only consider arguments that (1) are presented in the argument section of the appeal brief, and (2) address claims set out in the claim support and drawing analysis section in the appendix. In keeping with the well-established rules of waiver, Appellant would waive all arguments which could have been, but were not, addressed in the argument section of the appeal brief. *See e.g., Hyatt* v. *Dudas,* 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (holding that when an appellant fails to contest a ground of rejection to the Board, the Board may treat any argument with respect to that ground of rejection as waived); *In re Watts,* 354 F.3d 1362, 1367–68 (Fed. Cir. 2004) (declining to consider the appellant's new argument regarding the scope of a prior art patent raised for the first time on appeal because the court did not have the benefit of the Board's informed judgment on the issue for its review); *In re Berger,* 279 F.3d 975, 984 (Fed. Cir. 2002) (in which the Board affirmed an uncontested rejection of claims under 35 U.S.C. 112, second paragraph, and on appeal the Federal Circuit affirmed the Board's decision and found that the appellant had waived his right to contest the indefiniteness rejection by not presenting arguments as to error in the rejection on appeal to the Board); and *In re Schreiber,* 128 F.3d 1473, 1479 (Fed. Cir. 1997) (declining to consider whether prior art cited in an obviousness rejection was non-analogous art when that argument was not raised before the Board).

Bd.R. 41.37(p) would require an appeal brief to contain a ''claims section'' in the appendix which would consist of an accurate clean copy in numerical order of all claims pending in the application or reexamination proceeding on appeal. The claims section in the appendix would include all pending claims, not just those under rejection. The status of each claim would have to be indicated (*i.e.,* 1 (rejected), 2 (withdrawn), 3 (objected to), 4 (cancelled), 5 (allowed), 6 (confirmed), 7 (not subject to reexamination)).

Bd.R. 41.37(q) is reserved.

Bd.R. 41.37(r) requires an appeal brief to contain a ''claim support and drawing analysis section.''

The claim support portion of Bd.R. 41.37(r) replaces Rule 41.37(c)(1)(v) which required a concise explanation of the subject matter defined in each of the independent claims on appeal. The claim support section, for each independent claim involved in the appeal and each dependent claim argued separately (*see* Bd.R. 41.37(o)(1)), would consist of an annotated copy of the claim indicating in bold face between braces ({ }) after each limitation where, by page and line or paragraph numbers, the limitation is described in the specification as filed. Braces ({ }) are used instead of brackets ([ ]) because brackets are used in reissue claim practice. Unlike the ''claims section'' (*see* Bd.R. 41.37(p)), only those independent claims and dependent claims being argued separately, would need to appear in the ''claim support

and drawing analysis section.'' A significant objective of the claim support requirement is to provide the examiner and the Board with appellant's perspective on where language of the claims (including specific words used in the claims, but not in the specification) finds support in the specification. Finding support for language in the claims can help the examiner and the Board construe claimed terminology and limitations when applying the prior art. The claim support requirement will help the Board interpret the scope of claims, or the meaning of words in a claim, before applying the prior art. Practice under Rule 41.37(c)(1)(v) has not been efficient because of the diverse manners in which different appellants have attempted to comply with the current rule.

One significant problem faced by the Board under Rule 41.37(c)(1)(v) occurs when the language of a claim does not have direct antecedent language in the specification. In order for the Board to understand the scope of a claim or the meaning of a term in the claim, the Board primarily relies on the specification. Moreover, in practice before the Office, a claim is given its broadest reasonable construction consistent with the specification. However, when the language of the claim does not find correspondence in the specification, as filed, often it is difficult to determine the meaning of a particular word in a claim or to give the claim its broadest reasonable interpretation. The claim support requirement will give the examiner and the Board the appellant's view on where the claim is supported by the application, as filed. The requirement is expected to significantly improve the efficiency of the Board's handling of appeals.

The ''claims support and drawing analysis section'' also requires for each independent claim on appeal and each dependent claim argued separately (*see* Bd.R. 41.37(o)(1)), that a drawing analysis consist of an annotated copy of the claim in numerical sequence, indicating in bold face between braces ({ }) (the same braces used to identify references to the specification) after each limitation where, by reference or sequence residue number, each limitation is shown in the drawing or sequence. A drawing analysis has been required in interference cases since 1998 and has proven useful to the Board in understanding claimed inventions described in applications and patents involved in an interference. The drawing analysis requirement is expected to be equally useful in ex parte appeals.

Bd.R. 41.37(s) requires an appeal brief to contain a ''means or step plus function analysis section.'' The means or step plus function analysis section replaces the requirement of Rule 41.37(c)(1)(v) relating to identification of structure, material or acts for means or step plus function claim limitations contained in appealed claims. Under Bd.R. 41.37(s), the means or step plus function analysis section would include each independent claim and each dependent claim argued separately (*see* Bd.R. 41.37(o)(1)) that contains a limitation that appellant regards as a means or step plus function limitation in the form permitted by the sixth paragraph of 35 U.S.C. 112. Further, for each such claim, an annotated copy of the claim would be reproduced indicating in bold face between braces ({ }) the specific portions of the specification and drawing that describe the structure material or acts corresponding to each claimed function.

The Office is requiring a particular format for the means or step plus function analysis section to avoid the confusion that arises from the variety of ways appellants employ under current practice in attempting to comply with the requirements of Rule 41.37(c)(1)(v). A means or step plus function analysis essentially tracking Bd.R. 41.37(s) has been used in interference cases since 1998 and has been helpful in determining the scope of claims involved.

Bd.R. 41.37(t) would require an appeal brief to contain an ''evidence section'' in the appendix. The evidence section essentially continues the practice under Rule 41.37(c)(1)(ix). The evidence section would include (1) [reserved], (2) [reserved], (3) [reserved], (4) [reserved], (5) affidavits and declarations upon which the appellant relied before the examiner, (6) other evidence upon which the appellant relied before the examiner, and (7) evidence relied upon by the appellant and admitted into the file pursuant to Bd.R. 41.33(d).

Documents in the evidence appendix would not have to be reformatted to comply with format requirements of the appeal brief. However, the affidavits, declarations and evidence required by Bd.R. 41.37(t) which is otherwise mentioned in the appeal brief, but which does not appear in the evidence section will not be considered. Rule 41.37(c)(1)(ix) has a similar provision, but appellants have not attached the evidence appendix required by that rule. Appellants will now be on notice of the consequence of failing to comply with Bd.R. 41.37(t).

If the examiner believes that other material should be included in the evidence section, the examiner would be able to attach that evidence to the examiner's answer for consideration by Board.

Bd.R. 41.37(u) requires an appeal brief to contain a ''related cases section'' in the appendix. The related cases section consists of copies of orders and opinions required to be cited pursuant to Bd.R. 41.37(g).

Examiner's Answer

Bd.R. 41.39(a)(1) provides that within such time and manner as may be directed by the Director and if the examiner determines that the appeal should go forward, the examiner may enter an examiner's answer responding to the appeal brief. The specific requirements of what would be required in an examiner's answer would appear in the Manual of Patent Examining Procedure.

Bd.R. 41.39(a)(2) provides that an examiner may enter a new ground of rejection in an examiner's answer. As made clear in Bd.R. 41.39(a)(1) and Bd.R. 41.39(d), the examiner may respond to appellant's brief by filing only one examiner's answer, except in the case of a return or remand of an application by the Chief Administrative Patent Judge to the examiner (*see* Bd.R. 41.50(b)). The examiner may no longer file a supplemental examiner's answer in response to a reply brief. The reply brief is the last word. Although the examiner may enter a new ground of rejection in the examiner's answer, this will rarely occur because the examiner will not be able to respond to any new argument raised in the reply brief in response to the new ground. As set forth below in Bd.R. 41.39(b) and its subparts, if the examiner does enter a new ground of rejection in the examiner's answer, the appellant will have a choice of either (a) requesting reopening of prosecution before the examiner with the opportunity to enter an amendment or file additional evidence, or (b) requesting docketing of the appeal by the Board and filing a reply brief with argument relevant to the new ground of rejection. Where a newly cited reference is added in the examiner's answer merely as evidence of the prior statement made by the examiner as to what is ''well-known'' in the art which was challenged for the first time in the appeal brief, the citation of the reference in the examiner's answer would not ordinarily constitute a new ground of rejection within the meaning of Bd.R. 41.39(a)(2) and 41.39(b). Similarly, it

would not ordinarily be a new ground of rejection for an examiner to cite an additional reference in an examiner's answer in the following situations: (1) To prove a previously applied reference contains an enabling disclosure; (2) to explain the meaning of a term used in a previously applied reference; or (3) to show that a characteristic not explicitly disclosed in a previously applied reference is inherent. The basic thrust of the rejection remains the same in these above-referenced situations because the additional reference simply explains a previously applied reference or is evidence of what was taught in a previously applied reference in response to a new argument.

Bd.R. 41.39(b) provides that if an examiner's answer contains a rejection designated as a new ground of rejection, appellant would be required to exercise one of two options to avoid dismissal of the appeal as to the claims subject to the new ground of rejection. Either option would have to be exercised within two months from the date of the examiner's answer.

Bd.R. 41.39(b)(1) specifies a first option and provides that appellant could request that prosecution be reopened before the examiner by filing a reply under Rule 111, with or without amendment or submission of evidence. Any amendment or evidence would have to be relevant to the new ground of rejection. A request that complies with this paragraph would be entered and the application or patent under reexamination would be reconsidered by the examiner under the provisions of Rule 112. A request under Bd.R. 41.39(b)(1) would be treated as a request to dismiss the appeal.

Bd.R. 41.39(b)(2) specifies a second option and provides that appellant could request that the appeal be docketed. The request would have to be accompanied by a reply brief as set forth in Bd.R. 41.41. An amendment or evidence could not accompany the reply brief. A reply brief that is accompanied by an amendment or evidence would be treated as a request to reopen prosecution pursuant to Bd.R. 41.39(b)(1).

Bd.R. 41.39(c) provides that extensions of time under Rule 136(a) do not apply and that a request for an extension of time would be governed by the provisions of Rule 136(b) for extensions of time to reply for patent applications and Rule 550(c) for extensions of time to reply for ex parte reexamination proceedings.

Bd.R. 41.39(d) provides that the examiner shall not enter a supplemental examiner's answer in response to any reply brief filed under Bd.R. 41.39(b)(2) and/or Bd.R. 41.41.

Reply Brief

Bd.R. 41.41(a) provides that an appellant may file a single reply brief responding to the examiner's answer. On too many occasions, appellants have filed a first reply brief and thereafter a second reply brief. Only one reply brief is authorized under Bd.R. 41.41(a). A second reply brief will not be considered.

Bd.R. 41.41(b) provides that the time for filing a reply brief would be within two months of the date the examiner's answer is mailed.

Bd.R. 41.41(c) provides that extensions of time under Rule 136(a) do not apply and that a request for an extension of time would be governed by the provisions of Rule 136(b) for extensions of time to reply for patent applications and Rule 550(c) for extensions of time to reply for ex parte reexamination proceedings.

Bd.R. 41.41(d) provides that a reply brief shall be limited to responding to points made in the examiner's answer. Except as otherwise set out in the rules, the form and content of a reply brief would be governed by the requirements for an appeal brief as set out in Bd.R. 41.37. A reply brief would be required to contain, under appropriate headings and in the order indicated, the following items: (1) [reserved], (2) [reserved], (3) [reserved], (4) [reserved], (5) argument.

Bd.R. 41.41(e) is reserved.

Bd.R. 41.41(f) is reserved.

Bd.R. 41.41(g) requires that an argument made in the reply brief be limited to responding to points made in the examiner's answer. Any argument raised in a reply brief which is not responsive to a point made in the examiner's answer will not be considered and will be treated as waived. An example of an acceptable format for presenting an argument in a reply brief (where there was no new ground of rejection in the examiner's answer) might read as follows: First paragraph: ''This is a reply to the examiner's answer mailed [insert the date the answer was mailed].'' Last paragraph: ''For the reasons given in this reply brief and in the appeal brief, reversal of the examiner's rejection is requested.'' All paragraphs between the first and last paragraphs should read: ''On page x, lines y–z of the examiner's answer, the examiner states that [state what the examiner states]. The response is [concisely state the response].'' As part of each response, the appellant should refer to the page number and line or paragraph and drawing element number of any document relied upon to support the response. Frequently, new details and arguments surface in reply briefs. Bd.R. 41.41(g) seeks to confine reply briefs to what they ought to be—a response to points raised in the examiner's answer. If it turns out that too many resources of the Office are needed to enforce the reply brief rule and considerable time is wasted in resolving improper reply brief issues, consideration may be given to further limiting the nature of replies filed in ex parte appeals.

Bd.R. 41.41(h) is reserved.

Bd.R. 41.41(i) provides that an amendment or new evidence may not accompany a reply brief. The Office has found that appellants continue to attempt to file amendments and evidence with reply briefs. If an appellant, after reviewing the examiner's answer, believes that an amendment is appropriate, the appellant may file a continuing application or a request for continued examination or, in the case of a reexamination proceeding, ask that the proceeding be reopened.

Examiner's Response to Reply Brief and Supplemental Reply Brief Bd.R. 41.43 is reserved. An examiner will no longer be responding to a reply brief. As such, a supplemental reply brief is also no longer authorized because the examiner will no longer be filing a response to a reply brief.

Oral Hearing

Bd.R. 41.47(a) provides that if the appellant desires an oral hearing, appellant must file, as a separate paper, a written request captioned: ''REQUEST FOR ORAL HEARING.''

Bd.R. 41.47(b) provides that a request for oral hearing shall be accompanied by the fee required by § 41.20(b)(3).

Bd.R. 41.47(c) provides that the time for filing a request for an oral hearing would be within two months from the date the examiner's answer is mailed.

Bd.R. 41.47(d) provides that extensions of time under Rule 136(a) do not apply and that a request for an extension of time would be governed by the provisions of Rule 136(b) for extensions of time to reply for patent applications and Rule 550(c) for extensions of time to reply for ex parte reexamination proceedings.

Bd.R. 41.47(e) provides that if an oral hearing is properly requested, a date for the oral hearing would be set.

Bd.R. 41.47(f) provides that if an oral hearing is set, then within such time as the Board may order, appellant shall confirm attendance at the oral hearing. Failure to timely confirm attendance would be taken as a waiver of any request for an oral hearing.

Bd.R. 41.47(g) is reserved.

Bd.R. 41.47(h) provides that unless otherwise ordered by the Board, argument on behalf of appellant at an oral hearing would be limited to 20 minutes.

Bd.R. 41.47(i) provides that at oral hearing only the Record will be considered. No additional evidence may be offered to the Board in support of the appeal. Any argument not presented in a brief cannot be made at the oral hearing.

Bd.R. 41.47(j) provides that notwithstanding Bd.R. 41.47(i), an appellant could rely on and call the Board's attention to a recent court or Board opinion which could have an effect on the manner in which the appeal is decided.

Bd.R. 41.47(k) provides that visual aids may be used at an oral hearing. However, visual aids must be limited to copies of documents or artifacts in the Record or a model or exhibit presented for demonstration purposes during an interview with the examiner. When an appellant seeks to use a visual aid, one copy of each visual aid (photograph in the case of an artifact, a model or an exhibit) should be provided for each judge and one copy to be added to the Record.

Bd.R. 41.47(l) provides that failure of an appellant to attend an oral hearing would be treated as a waiver of the oral hearing. Over the years, the Board has become concerned with the large number of requests for postponements. In some cases, multiple requests in a single appeal are submitted for postponement of an oral hearing. Apart from the fact that a postponement can lead to large patent term adjustments, efficiency dictates that the Board is able to set an oral hearing schedule with an expectation that in a large majority of the cases the oral hearing will timely occur or the appellant will waive oral hearing. The Board will continue to handle requests for postponement of oral hearings on an ad hoc basis. However, postponements would no longer be granted on a routine basis. A request for a postponement made immediately after a notice of oral hearing is mailed is more likely to receive favorable treatment, particularly since it may be possible to set an oral hearing date prior to the originally scheduled oral hearing date.

Decisions and Other Actions by the Board

Bd.R. 41.50(a) provides that the Board may affirm or reverse a decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner. Bd.R. 41.50(a) continues a long-standing practice that an affirmance of a rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

Bd.R. 41.50(b) provides that the Chief Administrative Patent Judge may remand an application to the examiner. This potential modification would designate that the Chief Administrative Patent Judge, rather than the Board, may remand an application to the examiner. This change to the rule is being considered as a matter of administrative efficiency because a large majority of remands from the Board are administrative remands made under the direction of the Chief Administrative Patent Judge due to procedural defects in the application, rather than remands made by an assigned panel of Administrative Patent Judges on the merits. For example, in Fiscal Year 2009, the Board issued 431 administrative remands of applications to the examiner and only 33 merits remands of applications to the examiner. The Chief Administrative Patent Judge can delegate to an assigned panel of Administrative Patent Judges the authority to remand an application. Upon entry of a remand, the Board would no longer have jurisdiction unless an appellant timely files a request for rehearing. If the request for rehearing does not result in modification of the remand, the Board would then lose jurisdiction. An examiner may enter an examiner's answer in response to a remand. Should the examiner enter an examiner's answer in response to the remand, appellant would be required to exercise one of two options to avoid abandonment of the application or termination of the reexamination proceeding. Either option would have to be exercised within two months from the date of any examiner's answer mailed in response to the remand.

Bd.R. 41.50(b)(1) specifies a first option and provides that appellant could request that prosecution be reopened before the examiner by filing a reply under Rule 111, with or without amendment or submission of evidence. Any amendment or evidence would have to be relevant to the issues set forth in the remand or raised in any examiner's answer mailed in response to the remand. A request that complies with this paragraph would be entered and the application or patent under reexamination would be reconsidered by the examiner under the provisions of Rule 112. A request under Bd.R. 41.50(b)(1) would be treated as a request to dismiss the appeal.

Bd.R. 41.50(b)(2) specifies a second option and provides that appellant could request that the appeal be re-docketed. The request would have to be accompanied by a reply brief as set forth in Bd.R. 41.41. An amendment or evidence could not accompany the reply brief. A reply brief that is accompanied by an amendment or evidence would be treated as a request to reopen prosecution pursuant to Bd.R. 41.50(b)(1).

Bd.R. 41.50(c) provides that a remand is not a final decision. Following proceedings on remand, and with respect to affirmed rejections and claims not involved in the remand, an appellant could request the Board to enter a final decision so that the appellant could then seek judicial review as to those rejections and claims. Only a final decision of the Board is subject to judicial review. *Copelands' Enter., Inc.* v. *CNV, Inc.,* 887 F.2d 1065 (Fed. Cir. 1989) (en banc).

Bd.R. 41.50(d) provides that, should the Board have knowledge of a basis not involved in the appeal for rejecting a pending claim, the Board may enter a new ground of rejection. The pending claim could be a claim not rejected by the examiner. A new ground of rejection would not be considered final for purposes of judicial review. A new ground of rejection is not considered a final agency action because the appellant has not explained to the Board, without amendment or new evidence, or to the Office, with an amendment or new evidence or both, why the rejection is not proper. Bd.R. 41.50(d) places an appellant under a burden to explain to the Board or the Office why a new ground of rejection is not proper before it burdens a court with judicial review. A response by an appellant may convince the Office that a new ground of rejection should be withdrawn. If the Board enters a new ground of rejection, appellant would have to exercise one of two options with respect to the new ground of rejection to avoid dismissal of the appeal as to any claim subject to the new ground of rejection. Either option would have to be exercised within two months from the date of the new ground of rejection.

Bd.R. 41.50(d)(1) specifies that a first option would be to submit an amendment of the claims subject to a new ground of rejection or new evidence relating to the new ground of rejection or both and request that the matter be reconsidered by the examiner. The proceedings would be remanded to the examiner. A new ground of rejection would be binding on the examiner unless, in the opinion of the examiner, the amendment or new evidence

overcomes the new ground of rejection. In the event the examiner maintains the rejection, appellant would be able to again appeal to the Board.

Bd.R. 41.50(d)(2) specifies that a second option would be to request rehearing pursuant to Bd.R. 41.52. The request for rehearing would have to be based on the record before the Board and no new evidence or amendments would be permitted.

Bd.R. 41.50(e) continues a long-standing practice that the Board, in its opinion in support of its decision, could include a recommendation, explicitly designated as such, of how a claim on appeal may be amended to overcome a specific rejection. For the recommendation to be binding, it would have to be explicitly designated as a recommendation. For example, a conclusion or comment by the Board that a claim, notwithstanding appellant's argument, is so broad as to read on the prior art should not be taken as a recommendation that, if some undefined limitation is added, the claim would be patentable. When the Board makes a recommendation, appellant may file an amendment in conformity with the recommendation. An amendment in conformity with the recommendation would be deemed to overcome the specific rejection. An examiner would have authority to enter a rejection of a claim amended in conformity with a recommendation provided that the additional rejection constitutes a new ground of rejection. For example, the examiner may know of additional prior art not known to the Board that would meet the claim as amended. It is because of the possibility that an examiner may know of additional prior art that a recommendation would be expected to be a relatively rare event.

Bd.R. 41.50(f) provides that the Board could enter an order requiring appellant to brief additional issues or supply additional evidence or both if the Board believes doing so would be of assistance in reaching a decision on the appeal. Bd.R. 41.50(f) continues a practice which has been in existence since 1999. *See e.g.,* (1) 37 CFR 1.196(d) (1999) and (2) Rule 41.50(d). Practice under Rule 41.50(d) has been highly useful and complements the authority of Office personnel to request additional material under Rule 105. Appellant would be given a non-extendable time period within which to respond to the order. In setting the length of the non-extendable time period, the Board would take into account the extent of the information requested and the time of year a response would be due. For example, it is not likely that the Board would set a date for response between Christmas Day and New Year's Day. Failure of appellant to timely respond to the order could result in dismissal of the appeal in whole or in part. An appeal might be dismissed-in-part if the order sought further briefing or evidence or both related to one rejection but not another rejection, particularly where the two rejections apply to different claims.

Bd.R. 41.50(g) provides for extensions of time to respond to actions of the Board under Bd.R. 41.50(b) and (d). Bd.R. 41.50(g) provides that a request for an extension of time to respond to a request for briefing and information under Bd.R. 41.50(f) is not authorized. A request for an extension of time to respond to Board action under Bd.R. 41.50(b) and (d) would be governed by the provisions of Rule 136(b) for extensions of time to reply for patent applications and Rule 550(c) for extensions of time to reply for ex parte reexamination proceedings.

Rehearing

Bd.R. 41.52(a) authorizes an appellant to file a single request for rehearing. In the past, appellants have filed a second request for rehearing, in effect supplementing a first request for rehearing. Filing a second or subsequent request for rehearing is not authorized. Any second or subsequent request for rehearing will not be considered.

Bd.R. 41.52(b) provides that a request for rehearing is due within two months from the date the decision by the Board is mailed.

Bd.R. 41.52(c) provides that extensions of time under Rule 136(a) do not apply and that a request for an extension of time would be governed by the provisions of Rule 136(b) for extensions of time to reply for patent applications and Rule 550(c) for extensions of time to reply for ex parte reexamination proceedings.

Bd.R. 41.52(d) provides that a request for rehearing would have to contain, under appropriate headings and in the order indicated, the following items: (1) [reserved], (2) [reserved], (3) [reserved], and (4) argument.

Bd.R. 41.52(e) is reserved.

Bd.R. 41.52(f) provides that a request for rehearing shall state with particularity the points believed to have been misapprehended or overlooked by the Board. A general restatement of the case will not be considered an argument that the Board misapprehended or overlooked a point. A new argument cannot be made in a request for rehearing, except in two instances.

Bd.R. 41.52(f)(1) would authorize in a first instance an appellant to respond to a new ground of rejection entered pursuant to Bd.R. 41.50(d)(2).

Bd.R. 41.52(f)(2) would authorize an appellant to rely on and call the Board's attention to a recent decision of a court or the Board that is relevant to an issue decided in the appeal. Generally, the recent court decision would be a decision of the Supreme Court or the Court of Appeals for the Federal Circuit.

Bd.R. 41.52(g) provides that an amendment or new evidence could not accompany a request for rehearing.

Bd.R. 41.52(h) provides that a decision will be rendered on a request for rehearing. The decision on rehearing would be deemed to incorporate the decision sought to be reheard except for those portions of the decision sought to be reheard specifically modified on rehearing. A decision on rehearing would be considered final for purposes of judicial review, except when otherwise noted in the decision on rehearing.

Action Following Decision

Bd.R. 41.54 provides that, after a decision by the Board and subject to appellant's right to seek judicial review, the proceeding will be returned to the examiner for such further action as may be consistent with the decision by the Board.

Sanctions

Bd.R. 41.56 is new and provides for sanctions. The rule is designed to put the public on notice of actions which the Office believes are detrimental to the efficient handling of ex parte appeals.

Bd.R. 41.56(a) provides that the Director may impose a sanction against an appellant for misconduct. Misconduct would include (1) failure to comply with an order entered in the appeal or an applicable rule, (2) advancing or maintaining a misleading or frivolous request for relief or argument, or (3) engaging in dilatory tactics. A sanction would be entered by the Director. A sanction would be applied against the appellant, not against a registered practitioner. Conduct of a registered practitioner could result in a sanction against an appellant. Conduct of a registered practitioner believed to be inappropriate would be referred to the Office of Enrollment and Discipline for such action as may be appropriate.

Bd.R. 41.56(b) provides that the nature of possible sanctions includes entry of (a) an order declining to enter a docket notice, (b) an order holding certain facts to have been established in the appeal, (c) an order expunging a paper or precluding an appellant from filing a paper, (d) an order precluding

an appellant from presenting or contesting a particular issue, (e) an order excluding evidence, (f) an order holding an application on appeal to be abandoned or a reexamination proceeding terminated, (g) an order dismissing an appeal, (h) an order denying an oral hearing, or (i) an order terminating an oral hearing.

Whether and what sanction, if any, should be imposed against an appellant in any specific circumstance would be a discretionary action.

Previously submitted comments, particularly those submitted in response to the PRA notice [73 FR 32559], raised some public concerns. To the extent the potential modifications to the final rule have not obviated these concerns, we address them below in an effort to solicit more meaningful feedback from the public in response to this notice.

Concern 1: A concern was raised that the claim support and drawing analysis section (final rule 41.37(r)) and the means or step plus function analysis section (final rule 41.37(s)) significantly increase the burden of preparing a brief.

Answer 1: The potential modifications to the final rule are not intended to add any additional burden to appellants. It may be helpful to explain why the Office believes that no additional burden is likely. By way of comparison, current rule 41.37(c)(1)(v) is analogous to final rule sections 41.37(r) and (s). The current rule requires ''a concise explanation of the subject matter defined'' in each independent claim on appeal. The current rule also requires the explanation to refer to the specification by line and page number and the drawings, if any, by reference characters.

Potential modification to final rule 41.37(r) also requires that appellants refer to line and page numbers or paragraphs of the specification when mapping a claim. The potential modifications to the final rule differ, however, in that it requires not only a mapping of the independent claims on appeal but also a mapping of any dependent claim argued separately. For cases in which the appellants argue the dependent claims separately, this may minimally add to the burden in preparing the brief. Based upon the experience of the Office for the briefs coming before the Board, this additional burden will be realized in only a minority of cases. In the majority of cases coming before the Board, appellants have not argued dependent claims separately, and in such appeals the mapping burden is the same under both the current rule and the final rule.

With regard to claims containing means plus function and step plus function limitations, the requirements of the current rule (41.37(c)(1)(v)) and those under consideration as potential modifications to final rule (41.37(s)) are the same. Both require a mapping of such limitations to the specification by reference to page and line numbers and drawing reference characters which describe the structure, material, or acts. Both rules also require a mapping of the independent and dependent claims argued separately for those claims containing means plus function and step plus function limitations. The potential modifications to the final rule correct the inconsistency of the current rule of mapping both independent claims and dependent claims argued separately only in the case of means plus function and step plus function claims. In the potential modifications to the final rule, all independent claims and dependent claims argued separately on appeal are required to be mapped to the specification.

In addition, the potential modification to final rules 41.37(r) and (s) are intended to benefit appellants by reducing the likelihood of a defective brief notice or a return from the Board for non-compliance with the rule. One of the primary reasons for a defective brief notice or a return under the current rules is an improper summary of the claimed subject matter (rule 41.37(c)(1)(v)). The current rule requires ''a concise explanation of the subject matter.'' The phrase ''a concise explanation of the subject matter'' in the current rule has been interpreted in a myriad of ways by appellants. Appellants often misinterpret what the current rules require or have questions for which they seek guidance. The language in the current rule has also resulted in inconsistent interpretation by Office reviewers. The current rule has led to many appeals being returned before the Board will consider appeals on their merits. The potential modifications to the final rule would change the requirement to a clearly objective one. The potential modifications to the final rule would require ''an annotated copy of the claim * * * indicating in boldface between braces ({ }) the page and line or paragraph after each limitation where the limitation is described in the specification as filed.'' The potential modifications to the final rule provide a standardized objective format for appellants to follow and for agency reviewers to apply. This removes appellant's burden of interpreting the rule and reduces the likelihood of incurring additional burden and delay due to a defective brief notice, return, or remand. The Office, thus, has regarded this more precise requirement as a net benefit to appellants by reducing the delay that too frequently results from the current rule, while setting up the case better for decision. Objections, if any, to this approach should propose better ways to accomplish this goal.

Concern 2: A concern was raised that the sanctions rule (final rule 41.56) placed an additional burden on appellants in that sanctions in appeals are a new concept and create a new category of misconduct.

Answer 2: This concern is based on the mistaken premise that the final rule creates totally new misconduct sanctions. Potential modifications to final rule 41.56 are not new concepts and do not create a new category of misconduct. Existing 37 CFR 11.18 provides the Director the authority to impose procedural sanctions for misconduct for matters related to papers filed before the USPTO. Potential modifications to final rule 41.56 merely makes clear that the Director's existing 37 CFR 11.18 authority to impose procedural sanctions extends to misconduct that may occur during an ex parte appeal.

Additionally, potential modifications to final rule 41.56 parallel existing 37 CFR 41.128, which is limited to contested case appeals. Together these rules provide a comprehensive scope of procedural sanctions for misconduct before the Board beyond just those matters covered by 37 CFR 11.18. Finally, in addition to the Director's explicit authority to establish regulations which shall govern the conduct of proceedings in the Office (35 U.S.C. 2(b)(2)(A)), the Director has, and always has had, inherent authority to enforce the rules and to impose an appropriate sanction. In addition to existing 37 CFR 11.18 and 37 CFR 41.128, *see* existing 37 CFR 2.120(g) covering sanctions during inter partes trademark proceedings. The authority for potential modifications to final rule 41.56 spring from the same authority as these existing rules and is not a new concept. Potential modifications to final rule 41.56 provide for sanctions against an appellant when appropriate .

Also, the rule is meant to be employed for egregious cases of attorney misconduct, such as, for example, in the case where a practitioner consistently and repeatedly fails to follow the Board's rules.

Concern 3: A concern was raised that final rule 41.37(u) requiring copies of final decisions in Board or court proceedings related to the appeal places an additional burden on the appellants.

Answer 3: The requirement for such copies is not a new requirement. On the contrary, in both the current rule and the potential modifications to the final rule, appellants are required to file copies of any final decision of the Board or court proceeding related to the case on appeal. The potential modifications to the final rule would impose no additional burden.

Concern 4: A concern was raised that appellants have no way to respond to a new explanation in an examiner's answer.

Answer 4: It is not correct that the appellant cannot respond. Such a response is permitted in a reply brief authorized by the potential modification to final rule 41.41.

The United States Patent and Trademark Office (Office) is considering changes to its rules in 37 CFR part 41 governing prosecution in ex parte appeals at the Board of Patent Appeals and Interferences (Board). There are no fee changes associated with the proposed modified final rule. Additionally, as follows below, no additional cost burdens are anticipated as a result of the potential modifications to the final rule that are under consideration.

The primary potential modifications to the these rules are: (1) The appeal brief must include sections for claim support and drawing analysis and means or step plus function analysis in the appendix of the appeal brief, (2) the reply brief must limit arguments made in the reply brief to those responsive to points made in the examiner's answer, (3) in a request for rehearing, a general restatement of the case will not be considered an argument that the Board misapprehended or overlooked a point, and (4) the examiner's response to a reply brief is eliminated. The rules described in (1), (2), and (4) will apply to all appeal briefs filed with the Board. The rule described in (3) will apply only to those applicants who file a request for rehearing.

Appeal Brief (1)

No additional cost is associated with the potential modifications to the appeal brief requirements.

The claim support and drawing analysis section and the means or step plus function analysis section are analogous to the current summary of the claimed subject matter section in the appeal brief. The information required for these two newly titled sections is the same as that required by the current rules. The potential modifications to the final rule, however, are explicit as to the format to be followed in these sections. The current rule requires an explanation of the subject matter, whereas the potential modifications to the final rule set forth the precise format to be used in mapping claim limitations to the support and description of the limitations in the specification and drawings. Bd. R. 41.37(r) and (s). The current rule leaves the format for the explanation of the claimed subject matter open to interpretation by the applicant. Rule 41.37(c)(1)(v). The potential modifications to the final rule provide a standardized, easy to follow format for these sections. By following the prescribed format of the potential modifications to the final rule, the applicant will save time in not having to create their own format to explain the claimed subject matter. Moreover, the potential modifications to the final rule format are expected to reduce the number of applications returned to the examiner because the brief is not compliant with the explanation of the claimed subject matter section of the rule. Under the current rules, it is not uncommon for a case to be returned to the examiner because of deficiencies in the summary of the claimed subject matter section of the appeal brief. When a case is returned to the examiner for correction of a non-compliant brief, the applicant must prepare and file a corrected brief. This delays the applicant's appeal and costs the applicant money to prepare a compliant brief. By following the clear, standardized format in the potential modifications to the final rule for the claim support and drawing analysis section and means or step plus function section, applicants can prevent a return of their application on either or both of these bases. This will save the applicant the time and expense incurred for filing a corrected appeal brief. The claim support and drawing analysis section and the means or step plus function analysis section will not add cost to the appeal brief and will provide a savings to applicants in some cases.

Reply Brief (2)

No additional cost is associated with the new reply brief requirement under consideration in the potential modifications to the final rule.

Under the potential modifications to the final rule, the argument section of the reply brief has a new requirement that arguments be responsive to points made in the examiner's answer; otherwise, the argument will not be considered and will be treated as waived. This requirement does not impose any additional economic burden on the applicant. It only makes clear what arguments in the reply brief will be considered by the Board. It saves the applicant the time and expense of preparing arguments that will not be considered.

Request for Rehearing (3)

No additional cost is associated with the potential modifications to the request for rehearing requirement.

Under the potential modifications to the final rule, it would be established that a restatement of the case will not be considered an argument that the Board misapprehended or overlooked a point. Under current Rule 41.52(a)(1), applicants are already required to ''state with particularity the points believed to have been misapprehended or overlooked by the Board.'' As such, the clarification in the potential modifications to the rule as to what fails to constitute an argument that the Board misapprehended or overlooked a point do not impose any additional economic burden on the applicant. Rather, it makes clear what arguments in the request for rehearing will be considered by the Board. Thus, the potential modifications to the final rule save the applicant the time and expense of preparing arguments that will not be considered.

Elimination of Examiner's Response to Reply Brief (4)

The potential modifications to the final rule eliminate the requirement for an examiner's response following a reply brief. Under the current rule, examiners are required to respond to a reply brief either by filing a communication noting the reply brief or by filing a supplemental examiner's answer. Rule 41.43(a)(1). The potential modifications to the final rule eliminate both types of examiner response to a reply brief.

The elimination of the examiner's requirement to note the reply brief allows applications on appeal to proceed directly to the Board upon filing of the reply brief, without waiting for an examiner's response. This saves the applicant valuable time in the appeal process. It also saves the applicant the expense of tracking the examiner's response to the reply brief.

The elimination of a supplemental examiner's answer in response to a reply brief also allows applications on appeal to proceed directly to the Board upon filing of the reply brief. The applicant realizes an additional savings by elimination of the supplemental examiner's answer. Current practice provides that the applicant may file another reply brief in response to a supplemental examiner's answer. In almost every appeal where a supplemental examiner's answer is

provided, the applicant submits another reply brief. By eliminating the supplemental examiner's answer, it eliminates the need for applicant to respond with another reply brief. Therefore, elimination of the supplemental examiner's answer saves the applicant the cost of preparing another reply brief.

To summarize, the potential modifications to the final rule would result in no economic impact to an applicant, and may result in a net savings to the applicant when the savings outlined for the appeal brief, reply brief, and no examiner response to the reply brief are realized.

Paperwork Reduction Act

Potential modifications to the final rule may involve information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in the existing rules, currently in effect, is under review and will be approved by OMB under OMB collection number 0651–0063. The collection of information involved in this notice would also be covered under OMB control number 0651–0063. The Office plans to submit any new information collection request related to modifications to the final rule to OMB prior to issuing any final rule.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

Potential Modifications to the Rule for Discussion at Roundtable and for Written Comment

For the reasons stated in the preamble, the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office is proposing to amend 37 CFR part 41 as follows:

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

1. The authority citation for part 41 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 132, 133, 134, 135, 306, and 315.

Subpart A—General Provisions

1. In § 41.2, revise the definitions of ''Board'' and ''Contested case'' to read as follows:

§ 41.2 Definitions.

* * * * *

Board means the Board of Patent Appeals and Interferences and includes:

(1) For a final Board action in an appeal or contested case, a panel of the Board.

(2) For non-final actions, a Board member or employee acting with the authority of the Board.

* * * * *

Contested case means a Board proceeding other than an appeal under 35 U.S.C. 134. An appeal in an inter partes reexamination proceeding is not a contested case.

* * * * *

2. In § 41.3, revise paragraphs (a) and (b) to read as follows:

§ 41.3 Petitions.

(a) *Deciding official.* A petition authorized by this part must be addressed to the Chief Administrative Patent Judge. The Chief Administrative Patent Judge may delegate authority to decide petitions.

(b) *Scope.* This section covers petitions on matters pending before the Board, petitions authorized by this part and petitions seeking relief under 35 U.S.C. 135(c); otherwise *see* §§ 1.181 to 1.183 of this title. The following matters are not subject to petition:

(1) Issues committed by statute to a panel.

(2) In pending contested cases, procedural issues. *See* § 41.121(a)(3) and § 41.125(c).

* * * * *

3. In § 41.4, revise paragraphs (b) and (c) to read as follows:

§ 41.4 Timeliness.

* * * * *

(b) *Late filings.* (1) A request to revive an application which becomes abandoned or a reexamination proceeding which becomes terminated under §§ 1.550(d) or 1.957(b) or (c) of this title as a result of a late filing may be filed pursuant to § 1.137 of this title.

(2) A late filing that does not result in an application becoming abandoned or a reexamination proceeding becoming terminated under §§ 1.550(d) or 1.957(b) or limited under § 1.957(c) of this title may be excused upon a showing of excusable neglect or a Board determination that consideration on the merits would be in the interests of justice.

(c) *Scope.* Except to the extent provided in this part, this section governs proceedings before the Board, but does not apply to filings related to Board proceedings before or after the Board has jurisdiction (§ 41.35), such as:

(1) Extensions during prosecution (*see* § 1.136 of this title).

(2) Filing of a notice of appeal, a brief, or a request for oral hearing (*see* §§ 41.31, 41.37, 41.41, 41.47, 41.61, 41.66, 41.67, 41.68, 41.71, and 41.73).

(3) Seeking judicial review (*see* §§ 1.301 to 1.304 of this title).

4. Revise § 41.12 to read as follows:

§ 41.12 Citation of authority.

(a) *Authority.* Citations to authority must include:

(1) *United States Supreme Court decision.* A citation to a single source in the following order of priority: United States Reports, West's Supreme Court Reports, United States Patents Quarterly, Westlaw, or a slip opinion.

(2) *United States Court of Appeals decision.* A citation to a single source in the following order of priority: West's Federal Reporter (F., F.2d or F.3d), West's Federal Appendix (Fed. Appx.), United States Patents Quarterly, Westlaw, or a slip opinion.

(3) *United States District Court decision.* A citation to a single source in the following order of priority: West's Federal Supplement (F.Supp., F.Supp. 2d), United States Patents Quarterly, Westlaw, or a slip opinion.

(4) *Slip opinions.* If a slip opinion is relied upon, a copy of the slip opinion must accompany the first paper in which an authority is cited.

(5) *Pinpoint citations.* Use pinpoint citations whenever a specific holding or portion of an authority is invoked.

(b) *Non-binding authority.* Non-binding authority may be cited. If non-binding authority is not an authority of the Office and is not reproduced in one of the reporters listed in paragraph (a) of this section, a copy of the authority shall be filed with the first paper in which it is cited.

Subpart B—Ex parte Appeals

5. In § 41.30, add the definition ''Record'' to read as follows:

§ 41.30 Definitions.

* * * * *

Record means the official content of the file of an application or reexamination proceeding on appeal.

6. Revise § 41.31 to read as follows:

§ 41.31 Appeal to Board.

(a) *Notice of appeal.* An appeal is taken to the Board by filing a notice of appeal.

(b) *Fee.* The notice of appeal shall be accompanied by the fee required by § 41.20(b)(1).

(c) *Time for filing notice of appeal.* A notice of appeal must be filed within the time period provided under § 1.134 of this title.

(d) *Extensions of time to file notice of appeal.* The time for filing a notice of appeal is extendable under the provisions of § 1.136(a) of this title for applications and § 1.550(c) of this title for ex parte reexamination proceedings.

(e) *Non-appealable issues.* A non-appealable issue is an issue not subject to an appeal under 35 U.S.C. 134. An applicant or patent owner dissatisfied with a decision of an examiner on a non-appealable issue shall timely seek review by petition before jurisdiction over an appeal is transferred to the Board (*see* § 41.35). Failure to timely file a petition seeking review of a decision of the examiner related to a non-appealable issue may constitute a waiver to having that issue considered in the application or reexamination on appeal.

7. Revise § 41.33 to read as follows:

§ 41.33 Amendments and evidence after appeal.

(a) *Amendment after notice of appeal and prior to appeal brief.* An amendment filed after the date a notice of appeal is filed and prior to the date an appeal brief is filed may be admitted as provided in § 1.116 of this title.

(b) *Amendment with or after appeal brief.* An amendment filed on or after the date an appeal brief is filed may be admitted:

(1) To cancel claims. To cancel claims provided cancellation of claims does not affect the scope of any other pending claim in the application or reexamination proceeding on appeal, or

(2) To convert dependent claim to independent claim. To rewrite dependent claims into independent form.

(c) *Other amendments.* No other amendments filed after the date an appeal brief is filed will be admitted, except as permitted by §§ 41.39(b)(1), 41.50(b)(1), 41.50(d)(1), or 41.50(e) of this subpart.

(d) *Evidence after notice of appeal and prior to appeal brief.* Evidence filed after the date a notice of appeal is filed and prior to the date an appeal brief is filed may be admitted if:

(1) The examiner determines that the evidence overcomes at least one rejection under appeal and does not necessitate any new ground of rejection, and

(2) Appellant shows good cause why the evidence was not earlier presented.

(e) *Other evidence.* All other evidence filed after the date an appeal brief is filed will not be admitted, except as permitted by §§ 41.39(b)(1), 41.50(b)(1) or 41.50(d)(1) of this subpart.

8. Revise § 41.35 to read as follows:

§ 41.35 Jurisdiction over appeal.

(a) *Beginning of jurisdiction.* The jurisdiction of the Board begins when a docket notice is mailed by the Board.

(b) *End of jurisdiction.* The jurisdiction of the Board ends when:

(1) The Board mails a remand order (*see* § 41.50(b) or § 41.50(d)(1) of this subpart),

(2) The Board mails a final decision (*see* § 41.2 of this part) and judicial review is sought or the time for seeking judicial review has expired,

(3) An express abandonment is filed which complies with § 1.138 of this title, or

(4) A request for continued examination is filed which complies with § 1.114 of this title.

(c) *Remand ordered by the Director.* Prior to entry of a decision on the appeal by the Board (*see* § 41.50), the Director may sua sponte order an application or reexamination proceeding on appeal to be remanded to the examiner.

9. Revise § 41.37 to read as follows:

§ 41.37 Appeal brief.

(a) *Requirement for appeal brief.* An appeal brief shall be timely filed to perfect an appeal. Upon failure to file an appeal brief, the proceedings on the appeal are terminated without further action on the part of the Office.

(b) *Fee.* The appeal brief shall be accompanied by the fee required by § 41.20(b)(2) of this subpart.

(c) *Time for filing appeal brief.* Appellant must file an appeal brief within two months from the date of the filing of the notice of appeal (*see* § 41.31(a)).

(d) *Extension of time to file appeal brief.* The time for filing an appeal brief is extendable under the provisions of § 1.136(a) of this title for applications and § 1.550(c) of this title for ex parte reexamination proceedings.

(e) *Content of appeal brief.* The appeal brief must contain, under appropriate headings and in the order indicated, the following items:

(1) Statement of the real party in interest (*see* paragraph (f) of this section).

(2) Statement of related cases (*see* paragraph (g) of this section).

(3) [Reserved.]

(4) [Reserved.]

(5) [Reserved.]

(6) [Reserved.]

(7) Status of amendments (*see* paragraph (l) of this section).

(8) Grounds of rejection to be reviewed (*see* paragraph (m) of this section).

(9) [Reserved.]

(10) Argument (*see* paragraph (o) of this section).

(11) An appendix containing a claims section (*see* paragraph (p) of this section), a claim support and drawing analysis section (*see* paragraph (r) of this section), a means or step plus function analysis section (*see* paragraph (s) of this section), an evidence section (*see* paragraph (t) of this section), and a related cases section (*see* paragraph (u) of this section).

(f) *Statement of real party in interest.* The ''statement of the real party in interest'' shall identify the name of the real party in interest. The real party in interest must be identified in such a manner as to readily permit a member of the Board to determine whether recusal would be appropriate. Appellant is under a continuing obligation to update this item during the pendency of the appeal. If an appeal brief does not contain a statement of real party in interest, the Office will assume that the named inventors are the real party in interest.

(g) *Statement of related cases.* The ''statement of related cases'' shall identify, by application, patent, appeal, interference, or court docket number, all prior or pending appeals, interferences or judicial proceedings, known to any inventors, any attorneys or agents who prepared or prosecuted the application on appeal and any other person who was substantively involved in the preparation or prosecution of the application on appeal, and that are related to, directly affect, or would be directly affected by, or have a bearing on the Board's decision in the appeal. A related case includes any continuing application of the application on appeal. A copy of any final or significant interlocutory decision rendered by the Board or a court in any proceeding identified under this paragraph shall be included in the related cases section (*see* paragraph (u) of this section) in the appendix. Appellant is under a continuing obligation to update this item during the pendency of the appeal. If an appeal brief does not contain a statement of related cases, the Office will assume that there are no related cases.

(h) [Reserved.]

(i) [Reserved.]

(j) [Reserved.]

(k) [Reserved.]

(l) *Status of amendments.* The ''status of amendments'' shall indicate the status of all amendments filed after final

rejection (*e.g.*, whether entered or not entered).

(m) *Grounds of rejection to be reviewed.* The ''grounds of rejection to be reviewed'' shall set out the grounds of rejection to be reviewed, including the statute applied, the claims subject to each rejection and references relied upon by the examiner.

(n) [Reserved.]

(o) *Argument.* The ''argument'' shall explain why the examiner erred as to each ground of rejection to be reviewed. Any explanation must address all points made by the examiner with which the appellant disagrees. Any finding made or conclusion reached by the examiner that is not challenged will be presumed to be correct. Each ground of rejection shall be separately argued under a separate heading.

(1) Claims standing or falling together. For each ground of rejection applicable to two or more claims, the claims may be argued separately (claims are considered by appellants as separately patentable) or as a group (claims stand or fall together). When two or more claims subject to the same ground of rejection are argued as a group, the Board may select a single claim from the group of claims that are argued together to decide the appeal on the basis of the selected claim alone with respect to the group of claims as to the ground of rejection. Any doubt as to whether claims have been argued separately or as a group as to a ground of rejection will be resolved against appellant and the claims will be deemed to have been argued as a group. Any claim argued separately as to a ground of rejection shall be placed under a subheading identifying the claim by number. A statement that merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

(2) Arguments considered. Only those arguments which are presented in the argument section of the appeal brief and that address claims set out in the claim support and drawing analysis section in the appendix will be considered. Appellant waives all other arguments in the appeal.

(p) *Claims section.* The ''claims section'' in the appendix shall consist of an accurate clean copy in numerical order of all claims pending in the application or reexamination proceeding on appeal. The status of every claim shall be set out after the claim number and in parentheses (*e.g.*, 1 (rejected), 2 (withdrawn), 3 (objected to), 4 (cancelled), and 5 (allowed)). A cancelled claim need not be reproduced.

(q) [Reserved.]

(r) *Claim support and drawing analysis section.* For each independent claim involved in the appeal and each dependent claim argued separately (*see* paragraph (o)(1) of this section), the claim support and drawing analysis section in the appendix shall consist of an annotated copy of the claim (and, if necessary, any claim from which the claim argued separately depends) indicating in boldface between braces ({ }) the page and line or paragraph after each limitation where the limitation is described in the specification as filed. If there is a drawing or amino acid or nucleotide material sequence, and at least one limitation is illustrated in a drawing or amino acid or nucleotide material sequence, the ''claims support and drawing analysis section'' in the appendix shall also contain in boldface between the same braces ({ }) where each limitation is shown in the drawings or sequence.

(s) *Means or step plus function analysis section.* For each independent claim involved in the appeal and each dependent claim argued separately (*see* paragraph (o)(1) of this section) having a limitation that appellant regards as a means or step plus function limitation in the form permitted by the sixth paragraph of 35 U.S.C. 112, for each such limitation, the ''means or step plus function analysis section'' in the appendix shall consist of an annotated copy of the claim (and, if necessary, any claim from which the claim argued separately depends) indicating in boldface between braces ({ }) the page and line of the specification and the drawing figure and element numeral that describes the structure, material or acts corresponding to each claimed function.

(t) *Evidence section.* The ''evidence section'' shall contain only papers which have been entered by the examiner. The evidence section shall include:

(1) [Reserved.]

(2) [Reserved.]

(3) [Reserved.]

(4) [Reserved.]

(5) Affidavits and declarations. Affidavits and declarations, if any, and attachments to declarations, before the examiner and which are relied upon by appellant in the appeal. An affidavit or declaration otherwise mentioned in the appeal brief which does not appear in the evidence section will not be considered.

(6) Other evidence filed prior to the notice of appeal. Other evidence, if any, before the examiner and filed prior to the date of the notice of appeal and relied upon by appellant in the appeal. Other evidence filed before the notice of appeal that is otherwise mentioned in the appeal brief and which does not appear in the evidence section will not be considered.

(7) Other evidence filed after the notice of appeal. Other evidence relied upon by the appellant in the appeal and admitted into the file pursuant to § 41.33(d) of this subpart. Other evidence filed after the notice of appeal that is otherwise mentioned in the appeal brief and which does not appear in the evidence section will not be considered.

(u) *Related cases section.* The ''related cases section'' shall consist of copies of orders and opinions required to be cited pursuant to paragraph (g) of this section.

10. Revise § 41.39 to read as follows:

§ 41.39 Examiner's answer.

(a)(1) *Answer.* If the examiner determines that the appeal should go forward, then within such time and manner as may be established by the Director the examiner may enter an examiner's answer responding to the appeal brief.

(2) *New ground of rejection.* An examiner's answer may include a new ground of rejection.

(b) *Response to new ground of rejection.* If an examiner's answer contains a rejection designated as a new ground of rejection, appellant shall within two months from the date of the examiner's answer exercise one of the following two options to avoid dismissal of the appeal as to the claims subject to the new ground of rejection:

(1) Request to reopen prosecution. Request that prosecution be reopened before the examiner by filing a reply under § 1.111 of this title with or without amendment or submission of evidence. Any amendment or evidence must be relevant to the new ground of rejection. A request that complies with this paragraph will be entered and the application or the patent under ex parte reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. Any request under this paragraph will be treated as a request to dismiss the appeal.

(2) Request to docket the appeal. Request that the Board docket the appeal (*see* § 41.35(a) of this subpart) and file a reply brief as set forth in § 41.41 of this subpart. Such a reply brief must address each new ground of rejection. A reply brief may not be accompanied by any amendment or evidence. If a reply brief filed pursuant to this section is accompanied by any amendment or evidence, it shall be treated as a request to reopen prosecution under paragraph (b)(1) of this section.

(c) *Extension of time to file reply brief.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. *See* § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

(d) *No supplemental examiner's answer.* The examiner shall not enter a supplemental examiner's answer in response to any reply brief filed under §§ 41.39(b)(2) and/or 41.41.

11. Revise § 41.41 to read as follows:

§ 41.41 Reply brief.

(a) *Reply brief authorized.* An appellant may file a single reply brief responding to the points made in the examiner's answer.

(b) *Time for filing reply brief.* If the appellant elects to file a reply brief, the reply brief must be filed within two months of the date of the mailing of the examiner's answer.

(c) *Extension of time to file reply brief.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. *See* § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

(d) *Content of reply brief.* Except as otherwise set out in this section, the form and content of a reply brief are governed by the requirements for an appeal brief as set out in § 41.37 of this subpart. A reply brief must contain, under appropriate headings and in the order indicated, the following items:

(1) [Reserved.]

(2) [Reserved.]

(3) [Reserved.]

(4) [Reserved.]

(5) Argument—*see* paragraph (g) of this section.

(e) [Reserved.]

(f) [Reserved.]

(g) *Argument.* Any arguments raised in the reply brief which are not responsive to points made in the examiner's answer will not be considered and will be treated as waived.

(h) [Reserved.]

(i) *No amendment or new evidence.* No amendment or new evidence may accompany a reply brief.

§ 41.43 [Removed]

12. Remove § 41.43.

13. Revise § 41.47 to read as follows:

§ 41.47 Oral hearing.

(a) *Request for oral hearing.* If appellant desires an oral hearing, appellant must file, as a separate paper, a written request captioned: ''REQUEST FOR ORAL HEARING''.

(b) *Fee.* A request for oral hearing shall be accompanied by the fee required by § 41.20(b)(3) of this part.

(c) *Time for filing request for oral hearing.* Appellant must file a request for oral hearing within two months from the date of the examiner's answer.

(d) *Extension of time to file request for oral hearing.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. *See* § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

(e) *Date for oral hearing.* If an oral hearing is properly requested, the Board shall set a date for the oral hearing.

(f) *Confirmation of oral hearing.* Within such time as may be ordered by the Board, appellant shall confirm attendance at the oral hearing. Failure to timely confirm attendance will be taken as a waiver of any request for an oral hearing.

(g) [Reserved.]

(h) *Length of argument.* Unless otherwise ordered by the Board, argument on behalf of appellant shall be limited to 20 minutes.

(i) *Oral hearing limited to Record.* At oral hearing only the Record will be considered. No additional evidence may be offered to the Board in support of the appeal. Any argument not presented in a brief cannot be raised at an oral hearing.

(j) *Recent legal development.* Notwithstanding paragraph (i) of this section, an appellant or the examiner may rely on and call the Board's attention to a recent court or Board opinion which could have an effect on the manner in which the appeal is decided.

(k) *Visual aids.* Visual aids may be used at an oral hearing, but must be limited to documents or artifacts in the Record or a model or an exhibit presented for demonstration purposes during an interview with the examiner. At the oral hearing, appellant shall provide one copy of each visual aid (photograph in the case of an artifact, a model or an exhibit) for each judge and one copy to be added to the Record.

(l) *Failure to attend oral hearing.* Failure of an appellant to attend an oral hearing will be treated as a waiver of oral hearing.

14. Revise § 41.50 to read as follows:

§ 41.50 Decisions and other actions by the Board.

(a) *Affirmance and reversal.* The Board may affirm or reverse an examiner's rejection in whole or in part. Affirmance of a rejection of a claim constitutes a general affirmance of the decision of the examiner on that claim, except as to any rejection specifically reversed.

(b) *Remand.* The Chief Administrative Patent Judge may remand an application to the examiner. If in response to a remand for further consideration of a rejection, the examiner enters an examiner's answer, within two months the appellant shall exercise one of the following two options to avoid abandonment of the application or termination of a reexamination proceeding:

(1) Request to reopen prosecution. Request that prosecution be reopened before the examiner by filing a reply under § 1.111 of this title with or without amendment or submission of evidence. Any amendment or evidence must be responsive to the remand or issues discussed in the examiner's answer. A request that complies with this paragraph will be entered and the application or patent under reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. A request under this paragraph will be treated as a request to dismiss the appeal.

(2) Request to re-docket the appeal. The appellant may request that the Board re-docket the appeal (*see* § 41.35(a) of this subpart) and file a reply brief as set forth in § 41.41 of this subpart. A reply brief may not be accompanied by any amendment or evidence. A reply brief which is accompanied by an amendment or evidence will be treated as a request to reopen prosecution pursuant to paragraph (b)(1) of this section.

(c) *Remand not final action.* Whenever a decision of the Board includes a remand, the decision shall not be considered a final decision of the Board. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board may enter an order making its decision final.

(d) *New ground of rejection.* Should the Board have a basis not involved in the appeal for rejecting any pending claim, it may enter a new ground of rejection. A new ground of rejection shall be considered an interlocutory order and shall not be considered a final decision. If the Board enters a new ground of rejection, within two months appellant must exercise one of the following two options with respect to the new ground of rejection to avoid

dismissal of the appeal as to any claim subject to the new ground of rejection:

(1) Reopen prosecution. Submit an amendment of the claims subject to a new ground of rejection or new evidence relating to the new ground of rejection or both, and request that the matter be reconsidered by the examiner. The application or reexamination proceeding on appeal will be remanded to the examiner. A new ground of rejection by the Board is binding on the examiner unless, in the opinion of the examiner, the amendment or new evidence overcomes the new ground of rejection. In the event the examiner maintains the new ground of rejection, appellant may again appeal to the Board.

(2) Request for rehearing. Submit a request for rehearing pursuant to § 41.52 of this subpart relying on the Record.

(e) *Recommendation.* In its opinion in support of its decision, the Board may include a recommendation, explicitly designated as such, of how a claim on appeal may be amended to overcome a specific rejection. When the Board makes a recommendation, appellant may file an amendment or take other action consistent with the recommendation. An amendment or other action, otherwise complying with statutory patentability requirements, will overcome the specific rejection. An examiner, however, upon return of the application or reexamination proceeding to the jurisdiction of the examiner, may enter a new ground of rejection of a claim amended in conformity with a recommendation, when appropriate.

(f) *Request for briefing and information.* The Board may enter an order requiring appellant to brief matters or supply information or both that the Board believes would assist in deciding the appeal. Appellant will be given a non-extendable time period within which to respond to the order. Failure of appellant to timely respond to the order may result in dismissal of the appeal in whole or in part.

(g) *Extension of time to take action.* A request for an extension of time to respond to a request for briefing and information under paragraph (f) of this section is not authorized. A request for an extension of time to respond to Board action under paragraphs (b) and (d) of this section shall be presented under the provisions of § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

15. Revise § 41.52 to read as follows:

§ 41.52 Rehearing.

(a) *Request for rehearing authorized.* An appellant may file a single request for rehearing.

(b) *Time for filing request for rehearing.* Any request for rehearing must be filed within two months from the date of the decision mailed by the Board.

(c) *Extension of time to file request for rehearing.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. *See* § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

(d) *Content of request for rehearing.* A request for rehearing must contain, under appropriate headings and in the order indicated, the following items:

(1) [Reserved.]

(2) [Reserved.]

(3) [Reserved.]

(4) Argument—*see* paragraph (f) of this section.

(e) [Reserved.]

(f) *Argument.* A request for rehearing shall state with particularity the points believed to have been misapprehended or overlooked by the Board. A general restatement of the case will not be considered an argument that the Board has misapprehended or overlooked a point. A new argument cannot be made in a request for rehearing, except:

(1) New ground of rejection. Appellant may respond to a new ground of rejection entered pursuant to § 41.50(d)(2) of this subpart.

(2) Recent legal development. Appellant may rely on and call the Board's attention to a recent court or Board opinion which is relevant to an issue decided in the appeal.

(g) *No amendment or new evidence.* No amendment or new evidence may accompany a request for rehearing.

(h) *Decision on rehearing.* A decision will be rendered on a request for rehearing. The decision on rehearing is deemed to incorporate the underlying decision sought to be reheard except for those portions of the underlying decision specifically modified on rehearing. A decision on rehearing is final for purposes of judicial review, except when otherwise noted in the decision on rehearing.

16. Revise § 41.54 to read as follows:

§ 41.54 Action following decision.

After a decision by the Board and subject to appellant's right to seek judicial review, the application or reexamination proceeding will be returned to the jurisdiction of the examiner for such further action as may be appropriate consistent with the decision by the Board.

17. Add § 41.56 to read as follows:

§ 41.56 Sanctions.

(a) *Imposition of sanctions.* The Director may impose a sanction against an appellant for misconduct, including:

(1) Failure to comply with an order entered in the appeal or an applicable rule.

(2) Advancing or maintaining a misleading or frivolous request for relief or argument.

(3) Engaging in dilatory tactics.

(b) *Nature of sanction.* Sanctions may include entry of:

(1) An order declining to enter a docket notice.

(2) An order holding certain facts to have been established in the appeal.

(3) An order expunging a paper or precluding an appellant from filing a paper.

(4) An order precluding an appellant from presenting or contesting a particular issue.

(5) An order excluding evidence.

(6) [Reserved.]

(7) An order holding an application on appeal to be abandoned or a reexamination proceeding terminated.

(8) An order dismissing an appeal.

(9) An order denying an oral hearing.

(10) An order terminating an oral hearing.

Dated: December 14, 2009.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E9–30402 Filed 12–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 107, 171, 173, 174, 176, 177, and 179

[Docket No. PHMSA–2009–0289 (HM–233A)]

RIN 2137–AE39

Hazardous Materials: Incorporation of Special Permits Into Regulations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is proposing to amend the Hazardous

Materials Regulations to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations so long as an equivalent level of safety is maintained. The proposed revisions are intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety.

DATES: Written comments should be submitted on or before February 22, 2010.

ADDRESSES: You may submit comments identified by the docket number (PHMSA–2009–0289 (HM–233A) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (*see* **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson or Dirk Der Kinderen, Office of Hazardous Materials Standards, (202) 366–8553, or Diane LaValle, Office of Hazardous Materials Special Permits and Approvals, (202) 366–4535, Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is proposing to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to incorporate certain requirements based on existing special permits (SPs) issued by PHMSA under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127). A special permit sets forth alternative requirements—or a variance—to the requirements in the HMR in a way that achieves a safety level at least equal to the safety level required under the regulations or that is consistent with the public interest. Congress expressly authorized DOT to issue these variances in the Hazardous Materials Transportation Act of 1975.

The HMR generally are performance oriented regulations, which provides the regulated community with a certain amount of flexibility in meeting safety requirements. Even so, however, not every transportation situation can be anticipated and built into the regulations. Innovation is a strength of our economy and the hazardous materials community is particularly strong at developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly and safely integrate new products and technologies into the production and transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. A special permit must achieve at least an equivalent level of safety as the HMR. Implementation of new technologies and operational techniques may enhance safety because the approved operations or activities achieve a greater level of safety than currently required under the regulations. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers.

PHMSA conducts ongoing reviews of special permits to identify widely used and longstanding special permits with an established safety record for conversion into regulations of broader applicability. Converting these special permits into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. Additionally, adoption of special permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special permits. Factors that influence whether or not a specific special permit is a candidate for regulatory action include the safety record for hazardous materials transported under a special permit; broad application of a special permit; suitability of provisions in the special permit for incorporation into the HMR; rulemaking activity in related areas; and agency priorities.

Several of the special permits addressed in this notice of proposed rulemaking (NPRM) have hundreds of party status grantees. Party status is granted to a person who wishes to offer for transport or transport a hazardous material in the same manner as the original applicant. Several special permits addressed in this NPRM provide for the manufacture, marking, sale and use of certain packagings for transportation of hazardous materials. These manufacturing special permits are issued to the packaging manufacturer and provide for use of the packagings by hundreds and possibly thousands of distributors and users.

The amendments proposed in this NPRM will eliminate the need for approximately 510 current grantees to reapply for renewal of 44 special permits every four years and for PHMSA to process the renewal applications. These amendments also apply to any special permits this agency issues during the development of this rulemaking or its final rule whose provisions are identical in every respect to those described in the rulemakings issued under this docket. To emphasize this, we will preface the description of the affected special permits with the wording ''include'' or ''includes'' to clarify that additional special permits other than those specifically listed in this rulemaking may be incorporated under these proposed revisions.

Incorporation of the special permits into the HMR also eliminates a significant paperwork burden. Unless otherwise excepted by this agency, a copy of each special permit must be maintained at each facility where a packaging is manufactured under a

special permit, at each facility where a package is offered or re-offered for transportation under a special permit carried on board each cargo vessel or aircraft, and in some cases must be carried aboard each transport vehicle used to transport a hazardous material under a special permit.

II. Overview of Proposed Amendments

We identified several special permits for incorporation into this NPRM. A more detailed discussion of amendments to the HMR based on incorporation of provisions from these special permits appears in the ''Summary Review'' portion of this preamble. The proposed revisions include the following:

- Authorize vessel transportation for salvage cylinders containing damaged or leaking packagings under § 173.3.
- Allow liquid contents in quantities greater than 10% of the capacity in a mechanical displacement meter prover to the extent that draining of the meter prover is impracticable.
- Authorize the transport of waste Division 4.2, Packing Group I material, Division 5.2 (organic peroxide) material, and Division 6.1, Packing Group I (Hazard Zone A) material in lab packs under § 173.12.
- Allow the use of alternative outer packagings for waste lab packs and require use of UN standard steel or plastic drums (at the PG I performance level) for the transportation of Division 4.2, Packing Group I material and Division 6.1, Packing Group I, Hazard Zone A material in lab packs under § 173.12.
- Except hazardous waste materials, packaged in lab packs and meeting additional conditions, from certain segregation and marking requirements under § 173.12.
- Allow variation in the packing method for packagings prepared in accordance with § 173.13.
- Authorize, for certain hazardous materials, external visual inspection of the rupture disc in a non-reclosing pressure relief device of a rail tank car without requiring removal of the rupture disc.
- Authorize the transportation of certain specially designed radiation detectors containing a Division 2.2 (non-flammable gas) material under a new section § 173.310.
- Allow a greater gross weight limitation for packages used for the transport of aerosols for purposes of recycling or disposal.
- Allow rail tank cars to exceed the maximum capacity and gross weight on rail limitations upon approval from the Federal Railroad Administration (FRA) under § 179.13.
- Eliminate several requirements for submitting duplicate copies of applications for special permit, party status, or renewal when the applications are submitted electronically.
- Require certification of understanding of a special permit for persons submitting an application for party status to a special permit.

III. Summary Review of Proposed Amendments

The following are detailed summary discussions of proposed amendments to the HMR based on several special permits we have identified as suitable for incorporation into the HMR.

A. Salvage Cylinders

In accordance with § 173.3(d) of the HMR, damaged or leaking cylinders containing Division 2.1, 2.2, 2.3, 3, 6.1, or Class 8 materials may be overpacked in a salvage cylinder and transported by motor vehicle for repair or disposal. In this NPRM, we are proposing to permit salvage cylinders to be transported by vessel, consistent with the provisions of DOT–SP 14168.

B. Meter Provers

A mechanical displacement meter prover (meter prover) is a mechanical device, permanently mounted on a truck or trailer, consisting of a piping system that is used to calibrate the accuracy and performance of meters that measure the quantity of product being pumped or transferred at facilities such as drilling locations, refineries, tank farms and loading racks. Section 173.5a(b) excepts meter provers from specification packaging requirements in Part 178 of the HMR provided the meter provers conform to certain conditions. In a final rule published January 24, 2005 under Docket No. RSPA–03–16370 (HM–233) (70 FR 3302), the Research and Special Programs Administration (RSPA), the predecessor agency to PHMSA, incorporated several special permits concerning meter provers into § 173.5a. As provided by § 173.5a(b), a meter prover is excepted from the specification packaging requirements when, among other criteria, the liquid content of the meter prover does not exceed 10% of capacity (see § 173.5a(b)(2)(i)). PHMSA subsequently issued a special permit to allow transport of meter provers containing flammable liquids in quantities greater than 10% capacity when conditions make draining of the liquid impracticable. This special permit was based on information that (1) facilities or equipment used to drain and reinject the meter provers may not be readily available while in the field; (2) alternatives such as using DOT specification cargo tanks as meter provers or accompanying a meter prover with DOT specification cargo tanks filled with liquids drained from the meter prover are cost prohibitive; and (3) there is a record of safe transportation of meter provers under provisions from special permits previously adopted into the HMR. Therefore, in this NPRM, we propose to allow meter provers to retain flammable liquid contents in quantities greater than 10% of capacity to the extent that draining the contents to 10% or less is impracticable. The affected special permits include DOT–SP 14405.

We also propose to revise § 173.5a, paragraph (b)(iv), to change the wording ''maximum service pressure'' to the acronym ''MAWP'' for maximum allowable working pressure for consistency with use of the wording in other provisions within the HMR. In addition, we are proposing to add a definition for ''Mechanical displacement meter prover'' in § 171.8. As proposed, the definition reads: Mechanical displacement meter prover means a mechanical device used in the oilfield service industry consisting of a pipe assembly that is used to calibrate the accuracy and performance of meters that measure the quantities of a product being pumped or transferred at facilities such as drilling locations, refineries, tank farms, and loading racks.

C. Lab Packs

Section 173.12 of the HMR excepts certain waste materials from specification packaging requirements when transported in packagings (''lab packs'') that conform to the requirements specified in paragraph (b) of the section. Currently, the outer packaging of the lab packs must be a UN 1A2 or UN 1B2 metal drum, a UN 1D plywood drum, a UN 1G fiber drum, or a UN 1H2 plastic drum tested to the Packing Group III performance level. In this NPRM, we propose to allow the use of a UN 4G fiberboard box made of at least 500 psig burst strength fiberboard that is tested and marked to at least the Packing Group II performance level as an alternative outer packaging for a lab pack. The affected special permits include DOT–SP 10791, 12927, 13285, 13937, 14510, and 14817. We also propose to allow the use of a UN11G fiberboard intermediate bulk container (IBC) and a UN 11HH2 composite IBC (with a flexible plastic inner receptacle for solids loaded or discharged by gravity) as alternative outer packaging for a lab pack. The affected special

permits include DOT–SP 12296, 12668, 12682, 12749, and 12826.

Section 173.12 also excepts certain hazardous materials packaged in lab packs in conformance with paragraph (b) of this section from segregation requirements in Parts 174, 176, and 177 of the HMR provided the materials conform to limited segregation conditions in paragraph (e). In this NPRM, we are proposing to except certain additional hazardous waste materials in lab packs and non-bulk packagings from segregation and overpack marking requirements consistent with the provisions of DOT–SP 13192. We first issued DOT–SP 13192 in 2001 to consolidate earlier special permits that allowed different combinations of incompatible materials, including waste materials, to be transported together on the same transport vehicle. The waste materials are subject to safety control measures designed to mitigate the risks presented by these materials, such as quantity limitations, additional packaging, and segregation requirements. Revised editions of this special permit have authorized the transport of additional hazardous materials not currently authorized for transport under § 173.12. These hazardous materials include Division 5.2 (organic peroxide) material, Division 4.2 Packing Group I material (subject to more stringent outer packaging requirements), and Division 6.1 Packing Group I, Hazard Zone A material (for purposes of exception from segregation requirements only). It has been our experience with DOT–SP 13192 that when certain incompatible hazardous materials are properly packaged in lab packs and other authorized non-bulk packages, the possibility of these materials commingling in an incident is greatly reduced, if not eliminated, because of the integrity of the packagings and, for liquids, because of the requirement to include a sufficient amount of chemically compatible absorbent material to absorb the contents.

Thus, in this NPRM, we propose to authorize the transport of Division 5.2 (organic peroxide) material and Division 4.2 Packing Group I material in lab packs, and authorize transport of waste Division 6.1 Packing Group I, Hazard Zone A material with other waste materials if packaged in accordance with § 173.226(c) of the HMR and further packaged in an overpack of a UN steel or plastic drum at the Packing Group I performance level. We also propose to make several conforming amendments to segregration requirements in Parts 174, 176, and 177 to clarify the requirements do not apply to Division 6.1 Packing Group I, Hazard Zone A material transported in conformance with § 173.12(e).

D. Excepted Packaging

Section 173.13 provides conditions for transport of hazardous materials in non-specification packaging. Currently, in § 173.13, for packaging of liquids, a liquid must be placed in an inner packaging which is then placed in a hermetically sealed barrier bag that is wrapped in chemically compatible absorbent material and then placed in a metal can. PHMSA has issued a number of special permits that allow an alternative configuration in which the inner packaging for liquids is first wrapped in absorbent material and then placed in a hermetically sealed barrier bag which is then placed in a metal can. In this NPRM, we propose to incorporate this alternative method of packing inner packagings for liquids into § 173.13. The affected special permits include DOT–SP 7891, 8249, 9168, 10672, 10962, 10977, 11248, 12401, 13355.

E. Visual Inspection of Rail Tank Cars

Section 173.31 outlines requirements for the use of rail tank cars transporting hazardous materials. Paragraph (d) of this section requires an offeror to perform an external visual inspection of a rail tank car containing a hazardous material or a residue of a hazardous material prior to offering it for transportation. As a part of the examination, paragraph (d)(1)(vi) requires a careful inspection of the rupture (frangible) disc in non-reclosing pressure relief devices for corrosion or damage that may alter the intended operation of the device. Under special permits DOT–SP 11761 and 11864, the rupture disc is not required to be removed prior to visual inspection if the tank car contains residue of a Class 8 (corrosive), Packing Group II or III material with no subsidiary hazard or the residue of Class 9 molten sulfur. The HMR define ''residue'' to mean the hazardous material remaining in a packaging after its contents have been unloaded to the maximum extent possible (*see* § 171.8). PHMSA has interpreted ''unloaded to the maximum extent possible'' to mean that the hazardous material has ceased to flow out of the packaging's unloading device. Operations under these special permits have demonstrated these materials are present in the tank car in insufficient quantity and physical form to present a risk from a release of the material through a tank car pressure relief device due to the failure of a rupture disc during transportation.

Based on the safety record of use of the special permits, in this NPRM, we propose to revise paragraph (d)(1)(vi) to exclude inspection of the underside of the rupture disc on rail tank cars containing residue of a Class 8 (corrosive), PG II or III material with no subsidiary hazard or containing the residue of a Class 9 elevated temperature material.

F. Radiation Detectors

Radiation detectors are used for measuring the intensity of ionizing radiation. The devices typically contain a gas filled tube or ion chamber where radiation converts the gas into ions and the rate at which these ions are collected (on oppositely charged electrodes in the device) is measured as electric current. These radiation detectors are often used as integral parts of medical test equipment, such as a dose calibrator. The HMR require that the pressurized gas contained in these devices be transported in DOT specification cylinders or non-specification containers meeting the requirements prescribed in § 173.302 or § 173.306 of the HMR.

In this NPRM, we propose to authorize in new § 173.310 the transportation of radiation detectors (also described as radiation sensors, electron tube devices, and ionization chambers) containing a gas, specifically, certain Division 2.2 (non-flammable) compressed gases contained in electron tubes that are non-DOT specification, metal, single trip, inside containers that may or may not be hermetically sealed or equipped with a pressure relief device, based on the use of several special permits. The inside metal containers must be welded and designed to prevent fragmentation upon impact. The electron tubes may have up to a maximum design pressure of 4.83 MPa (700 psig), and up to a maximum water capacity of 355 fluid ounces (641 cubic inches), and must have a burst pressure of not less than three times the design pressure if equipped with a pressure relief device, and not less than four times the design pressure if not equipped with a pressure relief device. Also, each radiation detector must be placed in a strong outer packaging capable of withstanding a minimum drop test of 1.2 meter (4 feet) without breaking the device or rupturing the outer packaging, or if shipped as part of equipment, that the equipment provide equivalent protection. In addition, each shipment of these devices must be accompanied by emergency response information that must identify those receptacles not fitted with a pressure relief device, and provide guidance on

how to manage all the detectors if they are exposed to fire. When transported in conformance with these conditions, we propose to except radiation detectors from the specification packaging in this subchapter and, except when transported by air, from labeling and placarding requirements of this subchapter. The safety record for shipments made in accordance with several special permits is outstanding; therefore, PHMSA has determined the exceptions they contain demonstrate an acceptable level of safety and are candidates for inclusion into the HMR. The affected special permits include DOT–SP 9030, 9940, 10407, 12131, 12415, 13026, 13109 and 13244.

G. Aerosols for Recycling or Disposal

Section 173.306 provides exceptions from the requirements of the HMR for transport of limited quantities of compressed gases including limited quantities contained in aerosol containers. Conditions for exception from requirements include a 30 kg (66 pound) gross weight limitation for outer packagings. Under a special permit, PHMSA authorized the transport of limited quantities of certain Division 2.1 (flammable) and Division 2.2 (non-flammable) gases in aerosol containers packaged in strong outer packagings with gross weights of up to 500 kg (1,100 pounds). PHMSA allowed the increase in gross weight for the purpose of packaging discarded empty, partially used, and full aerosol containers to be transported to a recycling or disposal facility. As part of the conditions for the special permit, each aerosol container must be fitted with a cap to protect the valve stem or the valve stem must be removed. Based on the safe record of transportation of these aerosol containers under this special permit; and based on the fact that some limited quantity materials reclassed as ORM–D material, as authorized under § 173.306, are not subject to the 30 kg (66 pound) gross weight limitation when unitized in packages and offered for transportation in accordance with § 173.156 of the HMR, in this NPRM, we propose in § 173.306(k) to authorize the highway transport of aerosol containers conforming to § 173.306 in strong outer packagings not to exceed 500 kg (1,100 pounds) when transported for the purpose of recycling or disposal. The affected special permits include DOT–SP 12842.

H. Rail Tank Car Gross Weight Limitation

Section 179.13 sets limitations on rail tank car capacity and gross weight. Currently, this section limits rail tank cars to a maximum capacity of 34,500 gallons (130,597 L) and a gross weight of 263,000 pounds (119,295 kg). PHMSA granted several special permits to allow tank cars to transport up to 286,000 pounds (129,727 kg) gross weight on rail subject to certain conditions. We propose to revise this section to provide rail carriers with relief from the rail tank car capacity and gross weight limitations subject to review of an approval application submitted to the Associate Administrator for Safety, FRA. Providing for an approval process will expedite movement of rail tank cars by simplifying regulatory procedures and eliminating the time constraints associated with the mandatory comment period required for special permit applications. The affected special permits include DOT–SP 11241, 11654, 11803, 12423, 12561, 12613, 12768, 12858, 12903, 13856, 13936, 14004, 14038, 14442, 14505, 14520, 14570, and 14619.

I. Revisions to Procedures

Procedures for serving documents in PHMSA proceedings are established in 49 CFR Part 105. In accordance with these procedures, a non-resident of the United States must designate an agent and file the designation with PHMSA. In this NPRM, we propose to add the phrase ''agent for service of process'' as a synonym for the word ''agent'' in paragraph (b) of § 105.40(b) to clarify that this term includes an agent for service of process as this phrase is used elsewhere in PHMSA's procedural regulations in 49 CFR Parts 105, 106, and 107. In addition, in this NPRM we propose to revise the definition for ''Special Permit'' in 49 CFR Part 107 to permit the Associate Administrator of Hazardous Materials Safety to delegate signature authority at the Office Director level. We are proposing the same revision to the definition for ''Special Permit'' in § 171.8.

As provided in § 107.105, an application for a special permit must be submitted in duplicate no matter the method of submission, whether mail, fax, or e-mail. We propose to revise paragraph (a)(1) of this section to clarify that a duplicate copy of the application for a special permit is not required when the application is submitted electronically by e-mail. We also propose to revise paragraph (a)(2) to require an e-mail address if available and the DOT registration number if applicable. Finally, we are revising the format of paragraph (a) for greater ease of understanding of the application requirements for special permits.

Application requirements for party status to a special permit are set forth in § 107.107. We propose to revise paragraph (b)(1) of this section to clarify that a duplicate copy of the application for party status is not required when the application is submitted electronically by e-mail and to revise paragraph (b)(3) to require an e-mail address if available and the DOT registration number if applicable. In addition, in paragraph (b)(3), we propose to require an applicant for party status to provide a justification of the need for party status to the special permit and to certify that the applicant has read and understands the provisions of the special permit for party status. Finally, we are revising the format of paragraph (a) to make it easier to understand the application requirements.

Application procedures for renewal of a special permit are set forth in § 107.109. We propose to revise paragraph (a)(1) to state that a duplicate copy of an application to renew a special permit is not required when the application is submitted electronically.

IV. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under the authority of 49 U.S.C. 5103(b) which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. If adopted as proposed, the final rule would amend the regulations incorporating provision from certain widely used and longstanding special permits that have established a history of safety and which may, therefore, be converted into the regulations for general use.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034].

In this notice, we propose to amend the HMR to incorporate alternatives this agency has permitted under widely used and longstanding special permits with established safety records we have determined meet the safety criteria for inclusion in the HMR. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. In addition, the proposals in this NPRM will reduce the paperwork burden on industry and this agency resulting from continued renewals of special permits. Taken together, the provisions of this proposed rule will promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

C. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(5) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous materials.

This final rule addresses covered subject items (2), (3), and (5) and would preempt any State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the proposed rule and not later than two years after the date of issuance. PHMSA proposes the effective date of federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule incorporates into the HMR certain widely used special permits. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. Therefore, I certify this rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA has an approved information collection under OMB Control Number 2137–0051, ''Rulemaking, Special Permits, and Preemption Requirements.'' This NPRM may result in a decrease in the annual burden and costs under this information collection due to proposed changes to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule. PHMSA estimates that the information collection and recordkeeping burden as proposed in this rule would be as follows:

OMB Control No. 2137–0051:

Net Decrease in Annual Number of Respondents: 520.

Net Decrease in Annual Responses: 55.

Net Decrease in Annual Burden Hours: 560.

Net Decrease in Annual Burden Costs: $22,400.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of

Management and Budget, at fax number 202–395–6974.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and to prepare a detailed statement on actions that significantly affect the quality of the human environment.

The hazardous materials regulatory system is a risk management system that is prevention-oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous materials release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to class a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards by identifying the hazard class, packing group, and proper shipping name on shipping papers and with labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard Packing Group I material to a low hazard Packing Group III material. The quality, damage resistance, and performance standards for the packagings authorized for the hazardous materials in each packing group are appropriate for the hazards of the material transported.

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in transportation accidents. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. The ecosystems that could be affected by a hazardous materials release during transportation include atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the accident scene.

There are no significant environmental impacts associated with the proposals in this NPRM. We are proposing clarifications and changes to certain HMR requirements to include methods for packaging, describing, and transporting hazardous materials that are currently permitted under widely used special permits with established safety records for inclusion in the HMR. The process through which safety permits are issued requires the applicant to demonstrate that the alternative transportation method or packaging proposed provides an equivalent level of safety as that provided in the HMR. Implicit in this process is that the special permit must provide an equivalent level of environmental protection as that provided in the HMR. Thus, incorporation of the special permits as regulations of general applicability maintains the existing environmental protections built into the HMR.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78), or at *http://www.regulations.gov.*

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Rail carriers, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR Chapter I as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

1. The authority citation for part 105 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

§ 105.40 [Amended]

2. In § 105.40, paragraph (b), introductory paragraph, after the word ''agent'', add the words and punctuation '', also known as ''agent for service of process''.''

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

3. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

4. In § 107.1, revise the definition of ''Special permit'' to read as follows:

§ 107.1 Definitions.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapters A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements). The terms ''special permit'' and ''exemption'' have the same meaning for purposes of subchapters A or C of this chapter or other regulations issued under 49 U.S.C. 5101 through 5128.

* * * * *

5. In § 107.105, revise paragraph (a) to read as follows:

§ 107.105 Application for special permit.

(a) *General.* Each application for a special permit or modification of a special permit must be written in English and submitted for timely consideration, at least 120 days before the requested effective date and must—

(1)(i) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (*Attention:* Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted in duplicate with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov*. Electronic submissions need not be submitted in duplicate;

(2) State the name, street and mailing addresses, e-mail address (if available), US DOT Registration number (if applicable), and telephone number of the applicant. If the applicant is not an individual, also state the name, street and mailing addresses, e-mail address (if available), and telephone number of an individual designated as an agent of the applicant for all purposes related to the application;

(3) Include a designation of agent of service for process in accordance with § 105.40 of this part if the applicant is not a resident of the United States; and

(4) For a manufacturing special permit, include a statement of the name and street address of each facility when manufacturing under the special permit will occur.

* * * * *

6. In § 107.107, revise paragraphs (b)(1), (3), (4), and (5) to read as follows:

§ 107.107 Application for party status.

* * * * *

(b) * * *

(1)(i) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (*Attention:* Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted in duplicate with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov*. Electronic submissions need not be submitted in duplicate;

(2) * * *

(3) State the name, street and mailing addresses, e-mail address (if available), US DOT Registration number (if applicable), and telephone number of the applicant. If the applicant is not an individual, also state the name, street and mailing addresses, e-mail address (if available), and telephone number of an individual designated as an agent of the applicant for all purposes related to the application. In addition, each applicant must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested;

(4) Include a designation of agent of service for process in accordance with § 105.40 of this part if the applicant is not a resident of the United States; and

(5) For a Class 1 material that is forbidden for transportation by aircraft except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), include a certification by the applicant for party status to a special permit to transport such Class 1 material, on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds, that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

* * * * *

7. Revise § 107.109 to read as follows:

§ 107.109 Application for renewal.

(a) Each application for renewal of a special permit or renewal of party status to a special permit must—

(1)(i) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (*Attention:* Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted in duplicate with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov*. Electronic submissions need not be submitted in duplicate;

(2) Identify by number the special permit for which renewal is requested;

(3) State the name, street and mailing addresses, e-mail address (if available), US DOT Registration number (if applicable), and telephone number of the applicant. If the applicant is not an individual, also state the name, street and mailing addresses, e-mail address (if available), and telephone number of an individual designated as an agent of the applicant for all purposes related to the application. In addition, each applicant for renewal of party status must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested;

(4) Include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate and complete; or include an amendment to the previously submitted application as is necessary to update and assure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete; and

(5) Include a statement describing all relevant shipping and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant must so certify. When known to the applicant, the statement should indicate the approximate number of shipments made or packages shipped, as the case may be, and number of shipments or packages

involved in any loss of contents, including loss by venting other than as authorized in subchapter C; and

(6) When a Class 1 material is forbidden for transportation by aircraft, except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), include a certification by the applicant for renewal of party status to a special permit to transport such Class 1 material, on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds, that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(b) If at least 60 days before an existing special permit expires the grantee files an application for renewal that is complete and conforms to the requirements of this section, the special permit will not expire until final administrative action on the application for renewal has been taken.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

8. The citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410, section 4 (28 U.S.C. 2461 Note); Pub. L. 104–134 section 31001.

9. In § 171.8, add a new definition for ''Mechanical displacement meter prover'' and revise the definition for ''Special permit'' to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Mechanical displacement meter prover means a mechanical device used in the oilfield service industry consisting of a pipe assembly that is used to calibrate the accuracy and performance of meters that measure the quantities of a product being pumped or transferred at facilities such as drilling locations, refineries, tank farms, and loading racks.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapters A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements). The terms ''special permit'' and ''exemption'' have the same meaning for purposes of subchapters A or C of this chapter or other regulations issued under 49 U.S.C. 5101 through 5128.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

10. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

11. In § 173.3, revise paragraph (d)(6) to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(d) * * *

(6) Transportation is authorized by motor vehicle and vessel only.

* * * * *

12. In § 173.5a, revise paragraph (b) to read as follows:

§ 173.5a Oilfield service vehicles and mechanical displacement meter provers.

* * * * *

(b) *Mechanical displacement meter provers.* (1) A mechanical displacement meter prover, as defined in § 171.8 of this subchapter, permanently mounted on a truck chassis or trailer and transported by motor vehicle is excepted from the specification packaging requirements in part 178 of this subchapter provided it—

(i) Contains only the residue of a Division 2.1 (flammable gas) or Class 3 (flammable liquid) material. For liquids, the meter prover must be drained to not exceed 10% of its capacity or, to the extent that draining of the meter prover is impracticable, to the maximum extent practicable. For gases, the meter prover must not exceed 25% of the marked pressure rating;

(ii) Has a water capacity of 3,785 L (1,000 gallons) or less;

(iii) Is designed and constructed in accordance with chapters II, III, IV, V and VI of ASME Standard B31.4 (IBR, see § 171.7 of this subchapter);

(iv) Is marked with the MAWP determined from the pipe component with the lowest pressure rating; and

(v) Is equipped with rear-end protection as prescribed in § 178.337–10(c) of this subchapter and 49 CFR 393.86 of the Federal Motor Carrier Safety Regulations.

(2) The description on the shipping paper for a meter prover containing the residue of a hazardous material must include the phrase ''RESIDUE: LAST CONTAINED * * * '' before the basic description.

(3) *Periodic test and inspection.* (i) Each meter prover must be externally visually inspected once a year. The external visual inspection must include at a minimum: checking for leakage, defective fittings and welds, defective closures, significant dents and other defects or abnormalities which indicate a potential or actual weakness that could render the meter prover unsafe for transportation; and

(ii) Each meter prover must be pressure tested once every 5 years at not less than 75% of design pressure. The pressure must be held for a period of time sufficiently long to assure detection of leaks, but in no case less than 5 minutes.

(4) In addition to the training requirements in subpart H, the person who performs the visual inspection or pressure test and/or signs the inspection report must have the knowledge and ability to perform them as required by this section.

(5) A meter prover that fails the periodic test and inspection must be rejected and removed from hazardous materials service unless the meter prover is adequately repaired, and thereafter, a successful test is conducted in accordance with the requirements of this section.

(6) Prior to any repair work, the meter prover must be emptied of any hazardous material. A meter prover containing flammable lading must be purged.

(7) Each meter prover successfully completing the external visual inspection and the pressure test must be marked with the test date (month/year), and the type of test or inspection as follows:

(i) V for external visual inspection; and

(ii) P for pressure test.

The marking must be on the side of a tank or the largest piping component in letters 32 mm (1.25 inches) high on a contrasting background.

(8) The owner must retain a record of the most recent external visual inspection and pressure test until the next test or inspection of the same type is successfully completed. The test or inspection report must include the following:

(i) Serial number or other meter prover identifier;

(ii) Type of test or inspection performed;

(iii) Test date (month/year);

(iv) Location of defects found, if any, and method used to repair each defect;

(v) Name and address of person performing the test or inspection;

(vi) Disposition statement, such as ''Meter Prover returned to service'' or ''Meter Prover removed from service''.

13. In § 173.12, revise paragraphs (b) and (e), redesignate paragraph (f) as new

paragraph (g), and add new paragraph (f) to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(b) *Lab packs.* (1) Waste materials prohibited by paragraph (b)(3) of this section are not authorized for transport in packages authorized by this paragraph (b). Waste materials classed as Class or Division 3, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1, 8, or 9 are excepted from the specification packaging requirements of this subchapter for combination packagings if packaged in accordance with this paragraph (b) and transported for disposal or recovery by highway, rail or cargo vessel. In addition, a generic description from the § 172.101 Hazardous Materials Table may be used in place of specific chemical names, when two or more chemically compatible waste materials in the same hazard class are packaged in the same outside packaging.

(2) Combination packaging requirements:

(i) *Inner packagings.* The inner packagings must be either glass, not exceeding 4 L (1 gallon) rated capacity, or metal or plastic, not exceeding 20 L (5.3 gallons) rated capacity. Inner packagings containing liquid must be surrounded by a chemically compatible absorbent material in sufficient quantity to absorb the total liquid contents.

(ii) *Outer packaging.* Each outer packaging may contain only one class of waste material. The following outer packagings are authorized except that Division 4.2 Packing Group I materials must be packaged using UN standard steel or plastic drums tested and marked to the Packing Group I performance level for liquids or solids; and bromine pentafluoride and bromine trifluoride may not be packaged using UN 4G fiberboard boxes:

(A) A UN 1A2 or UN 1B2 metal drum, a UN 1D plywood drum, a UN 1G fiber drum, or a UN 1H2 plastic drum, tested and marked to at least the Packing Group III performance level for liquids or solids;

(B) At a minimum, a double-walled UN 4G fiberboard box made out of 500 pound burst-strength fiberboard fitted with a polyethylene liner at least 3 mils (0.12 inches) thick and when filled during testing to 95 percent capacity with a solid material, successfully passes the tests prescribed in §§ 178.603 (drop) and 178.606 (stacking), and is capable of passing the tests prescribed in § 178.608 (vibration) to at least the Packing Group II performance level for liquids or solids; or

(C) A UN 11G fiberboard intermediate bulk container (IBC) or a UN 11HH2 composite IBC, fitted with a polyethylene liner at least 6 mils (0.24 inches) thick, that successfully passes the tests prescribed in Subpart O of Part 178 and § 178.603 to at least the Packing Group II performance level for liquids or solids; a UN 11HH2 is composed of multiple layers of encapsulated corrugated fiberboard between inner and outer layers of woven coated polypropylene.

(iii) The gross weight of each completed combination package may not exceed 205 kg (452 lbs).

(3) *Prohibited materials.* The following waste materials may not be packaged or described under the provisions of this paragraph (b): a material poisonous-by-inhalation, a Division 6.1 Packing Group I material, chloric acid, and oleum (fuming sulfuric acid).

* * * * *

(e) *Segregation requirements.* Waste materials packaged according to paragraph (b) of this section and transported in conformance with this paragraph (e) are not subject to the segregation requirements in §§ 174.81(d), 176.83(b), and 177.848(d) if blocked and braced in such a manner that they are separated from incompatible materials by a minimum horizontal distance of 1.2 m (4 feet) and the packages are loaded at least 100 mm (4 inches) off the floor of the freight container, unit load device, transport vehicle, or rail car. The following conditions specific to incompatible materials also apply:

(1) The freight container, unit load device, transport vehicle, or rail car may not contain any Class 1 explosives, Class 7 radioactive material, or uncontainerized hazardous materials;

(2) *Waste cyanides and waste acids.* For waste cyanides stored, loaded, and transported with waste acids:

(i) The cyanide or a cyanide mixture may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging; a cyanide solution may not exceed 2 L (0.6 gallon) per inner packaging and may not exceed 10 L (3.0 gallons) per outer packaging; and

(ii) The acids must be packaged in lab packs in accordance paragraph (b) of this section or in single packagings authorized for the acid in Column (8B) of the § 172.101 Hazardous Materials Table of this subchapter not to exceed 208 L (55 gallons) capacity.

(3) *Waste Division 4.2 materials and waste Class 8 liquids.* For waste Division 4.2 materials stored, loaded, and transported with waste Class 8 liquids:

(i) The Division 4.2 material may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging; and

(ii) The Class 8 liquid must be packaged in lab packs in accordance with paragraph (b) of this section or in single packagings authorized for the material in Column (8B) of the § 172.101 Hazardous Materials Table of this subchapter not to exceed 208 L (55 gallons) capacity.

(4) *Waste Division 6.1 Packing Group I, Hazard Zone A material and waste Class 3, Class 8 liquids, or Division 4.1, 4.2, 4.3, 5.1 and 5.2 materials.* For waste Division 6.1 Packing Group I, Hazard Zone A material stored, loaded, and transported with waste Class 8 liquids, or Division 4.2, 4.3, 5.1 and 5.2 materials:

(i) The Division 6.1 Packing Group I, Hazard Zone A material must be packaged in accordance with § 173.226(c) of this subchapter and overpacked in a UN standard steel or plastic drum meeting the Packing Group I performance level;

(ii) The Class 8 liquid must be packaged in lab packs in accordance with paragraph (b) of this section or in single packagings authorized for the material in Column (8B) of the § 172.101 Hazardous Materials Table of this subchapter not to exceed 208 L (55 gallons) capacity.

(iii) The Division 4.2 material may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging;

(iv) The Division 5.1 materials may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging. The aggregate net weight per freight container, unit load device, transport vehicle, or rail car may not exceed 100 kg (220 pounds);

(v) The Division 5.2 material may not exceed 1 kg (2.2 pounds) net weight per inner packaging and may not exceed 5 kg (11 pounds) net weight per outer packaging. Organic Peroxide, Type B material may not exceed 0.5 kg (1.1 pounds) net weight per inner packaging and may not exceed 2.5 kg (5.5 pounds) net weight per outer packaging. The aggregate net weight per freight container, unit load device, transport vehicle, or rail car may not exceed 50 kg (110 pounds).

(f) *Additional exceptions.* Lab packs conforming to the requirements of this section are not subject to the following:

(1) The overpack marking and labeling requirements in § 173.25(a)(2) of this subchapter when secured to a pallet with shrink-wrap or stretch-wrap except that labels representative of each Hazard Class or Division in the overpack must be visibly displayed on two opposing sides.

(2) The restrictions for overpacks containing Class 8, Packing Group I material and Division 5.1, Packing Group I material in § 173.25(a)(5) of this subchapter. These waste materials may be overpacked with other materials.

(g) *Household waste.* Household waste, as defined in § 171.8 of this subchapter, is not subject to the requirements of this subchapter when transported in accordance with applicable state, local, or tribal requirements.

14. In § 173.13, revise paragraph (c)(1)(ii) to read as follows:

§ 173.13 Exceptions for Class 3, Division 4.1, 4.2, 4.3, 5.1, 6.1, and Classes 8 and 9 materials.

* * * * *

(c) * * *

(1) * * *

(ii) The inner packaging must be placed in a hermetically sealed barrier bag which is impervious to the lading, and then wrapped in a non-reactive absorbent material in sufficient quantity to completely absorb the contents of the inner packaging. Alternatively, the inner packaging may first be wrapped in a non-reactive absorbent material and then placed in the hermetically sealed barrier bag. The combination of inner packaging, absorbent material, and bag must be placed in a snugly fitting metal can.

* * * * *

15. In § 173.31, revise paragraph (d)(1)(vi) to read as follows:

§ 173.31 Use of tank cars.

* * * * *

(d) * * *

(1) * * *

(vi) The pressure relief device, including a careful inspection of the rupture disc in non-reclosing pressure relief devices, for corrosion or damage that may alter the intended operation of the device. The rupture disc is not required to be removed prior to visual inspection if the tank car contains the residue, as defined in § 171.8 of this subchapter, of a Class 8, PG II or PG III material with no subsidiary hazard or the residue of a Class 9 elevated temperature material;

* * * * *

16. In § 173.306, redesignate paragraph (k) as paragraph (l) and add new paragraph (k) to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(k) *Aerosols for recycling or disposal.* Aerosols, as defined in § 171.8 of this subchapter, containing a limited quantity which conforms to the provisions of paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of this section are not subject to the 30 kg (66 pounds) gross weight limitation for strong outer packaging when transported by motor vehicle for purposes of recycling or disposal under the following conditions:

(1) The strong outer packaging must not exceed a gross weight of 500 kg (1,100 pounds);

(2) Each aerosol container must be secured with a cap to protect the valve stem or the valve stem must be removed; and

(3) The packaging must be offered for transportation or transported by—

(i) Private or contract motor carrier; or

(ii) Common carrier in a motor vehicle under exclusive use for such service.

(l) For additional exceptions, also see § 173.307.

17. Add new § 173.310 to read as follows:

§ 173.310 Exceptions for radiation detectors.

Radiation detectors, radiation sensors, electron tube devices, or ionization chambers, herein referred to as ''radiation detectors,'' that contain only Division 2.2 gases, are excepted from the specification packaging in this subchapter and, except when transported by air, from labeling and placarding requirements of this subchapter when designed, packaged, and transported as follows:

(a) Radiation detectors must be single-trip, hermetically sealed, welded metal inside containers that will not fragment upon impact.

(b) Radiation detectors must not have a design pressure exceeding 4.83 MPa (700 psig) and a maximum capacity exceeding 355 fluid ounces (641 cubic inches). They must be designed and fabricated with a burst pressure of not less than three times the design pressure if the radiation detector is equipped with a pressure relief device, and not less than four times the design pressure if the detector is not equipped with a pressure relief device.

(c) Radiation detectors must be shipped in a strong outer packaging capable of withstanding a drop test of at least 1.2 meters (4 feet) without breakage of the radiation detector or rupture of the outer packaging. If the radiation detector is shipped as part of other equipment, the equipment must be packaged in strong outer packaging or the equipment itself must provide an equivalent level of protection.

(d) Emergency response information accompanying each shipment and available from each emergency response telephone number for radiation detectors must identify those receptacles that are not fitted with a pressure relief device and provide appropriate guidance for exposure to fire.

PART 174—CARRIAGE BY RAIL

18. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

19. In § 174.81, revise paragraph (c) to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids; Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids; and Division 6.1 Packing Group I, Hazard Zone A material may not be stored, loaded and transported with Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material.

* * * * *

PART 176—CARRIAGE BY VESSEL

20. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

21. In § 176.83, revise paragraph (a)(11) to read as follows:

§ 176.83 Segregation.

(a) * * *

(11) Certain exceptions from segregation for waste cyanides or waste cyanide mixtures or solutions transported with acids; waste Division 4.2 materials transported with Class 8 liquids; and waste Division 6.1 Packing Group I, Hazard Zone A material transported with waste Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

22. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

23. In § 177.848, revise paragraph (c) to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(c) In addition to the provisions of paragraph (d) of this section and except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids; Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids; and Division 6.1 Packing Group I, Hazard Zone A material may not be stored, loaded and transported with Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

24. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

25. Revise § 179.13 to read as follows:

§ 179.13 Tank car capacity and gross weight limitation.

Except as provided in this section, tank cars, built after November 30, 1970, or any existing tank cars that are converted, may not exceed 34,500 gallons (130,597 L) capacity or 263,000 pounds (119,295 kg) gross weight on rail.

(a) For other than tank cars containing poisonous-by-inhalation material, a tank car may be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA). Tank cars must conform to the conditions of the approval and must be operated only under controlled interchange conditions agreed to by participating railroads.

(b) Tank cars containing poisonous-by-inhalation material meeting the applicable authorized tank car specifications listed in § 173.244(a)(2) or (3), or § 173.314(c) or (d) may have a gross weight on rail of up to 286,000 pounds (129,727 kg). Tank cars exceeding 263,000 pounds and up to 286,000 pounds gross weight on rail must meet the requirements of AAR Standard S–286, Free/Unrestricted Interchange for 286,000 lb Gross Rail Load Cars (IBR; *see* § 171.7 of this subchapter). Any increase in weight above 263,000 pounds may not be used to increase the quantity of the contents of the tank car.

Issued in Washington, DC, on December 7, 2009 under authority delegated in 49 CFR part 1.

Magdy El-Sibaie,

Acting Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. E9–30280 Filed 12–21–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0912081429–91430–01]

RIN 0648–XS55

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2010 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Proposed rule; request for comments.

SUMMARY: Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) established a process for the formation of sectors and for annual NMFS Northeast Regional Administrator approval of proposed sector operations. Proposed Amendment 16, currently under NMFS review, with an expected implementation date of May 1, 2010, if approved, would significantly revise sector allocation management measures and expand sector management by authorizing up to 19 sectors for fishing year (FY) 2010.

Representatives from 17 sectors have submitted operations plans and sector contracts, and requested an allocation of stocks regulated under the FMP for FY 2010 at this time, in order to be timely considered for approval on a parallel track with the review of Amendment 16. NMFS received sector operations plans and contracts from the Northeast Fishery Sectors II through XIII, the Sustainable Harvest Sector, the Tri-State Sector, the Northeast Coastal Communities Sector, the Georges Bank (GB) Cod Fixed Gear Sector, and the Port Clyde Community Groundfish Sector. The intention of this action is to provide interested parties an opportunity to comment on the proposed 17 sector agreements for FY 2010 prior to final approval or disapproval of the operations plans. Because the approval and operation of these sector proposals are conditional on approval of proposed Amendment 16 measures, final action regarding the approval of these proposals will not be made unless and until a final decision on Amendment 16 has been made.

DATES: Written comments must be received on or before January 21, 2010.

ADDRESSES: You may submit comments, identified by 0648–XS55, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.

• *Fax:* (978) 281–9135, Attn: William Whitmore.

• *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on 2010 Sector Operations Plans and Contracts.''

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. No comments will be posted for public viewing until after the comment period has closed. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the sector operations plans and contracts and supplemental environmental assessments (EA) are available from the NMFS NE Regional Office at the mailing address specified above. An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule and is comprised of the EAs, and the preamble and the Classification sections of this proposed rule.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Sector Policy Analyst, phone (978) 281–9182, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: NMFS announces that the Administrator, NE Region, NMFS (Regional Administrator), has made a preliminary determination that 17 sector operations plans and

contracts, which were initially submitted to NMFS on September 1, 2009, are consistent with the goals of the FMP, as described in proposed Amendment 16 and other applicable laws, and are in compliance with the proposed measures that would govern the development and operation of a sector as specified in Section 4.2.3 of the Amendment 16 Final Environmental Impact Statement (FEIS).

Background

The final rule implementing Amendment 13 (69 FR 22906, April 27, 2004) specified a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized allocation of a total allowable catch (TAC) for specific groundfish species to a sector. As approved in Amendment 13, sector operations plans and contracts must contain certain elements, including a contract signed by all sector participants and an operations plan containing rules that sector members agree to abide by to avoid exceeding their sector TAC. An environmental assessment (EA), or other appropriate analysis, must be prepared for each sector that analyzes the individual and cumulative impacts of all proposed sector operations. Additionally, the public must be provided an opportunity to comment on each proposed sector operations plan, sector contract, and EA. The regulations require that, upon completion of the public comment period, the Regional Administrator must make a determination regarding approval of the sectors operations plans and contracts.

While Amendment 13 implemented the GB Cod Hook Sector in 2004, and Framework Adjustment (FW) 42 (71 FR 62156, October 23, 2006) implemented the GB Cod Fixed Gear Sector in 2006, Amendment 16, as proposed, would revise and expand the rules for these two existing sectors and authorize an additional 17 new sectors, including the Northeast Fishery Sectors II through XIII, the Sustainable Harvest Sector, the Tri-State Sector, the Northeast Coastal Communities Sector, and the Port Clyde Community Groundfish Sector. Because the approval and operation of these sector proposals are conditional on approval of measures proposed in Amendment 16, final action regarding the approval of these proposals will not be made unless and until a final decision on Amendment 16 has been made.

Representatives from 17 of the 19 sectors proposed in Amendment 16 have submitted operations plans and sector contracts, and requested an allocation of stocks regulated under the FMP for FY 2010. As currently proposed, one of these 17 sectors, Northeast Fishery Sector IV, would operate as a lease-only sector. Neither the GB Cod Hook Sector nor Northeast Fishery Sector I chose to submit an operations plan and sector contract at this time. FY 2010 would be the first year of operation for 16 of the 17 sectors, if approved. Permit owners that have indicated their intent to participate in one of the proposed 17 sectors account for 784 of the 1,480 eligible NE multispecies permit holders, representing approximately 95 percent of the historical commercial NE multispecies catch. Table 1 (below) includes permit owners who joined a sector as of September 1, 2009. The 784 permits specified above include additional permit owners who enrolled in a sector up through November 20, 2009. These permit owners have until April 30, 2010, to withdraw from a sector and fish in the common pool for FY 2010. Further, additional permit owners who wish to join a sector may be included in the final sector rule, provided that no significantly new analysis is needed and the general conclusions of the draft environmental documents remain unchanged. This proposed rule summarizes sector requirements as proposed in Amendment 16, details regulation exemptions requested by sectors, and summarizes the applicable environmental analyses. Comments on general sector provisions should be addressed to the Amendment 16 proposed rulemaking; comments on sector operations plans and EAs should be submitted for this rulemaking (see **ADDRESSES**).

Amendment 16 defines a sector as ''[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives.'' A sector's TAC is also referred to as an annual catch entitlement (ACE). Regional Administrator approval is required in order for the sectors to be authorized to fish and to be allocated an ACE for most stocks of regulated NE multispecies and ocean pout during each FY. Each individual sector's ACE for a particular stock would represent a share of that stock's annual catch limit (ACL) available to commercial NE multispecies vessels, based upon the potential sector contributions (PSC) of permits participating in that sector. Sectors are self-selecting, meaning each sector maintains the ability to choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire.

TABLE 1—SUMMARY OF THE NUMBER OF PERMITS, MEMBERS, ACTIVE VESSELS, GEAR TYPE, AND AREA FISHED FOR THE PROPOSED FY 2010 SECTORS *

Sector	Permits enrolled	Number of members	Number of active vessels	Gear type fished	Regulated mesh areas
Northeast Fishery Sector II	75	22	20–25	90% trawl, 10% gillnet	GOM, GB, and southern NE.
Northeast Fishery Sector III	74	30	25–30	5% trawl, 90% gillnet, 5% longline.	GOM, GB, and southern NE.
Northeast Fishery Sector IV	47	12	10–15	Lease-only sector	GOM, GB, and southern NE.
Northeast Fishery Sector V	39	12	10–15	90% trawl, 10% gillnet	Southern NE, GB.
Northeast Fishery Sector VI	21	12	10–15	90% trawl, 10% gillnet	GOM, GB, and southern NE.
Northeast Fishery Sector VII	25	12	10–15	90% trawl, 10% gillnet	GOM, GB, and southern NE.
Northeast Fishery Sector VIII	22	22	20–25	90% trawl, 10% gillnet	GOM, GB, and southern NE.
Northeast Fishery Sector IX	44	22	20–25	90% trawl, 10% gillnet	GOM, GB, and southern NE.
Northeast Fishery Sector X	33	22	20–25	90% trawl, 5% gillnet, 5% longline.	GOM, GB, and southern NE.
Northeast Fishery Sector XI	47	22	20–25	10% trawl, 85% gillnet, 5% longline.	Primarily GOM.
Northeast Fishery Sector XII	10	22	20–25	90% trawl, 10% gillnet	Primarily GOM.

TABLE 1—SUMMARY OF THE NUMBER OF PERMITS, MEMBERS, ACTIVE VESSELS, GEAR TYPE, AND AREA FISHED FOR THE PROPOSED FY 2010 SECTORS *—Continued

Sector	Permits enrolled	Number of members	Number of active vessels	Gear type fished	Regulated mesh areas
Northeast Fishery Sector XIII	31	10	15–22	90% trawl, 10% gillnet	GOM, GB, and southern NE.
Fixed Gear Sector	88	54	35	75% gillnet, 20% longline, 5% hook gear.	GOM, GB, and southern NE.
Sustainable Harvest Sector	93	31	44	Trawl, gillnet, hook and line, longlines **.	GOM, GB, and southern NE.
Port Clyde Sector	39	29	26	50% trawl, 50% gillnet	GOM.
Tri-State Sector	16	13	14	90% trawl, 10% gillnet/trawl/ longline.	GOM, GB, and southern NE.
Northeast Coastal Community Sector.	19	19	17	1 otter trawl, all others hook gear.	GOM, GB, and southern NE.

* The data in this table is from the sector operations plans and EAs submitted September 1, 2009, and is subject to change based on final sector rosters.

** No gear mix ratio was described in this sector's EA.

Sector ACEs

Sectors can determine the percentage of each stock's ACL they will be allocated based on the PSC of each member's permit. As of November 20, 2009, 784 of the 1,480 eligible NE multispecies permits, which would account for approximately 95 percent of the historical commercial NE multispecies landings during the qualifying period selected by the New England Fishery Management Council (Council) in Amendment 16, have enrolled in a sector. Permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2010, to withdraw from a sector and fish in the common pool for FY 2010. Table 2 details the ACE percentages each sector would receive according to their memberships as of November 20, 2009. Tables 3a and 3b detail the ACEs (in metric tons and tons) each sector would be allocated based on their November 20, 2009 sector rosters for FY 2010.

TABLE 2—PERCENTAGE (%) OF THE PROPOSED ACE EACH SECTOR WOULD RECEIVE BY STOCK FOR FY 2010*†

Sector	GOM cod	GB cod**	GOM haddock	GB haddock**	Cape cod/ GOM yellowtail flounder	GB yellowtail flounder	Southern New England/ Mid-Atlantic yellowtail flounder	Pollock	Redfish	White hake	Plaice	GOM winter flounder	GB winter flounder	Witch flounder
Northeast Fishery Sector II	18.94	5.47	17.67	11.63	19.32	1.70	1.64	12.26	16.54	6.10	8.36	19.88	1.67	13.27
Northeast Fishery Sector III	15.95	1.18	11.43	0.17	9.01	0.05	0.40	6.82	1.14	4.51	4.30	10.89	0.03	2.96
Northeast Fishery Sector IV	8.65	4.71	6.72	5.42	7.20	2.16	2.68	5.65	6.46	7.97	9.24	7.63	0.71	9.28
Northeast Fishery Sector V	0.25	3.14	0.68	5.66	1.70	9.71	26.26	0.55	0.60	0.52	2.65	0.71	2.66	2.97
Northeast Fishery Sector VI	2.13	2.73	3.56	2.95	2.26	2.10	5.04	3.78	5.61	4.37	4.12	3.39	2.70	4.71
Northeast Fishery Sector VII	0.58	6.29	0.64	5.17	5.26	16.90	4.49	0.77	0.54	0.77	4.23	3.23	17.55	4.11
Northeast Fishery Sector VIII	0.47	7.36	0.20	6.61	7.29	15.93	5.96	0.64	0.44	0.51	2.44	3.36	20.63	3.13
Northeast Fishery Sector IX	1.66	12.14	4.77	10.13	9.19	17.68	6.78	3.81	5.79	4.09	7.30	2.55	32.56	7.53
Northeast Fishery Sector X	4.39	0.83	2.12	0.68	9.71	1.34	1.24	1.41	0.56	0.91	1.29	12.19	0.68	1.93
Northeast Fishery Sector XI	13.68	0.40	3.23	0.04	2.21	0.00	0.01	9.28	1.88	4.85	1.87	2.13	0.00	1.86
Northeast Fishery Sector XII	1.55	0.05	0.51	0.00	0.59	0.00	0.04	0.14	0.07	0.11	0.45	0.45	0.02	0.34
Northeast Fishery Sector XIII	0.76	7.40	0.60	13.61	3.17	14.15	10.52	2.22	4.54	1.81	3.40	1.59	10.16	4.50
Fixed Gear Sector	1.90	28.08	1.29	6.41	1.83	0.01	0.18	7.81	2.89	5.92	0.55	2.24	0.03	0.80
Sustainable Harvest Sector	16.55	15.28	36.15	28.40	10.37	7.42	10.70	35.73	47.47	43.44	35.70	6.75	6.56	31.50
Port Clyde Sector	4.77	0.21	2.32	0.05	1.07	0.00	0.65	4.35	2.56	4.63	6.42	2.06	0.01	4.43
Tri-State Sector	2.23	1.11	5.60	1.84	4.79	5.41	0.55	1.29	1.05	5.66	3.64	7.49	1.64	3.34
Northeast Coastal Community Sector	0.51	0.16	0.25	0.12	0.46	0.84	0.53	0.46	0.48	0.90	0.24	0.47	0.07	0.27
All Sectors	94.95	96.53	97.75	98.90	95.43	95.40	77.68	96.98	98.61	97.07	96.19	87.01	97.67	96.91
Common Pool	5.05	3.47	2.25	1.10	4.57	4.60	22.32	3.02	1.39	2.93	3.81	12.99	2.33	3.09

*The data in this table is based on signed roster contracts as of November 30, 2009.

** Eastern US/Canada cod and haddock percentages equal the PSC % of GB cod and GB haddock.

†Percentages have been rounded to the nearest hundredth of a percent in this table, but thousandths of a percent are used in calculating ACEs in metric tons and tons. In some cases, this table shows a sector allocated 0% of an ACE, but that sector is allocated a small amount of that stock.

TABLE 3A—PROPOSED ACE (IN METRIC TONS) EACH SECTOR WOULD RECEIVE BY STOCK FOR FY 2010 *

Sector	GOM cod	Eastern GB cod	Other GB cod	GOM haddock	Eastern GB haddock	Other GB haddock	CC/GOM yellowtail flounder	GB yellowtail flounder	SNE/MA yellowtail flounder	Pollock	Redfish	White hake	Plaice	GOM winter flounder	GB winter flounder	Witch flounder
Northeast Fishery Sector II	865	19	169	146	1394	3308	150	17	5	337	1132	156	238	31	31	113
Northeast Fishery Sector III	728	4	36	94	20	48	70	0	1	187	78	115	122	17	1	25
Northeast Fishery Sector IV	395	16	146	55	650	1543	56	22	9	155	442	204	263	12	13	79
Northeast Fishery Sector V	11	11	97	6	678	1610	13	97	87	15	41	13	75	1	49	25
Northeast Fishery Sector VI	97	9	84	29	354	840	18	21	17	104	384	112	117	5	50	40
Northeast Fishery Sector VII	26	21	194	5	620	1472	41	169	15	21	37	20	120	5	325	35
Northeast Fishery Sector VIII	21	25	228	2	792	1881	57	159	20	18	30	13	69	5	382	27
Northeast Fishery Sector IX	76	41	375	39	1215	2883	72	177	23	105	396	105	208	4	603	64
Northeast Fishery Sector X	200	3	26	18	82	195	76	13	4	39	38	23	37	19	13	16
Northeast Fishery Sector XI	625	1	12	27	4	11	17	0	0	255	128	124	53	3	0	16
Northeast Fishery Sector XII	71	0	1	4	1	1	5	0	0	4	5	3	13	1	0	3
Northeast Fishery Sector XIII	35	25	229	5	1632	3872	25	141	35	61	311	46	97	3	188	38
Fixed Gear Sector	87	95	868	11	768	1823	14	0	1	215	198	151	16	4	0	7
Sustainable Harvest Sector	756	52	472	298	3405	8081	81	74	36	982	3250	1110	1017	11	121	268
Port Clyde Sector	218	1	6	19	6	14	8	0	2	120	175	118	183	3	0	38
Tri-State Sector	102	4	34	46	220	522	37	54	2	35	72	145	104	12	30	28
Northeast Coastal Community Sector	23	1	5	2	15	34	4	8	2	13	33	23	7	1	1	2
All Sectors	4336	326	2984	807	11856	28138	743	953	258	2665	6751	2481	2740	137	1809	826
Common Pool	230	12	108	19	132	314	36	46	74	83	95	75	109	20	43	26

*The data in this table is based on signed roster contracts as of November 30, 2009. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocated 0 metric tons, but that sector is allocated a small amount of that stock in pounds.

TABLE 3b—POUNDAGE OF ACE (IN TONS) BY STOCK PROPOSED FOR EACH SECTOR FOR FY 2010*

Sector	GOM cod	Eastern GB cod	Other GB cod	GOM haddock	Eastern GB haddock	Other GB haddock	CC/GOM yellowtail flounder	GB yellowtail flounder	SNE/MA yellowtail flounder	Pollock	Redfish	White hake	Plaice	GOM winter flounder	GB winter flounder	Witch flounder
Northeast Fishery Sector II	954	20	187	161	1537	3647	166	19	6	371	1248	172	263	35	34	125
Northeast Fishery Sector III	803	4	40	104	22	53	77	1	1	207	86	127	135	19	1	28
Northeast Fishery Sector IV	436	18	161	61	717	1701	62	24	10	171	487	225	290	13	15	87
Northeast Fishery Sector V	13	12	107	6	748	1774	15	107	96	17	46	15	83	1	54	28
Northeast Fishery Sector VI	107	10	93	32	390	926	19	23	18	115	423	123	129	6	55	44
Northeast Fishery Sector VII	29	23	214	6	684	1622	45	186	16	23	41	22	133	6	358	39
Northeast Fishery Sector VIII	23	27	251	2	873	2073	63	175	22	19	33	14	77	6	421	29
Northeast Fishery Sector IX	84	45	414	43	1339	3178	79	195	25	116	437	115	229	4	665	71
Northeast Fishery Sector X	221	3	28	19	90	215	83	15	5	43	42	26	41	21	14	18
Northeast Fishery Sector XI	689	1	13	29	5	12	19	0	0	281	142	137	59	4	0	17
Northeast Fishery Sector XII	78	0	2	5	1	1	5	0	0	4	6	3	14	1	0	3
Northeast Fishery Sector XIII	38	28	252	5	1798	4268	27	156	39	67	343	51	107	3	207	42
Fixed Gear Sector	96	105	957	12	847	2009	16	0	1	237	218	167	17	4	1	7
Sustainable Harvest Sector	833	57	521	329	3753	8908	89	82	39	1083	3582	1224	1121	12	134	296
Port Clyde Sector	240	1	7	21	6	15	9	0	2	132	193	130	201	4	0	42
Tri-State Sector	112	4	38	51	243	576	41	60	2	39	79	159	114	13	33	31
Northeast Coastal Community Sector	25	1	5	2	16	38	4	9	2	14	36	25	8	1	1	3
All Sectors	4780	360	3289	889	13069	31016	819	1051	285	2938	7442	2735	3020	151	1994	910
Common Pool	254	13	119	20	146	346	39	51	82	91	105	82	120	23	48	29

*The data in this table is based on signed roster contracts as of November 30, 2009. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocated 0 metric tons, but that sector is allocated a small amount of that stock in pounds.

Sector Operations Plans and Contracts

All sectors must, on an annual basis, submit an operations plan, sector contract, and EA to NMFS for the following FY. On September 1, 2009, 17 sectors submitted an operations plan and contract for FY 2010 to NMFS. Each sector operations plan contains the rules under which each sector would fish. The sector contract provides the legal contract that binds members to a sector and its operations plan.

While each sector conducts fishing activities according to its approved operations plan, Section 4.2.3 of the Amendment 16 FEIS contains numerous provisions that, if approved, would apply to all sector operations plans and sector members. All permit holders with a valid limited access NE multispecies days-at-sea (DAS) permit as of May 1, 2008, are eligible to participate in a sector, including those permits currently held in confirmation of permit history. While membership in each sector is voluntary, each member (and their permits associated with the sector) must remain with the sector for the entire FY, and cannot fish in the NE multispecies DAS program outside of the sector (*i.e.,* in the common pool) during the FY. Participating vessels would be required to comply with all pertinent Federal fishing regulations, unless specifically exempted by a letter of authorization (LOA) issued by the Regional Administrator, as part of the approval of a sector's operations plan, as described further below. Sector operations plans may be amended in-season if a change is necessary and agreed to by NMFS, provided the change does not require a modification to the Amendment 16 regulations. These changes would be included in updated LOAs issued to sector members.

As proposed in Amendment 16, sectors would be allocated all large-mesh groundfish stocks for which members have landings history, with the exception of Atlantic halibut, ocean pout, windowpane flounder, Atlantic wolffish, and Southern New England/Mid-Atlantic winter flounder. Sector vessels would be required to retain all legal-sized allocated groundfish. Catch of all allocated groundfish stocks by a sector's vessels would count against the sector's ACE, unless the catch is an element of a separate ACL sub-component, such as groundfish catch in exempted fisheries, or catch of yellowtail flounder in the Atlantic sea scallop fishery. Sector vessels fishing for monkfish, skate, lobster (with non-trap gear) and spiny dogfish (outside an exempted fishery) would have their groundfish catch (including discards) on those trips debited against the sector's ACE, unless the vessel is fishing for such species under the provisions of a NE multispecies exempted fishery. Discard rates applied to sectors would be determined by NMFS through at-sea monitoring.

Amendment 16 proposes that ACE could be transferred between sectors, although ACE transfers to or from common pool vessels would be prohibited. Each sector would be required to ensure that its ACE is not exceeded during the FY. Sectors would be required to develop independent third-party dockside monitoring programs. During FY 2010, 50 percent of trips by each sector would be randomly selected for dockside monitoring to verify at the time it is weighed by the dealer and to certify the landings weights are accurate as reported by the dealer. Sectors would be required to monitor their landings and available ACE and submit weekly catch reports to NMFS. In addition, the sector manager would be required to provide NMFS with aggregate sector reports on a daily basis when either 80 percent of any one of the sector's groundfish ACEs are reached, or when, for two consecutive weekly reporting periods, 20 percent or more of the remaining portion of any ACE is harvested, whichever occurs first. Once a sector's ACE for a particular stock is caught, a sector would be required to cease all fishing operations in that stock area until it could acquire additional ACE for that stock. Each sector would be required to submit an annual report to NMFS and the Council within 60 days of the end of the FY detailing the sector's catch (landings and discards by the sector), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts from the sector.

Sector contracts provide procedures to enforce the sector operations plan, explain sector monitoring and reporting requirements, present a schedule of penalties, and provide authority to sector managers to issue stop fishing orders to sector members. Sector members could be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). Each sector contract submitted for FY 2010 states that the sector would withhold an initial reserve from each member's individual allocation to prevent the sector from exceeding its ACE. Each sector contract also details the method for initial ACE allocation to sector members; for FY 2010, each sector has proposed that each sector member could harvest an amount of fish equal to the proportion of PSC that each individual member's permit contributed to the sector's ACE.

Amendment 16 proposes several ''universal'' exemptions that are applicable to all sectors. These universal exemptions include exemptions from trip limits on allocated stocks, the GB Seasonal Closed Area, NE multispecies DAS restrictions, the requirement to use a 6.5-inch (16.51-cm) mesh codend when fishing with selective gear on GB, and portions of the Gulf of Maine (GOM) Rolling Closure Areas. Sectors may request additional exemptions from Amendment 16 regulations in their sector operations plan. However, sector vessels would not be allowed exemptions from several NE multispecies management measures, including year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (not including DAS reporting requirements).

Proposed Exemptions

In addition to the universal exemptions proposed in Amendment 16, sectors have requested several additional exemptions from the NE multispecies regulations in their sector operations plans. The requests include exemptions from the: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) 20-day spawning block out of the fishery required for all vessels; (3) limitation on the number of gillnets imposed on Day gillnet vessels; (4) prohibition on a vessel hauling another vessel's gillnet gear; (5) limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (6) limits on the number of hooks that may be fished; and (7) DAS Leasing Program length and horsepower restrictions. NMFS is soliciting public comment on these exemptions and is especially interested in receiving comments on the exemption requests from the Day gillnet 120-day block out requirement, the 20-day spawning block out requirement, and the limitation on the number of gillnets imposed on Day gillnet vessels, because of particular concerns regarding the impacts of these exemptions.

1. 120-Day Block Requirement Out of the Fishery for Day Gillnet Vessels

This measure was implemented in 1996 under Amendment 7 (61 FR 27709, May 31, 1996) to help ensure that Day gillnet management measures were comparable to effort controls placed on other fishing gear types. Regulations at 50 CFR § 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category

declare and take 120 days out of the non-exempt gillnet fishery. Each period of time taken must be a minimum of 7 consecutive days, and at least 21 of the 120 days must be taken between June 1 and September 30. Six sectors requested an exemption from this Day gillnet requirement, arguing that this measure was designed to control fishing effort and, therefore, is no longer necessary because sectors are restricted to a hard TAC (*i.e.,* ACE) for each groundfish stock, which limits overall fishing mortality. Exemption from the Day gillnet 120-day block requirement is being requested by Northeast Fishery Sectors III and XI, the GB Cod Fixed Gear Sector, the Sustainable Harvest Sector, the Tri-State Sector, and the Port Clyde Community Groundfish Sector. The Tri-State Sector initially requested this exemption in the first draft of its sector operations plan, and later removed the request from their operations plan after no gillnet vessels committed to the sector. After sector rosters were re-opened on October 30, 2009, additional gillnet vessels joined the Tri-State Sector. Therefore, while there is an exemption request in the sector's most final operations plan, an analysis for this exemption is not in the sector's EA. The Tri-State Sector's EA would contain the necessary analysis for this exemption request in their final EA, which would be available to the public on publication of the sector final rule. Similar analysis for this exemption can be found in the EAs prepared for the other sectors requesting an exemption from the Day gillnet 120-day block requirement.

Depending on the selectivity and catch rates of the vessels requesting this exemption, sector vessels that are no longer subject to the 120-day block requirement could increase their catch per unit effort (CPUE) and reduce the number of days that fixed gear is in the water. However, NMFS is concerned about this exemption because, if some vessels are not selective and/or if they catch less fish, CPUE could decrease and more fixed gear could be deployed. Similarly, protected species (such as harbor porpoise and humpback whales) could benefit from less fishing effort and fewer gear days, but, conversely, could be negatively impacted by an increase in gear days and more fishing effort. Impacts to protected species also depend on spatial and temporal changes in fixed gear location and how these changes interact with protected species. Additionally, it is possible that this fixed gear exemption could allow sector vessels to ''hold'' additional bottom ground, disadvantaging common pool vessels. Moreover, gillnet gear that is not tended regularly could increase ghost fishing (i.e., gear that could continue to catch fish or entangle protected resources if loose or lost).

2. 20-Day Spawning Block

The Northeast Coastal Communities Sector, the Sustainable Harvest Sector, and the Tri-State Sector are requesting exemption from the 20-day spawning block requirement out of the fishery. Regulations at § 648.82(g) require vessels to declare out and be out of the NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning is most prevalent in the GOM. The sectors argue that an exemption from the 20-day spawning block requirement would allow for greater fishing flexibility and could increase efficiency and reduce overall gear time in the water. Sectors requesting an exemption from the 20-day spawning block requirement state that this measure, while designed to control fishing effort on spawning fish stocks, is ineffective and no longer necessary because each sector would utilize an ACE to restrict its fishing effort. The sectors claim that the ability for a vessel owner to select any 20-day period (between March 1 and May 31) out of the fishery, as allowed under the current regulations, makes the measure ineffective for protecting spawning stocks.

This regulation was developed to protect spawning groundfish stocks and, therefore, NMFS is seeking public comment about potential biological impacts this exemption could bring to spawning stocks, including the disruption of spawning aggregations.

3. Limitation on the Number of Gillnets for Day Gillnet Vessels

Current gear restrictions in the groundfish regulated mesh areas (RMA) restrict Day gillnet vessels from fishing more than: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the Mid-Atlantic RMA (§ 648.80(b)(2)(iv)). These restrictions were implemented in 1996 under Amendment 7 and revised in Amendment 13 to prevent an uncontrolled increase in the number of nets being fished, and thus, undermining the applicable effort controls. The Sustainable Harvest Sector is requesting that their vessels be allowed to fish up to 150 nets (any combination of flatfish or roundfish nets) in each of the RMAs. The current regulations require either one or two tags per net depending on the type of gillnet and RMA fished. Because vessels under this exemption would no longer be restricted by the number of roundfish or flatfish nets in each area (up to 150 nets), the Sustainable Harvest Sector is also requesting that the two tag per net requirement be replaced with one tag per net. This exemption would increase the number of gillnets that could be fished per permit in the Sustainable Harvest Sector by 50 percent in the GOM RMA, by 200 percent in the GB RMA, and by 100 percent in the SNE RMA. The Sustainable Harvest Sector rationalizes that, because this measure was designed to control fishing effort, it is no longer necessary, since the sector is restricted to an ACE for each stock that caps overall fishing effort.

The concern raised by NMFS regarding potential increased gear under item number 1 (an exemption from the 120-day block out requirement) are applicable for this exemption request as well.

4. Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear

Northeast Fishery Sectors III and XI are requesting exemption from current regulations that prohibit one vessel from hauling another vessel's gillnet gear (§§ 648.14(k)(6)(ii)(A) and 648.84). The sectors requesting this exemption believe that the regulations pertaining to gear marking controls and setting and hauling responsibilities are no longer necessary, because the sector would be confined to an ACE for each stock and that ''community'' fixed gear would allow fishermen greater flexibility. In addition, the sectors argue that shared fixed-gear fishing effort could potentially reduce the amount of gillnet gear in the water and minimize the use of gear to ''hold'' additional bottom ground. Pursuant to a request by NMFS, the sectors requesting this exemption have proposed that all vessels participating in community fixed gear be jointly liable for any violations associated with that gear.

5. Limitation on the Number of Gillnets That May Be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS

The GB Cod Fixed Gear Sector requests an exemption from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. Current regulations at § 648.80(a)(4)(iv), which prohibit Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 nets on GB, were implemented as a groundfish mortality control under Amendment 13. The GB Cod Fixed Gear

Sector proposes that this exemption would increase efficiency of its gillnet vessels by allowing them to haul additional nets per trip—nets which are already permitted in the water under the Monkfish FMP. The sector argues that this would allow additional opportunities to tend gear and would likely reduce gear soak time. This exemption does not permit the use of additional nets; it would only allow nets deployed under existing net limits, according to the Monkfish FMP, to be hauled more efficiently by vessels dually permitted under both FMPs.

6. Limitation on the Number of Hooks That May Be Fished

The GB Cod Fixed Gear Sector requests an exemption from the number of hooks that a vessel may fish on a given fishing trip, claiming that this measure, which was initially implemented through an interim action (67 FR 50292, August 1, 2002) and made permanent through Amendment 13, was designed to control fishing effort and, therefore, is no longer necessary because the sector is restricted to an ACE for each stock, which caps mortality from fishing. Current regulations (§ 648.80) prohibit vessels from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the SNE RMA, or 4,500 rigged hooks in the MA RMA.

Again, the concerns raised by NMFS regarding potential increased gear under items number 1 and number 3, which also could potentially allow additional fixed gear to be fished, are applicable for this exemption request as well. However, the potential problems associated with longline/hook gear would likely result in lesser impacts than those associated with gillnets. For example, the potential for gear interaction between protected resources and longline/hook gear is much lower than the interaction potential from gillnet gear. Also, while it is possible for lost longline/hook gear to ghost fish, the resulting impacts would likely be less than impacts from a gillnet ghost fishing.

7. Length and Horsepower Restrictions on DAS Leasing

While Amendment 16 would exempt sector vessels from the requirement to use NE multispecies DAS to harvest groundfish, some sector vessels would still need to use NE multispecies DAS under specific circumstances, e.g., the Monkfish FMP includes a requirement that limited access monkfish Category C and D vessels harvesting more than the incidental monkfish catch must fish under both a monkfish and a groundfish DAS. Therefore, sector vessels may still use, and lease, NE multispecies DAS.

The Sustainable Harvest Sector and Tri-State Sector have requested an exemption from the DAS Leasing Program length and horsepower restrictions in their operations plans, within their individual sectors as well with other sectors. The sectors requesting an exemption for the DAS leasing specifications state that sector ACEs eliminate the need to use vessel characteristics to control fishing effort and that removal of this restriction would allow sector vessels more flexibility. It is important to note that, because this exemption was only requested by the Sustainable Harvest Sector and Tri-State Sector, if approved, only these two sectors would be exempt from the DAS Leasing Program length and horsepower restrictions. Thus, this exemption would not apply to the other approved sectors and therefore, leasing under this exemption could only occur between the Sustainable Harvest Sector and the Tri-State Sector.

Details of the justifications for the proposed exemptions and analyses of the potential impacts of the operations plans are contained in the sector EAs.

Requested Exemptions for Which There Are Serious Concerns

After completing an initial review of 17 sector operations plans and contracts submitted September 1, 2009, NMFS provided each sector with comments, including an assessment of which exemption requests NMFS would likely disapprove because of serious concerns with negative environmental impacts that could result from granting the exemption. Some of the sectors chose to remove these exemption requests from their operations plans, while other sectors did not. After reconsideration, NMFS has decided to include all of these exemption requests of serious concern in the proposed rule, and moreover, is soliciting public comment on these requests. If public comment on these exemptions of serious concern provides additional support that convinces NMFS to change its earlier stance on such requests, the sector operations plans and EAs would be revised accordingly. If necessary, NMFS would submit a supplemental EA.

Of central concern to NMFS are exemption requests from the GOM Rolling Closure Areas beyond the proposed Amendment 16 universal exemption areas, the 72-hr observer notification requirement for NMFS-funded at-sea monitoring coverage, the Atlantic halibut one-fish trip limit during the Maine seasonal halibut fishery, the vessel monitoring system (VMS) reporting requirements, the use of electronic vessel trip reports (VTRs) in replace of paper VTRs, the minimum 6-inch (16.51-cm) spacing requirement for de-hookers, and the minimum fish size requirements, as discussed further below.

1. GOM Rolling Closure Areas

Amendment 16 proposes universal sector exemptions from portions of the current GOM Rolling Closure Areas. Six of the Northeast Fishery Sectors and the Sustainable Harvest Sector requested additional exemptions from these rolling closures, specifically from statistical blocks 124, 125, 132, and 133 in April; and block 138 in May. At its November meeting, the Council endorsed the sector's request for an exemption to the rolling closure for block 138. In Amendment 16, the Council voted to exempt sectors from the GOM Rolling Closure Areas, with the exception of portions of these areas that the Council believed should remain closed to protect spawning aggregations. The Council tasked the Groundfish Plan Development Team (PDT) with reviewing and analyzing the existing GOM Rolling Closure Areas to determine which areas should remain closed, but stipulated that sectors may request specific exemptions from the GOM Rolling Closure Areas in their sector operations plans.

The sectors requesting this exemption make the argument that, because they are restricted to an ACE for each groundfish stock that caps overall fishing mortality, exemptions to the rolling area closures should be granted because they are mortality closures. The Sustainable Harvest sector contends that statistical block 138, from which they are requesting an exemption during the month of May, does not overlap with any areas regulated by the Atlantic Large Whale Take Reduction Plan (ALWTRP) and that trawl gear, which would be the primary fishing gear utilized by the sector, is not regulated by the Harbor Porpoise Take Reduction Plan (HPTRP). The six Northeast Fishery Sectors requesting exemption from statistical blocks 124, 125, 132, and 133 in April contend that their members have a vast amount of experience and knowledge identifying spawning aggregations of fish and that eliminating access to these additional rolling closure areas requested in this exemption would prematurely end commercial access to the haddock stocks, which are fully rebuilt, in those areas. The Northeast Fishery Sectors further commented that they have

designed a strategy to minimize the impacts to spawning fish while promoting benefits to sector members. Under this strategy, Northeast Fishery Sector vessels would fish on rotating schedules to limit daily effort, would utilize a sentinel vessel to survey the area for the presence of spawning fish, and would utilize a bycatch/spawning fish notification system through an onboard computer system to reduce the potential for sector vessels to overharvest spawning stocks of fish. Northeast Fishery Sectors requesting this exemption would restrict the harvesting of GOM cod in these areas by capping the percentage of the sector's available ACE that could be taken during the requested exemption period. Trawling vessels would minimize their gear impacts by reducing the time that they tow their nets along the bottom. In addition to abiding by all Federal fishing regulations, sector vessels would adhere to all applicable Massachusetts Department of Marine Fisheries cod conservation measures. Finally, the Northeast Fishery Sectors contend that vessels fishing in the requested exemption areas would provide additional data, which could improve scientific knowledge for the purpose of protecting spawning cod.

NMFS is seeking public comment about these additional exemption requests from the GOM Rolling Closure Areas due to the ancillary benefits the GOM RCAs provide to spawning fish in the GOM, as well as the protection these areas afford harbor porpoise and other marine mammals.

2. 72-Hour Observer Notification Requirement

Vessels are currently required to call into the Northeast Fisheries Observer Program 72 hours prior to leaving for a trip into a special management program (§ 648.85). Eight of the 12 Northeast Fishery Sectors and the GB Cod Fixed Gear Sector are requesting exemption from this requirement, arguing that, if they can hire an at-sea monitor through a private contract arrangement with a NMFS-approved observer company that can respond in less time, they should be able to do so. NMFS is proposing to reduce this requirement from 72 hr to 48 hr in the proposed rule for Amendment 16.

This notification requirement is necessary because of the additional logistical demands imposed on the NMFS Observer Program resulting from the increased NMFS funded at-sea monitoring program for all groundfish vessels. An exemption from the observer notification requirement is of significant concern due to the difficulties this would pose for the NMFS Observer Program to maintain a random selection of observer coverage. Lastly, an observer from the NMFS Observer Program is required to gather more data than an at-sea monitor, thus this exemption would reduce the amount of fisheries data available to managers.

3. Halibut One-Fish Trip Limit

The Northeast Coastal Communities Sector has requested an exemption from the NE multispecies FMP one-fish per trip Atlantic halibut possession limit in order to allow member vessels to participate in the State of Maine's halibut fishery, which has a 50-fish seasonal limit. The sector rationalizes that because halibut mortality would be controlled by existing state regulations, including area restrictions, seasonal restrictions, a minimum size limit, a minimum trip limit, a minimum hook size, and tagging requirements, mortality would remain consistent with previous fishing practices.

The Atlantic halibut stock is currently overfished and experiencing overfishing. The NE multispecies FMP includes a rebuilding program for Atlantic halibut that permits a one-fish per trip possession limit to prevent a targeted fishery while minimizing discards. Allowing an exemption from the one-fish halibut trip limit specifically to allow sector vessels to participate in a targeted halibut fishery would be inconsistent with the rebuilding program of the FMP.

4. VMS Requirements

All 12 of the Northeast Fishery Sectors request a VMS exemption that would allow a central sector server to relay member vessel catch reports and logbook data to NMFS. Currently, catch data are sent directly from the vessel to NMFS through VMS. The sector anticipates that, in order to facilitate electronic data transmission from its vessels to a sector-operated data collection and distribution Web portal, an administrative exemption may be necessary to allow the server to relay catch reports and logbook data on behalf of sector member vessels. Thus, under this exemption, catch data would go from the vessel to a central server maintained by the sector, and the sector's server would then relay the data to NMFS.

NMFS' Office of Law Enforcement has raised serious concerns about this exemption request, given that the chain of custody of catch information would be interrupted and, therefore, open to tampering. Until such time that NMFS can ensure that the flow of information under such an exemption is tamper-proof, this type of reporting exemption would be difficult to approve.

5. Electronic VTRs (eVTRs)

All of the Northeast Fishery Sectors, as well as the Sustainable Harvest and Tri-State Sectors, requested permission to use eVTRs in place of paper VTRs to transmit catch data to NMFS. A pilot study is currently being developed that would use eVTRs as well as paper VTRs to determine the viability of eVTRs as a replacement to the paper version. Should the pilot study, which will include both sector and common pool vessels, determine that eVTRs can fulfill all necessary requirements, this option could be considered at a later date. However, NMFS considers it premature to allow eVTRs without first determining the viability of this electronic report.

6. Fairlead Roller Spacing on De-Hookers

The GB Cod Fixed Gear Sector requested an exemption from the prohibition on the use of de-hookers (crucifiers) with less than 6-inch (15.24-cm) spacing between the fairlead rollers. The sector argues that a prohibition on de-hookers requires a modification to longline gear haulers that is inefficient and unnecessary. De-hookers with a spacing of less than 6 inches (15.24-cm) were originally prohibited in the 2002 interim rule, and then included in Amendment 13, to discourage de-hooking strategies that may reduce survival rates of discarded fish.

NMFS believes that this exemption request is not warranted because the current prohibition minimizes the mortality of discarded fish.

7. Minimum Fish Size Requirements

The GB Cod Fixed Gear Sector and the Tri-State Sector requested an exemption from the minimum groundfish fish size requirements. Current regulations specify minimum size (total length) for nine groundfish species: Cod, haddock, pollock, witch flounder, yellowtail flounder, American plaice, Atlantic halibut, winter flounder, and Acadian redfish. The GB Cod Fixed Gear sector argues that allowing full retention of all catch would eliminate discards and increase profitability without additional mortality. Further, the sector contends that, because 100-percent discard mortality is presently assumed by NMFS, and because the sector's ACE, which would cap the sector's catch, would be debited for all discards, the sectors should be allowed to land fish less than the current minimum fish size. The Tri-State Sector, which requests an exemption from the

Federal minimum fish size requirements for American plaice and witch flounder, states that many of these fish that their member vessels catch are less than one inch (2.54-cm) smaller than the current minimum fish size requirements and are already dead when discarded, thus making the requirement of discarding sub-legal fish wasteful.

NMFS has a serious concern about exempting vessels from the minimum fish size, as this would present significant enforcement issues by allowing two different fish sizes in the marketplace. NMFS is also concerned that this exemption could potentially increase the targeting of juvenile fish.

Requested Exemptions Previously Prohibited or Included in Amendment 16

Exemptions requested by several sectors for increased access to Special Access Programs (SAPs), inter-sector DAS leasing, and a decrease in the minimum mesh size requirements for gillnets, are either specifically prohibited in Amendment 16 or are already included in the Amendment 16 proposed rule. Accordingly, these exemptions are not proposed in this rule.

As previously stated, Amendment 16 prohibits sectors from requesting exemptions from year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements). The Closed Area II Yellowtail Flounder SAP and the Eastern U.S./Canada Haddock SAP are both programs that provide seasonal access to year-round closed areas. Exemptions that would expand access to these year-round closures would be prohibited under Amendment 16.

Exemption requests to authorize inter-sector DAS leasing, year-round access to the Eastern U.S./Canada Area, and a decrease in the minimum mesh size requirements for gillnets in the GOM from January to April are all proposed in Amendment 16. In addition, an exemption from regulations pertaining to the possession of additional nets while using either a haddock separator trawl or a Ruhle trawl is being proposed in the Amendment 16 regulations as a correction, since this omission in the current regulations is the result of an administrative oversight in a previous rulemaking.

Northeast Fishery Sector IV, which would operate as a lease-only sector, originally requested a suite of exemptions similar to those requested by other Northeast Fishery Sectors. However, because the permitted vessels within Northeast Fishery Sector IV (the transferor) would undertake no actual fishing operations, the exemption requests would not be applicable and are, therefore, moot and not proposed in this rule.

Sector EAs

In order to comply with the National Environmental Policy Act, an EA was prepared for each operations plan. All sector EAs are tiered from the Environmental Impact Statement (EIS) for Amendment 16 to the NE Multispecies FMP. The EA for each sector examines the biological, economic, and social impacts unique to each sector's proposed operations, including requested exemptions, and provides a cumulative effects analysis (CEA) that addresses the combined impact of the direct and indirect effects of a particular sector and the other proposed sectors. The summary findings of each EA conclude that each sector would produce similar effects that have non-significant impacts. An analysis of aggregate sector impacts was also conducted. Visit *http://www.regulations.gov* to view the EAs prepared for each of the 17 sectors that this rule would implement.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Because this proposed rule contains no implementing regulations, it is exempt from review under Executive Order (E.O.) 12866.

An initial regulatory flexibility analysis (IRFA) was prepared as required by § 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that the proposed rule, if adopted, would have on small entities. The IRFA consists of this section and the preamble of this proposed rule, and the EAs prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EAs prepared for this action. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Economic Impacts on Regulated Small Entities Enrolled in a Sector

This proposed action would affect regulated entities engaged in commercial fishing for groundfish that have elected to join any one of the 17 proposed sectors that have submitted operations plans for FY 2010. Any limited access Federal permit under the NE Multispecies FMP is eligible to join a sector (Table 4). The Small Business Administration (SBA) size standard for commercial fishing (NAICS code 114111) is $4 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross annual sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million annually. Since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. As of November 20, 2009, a total of 784 of 1,480 eligible permits elected to join a sector. Table 4 presents a summary of the number and percent of individual and active permits currently enrolled in a sector for FY 2010. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2010, the number of permits participating in sectors on May 1, 2010, and the resulting sector ACE allocations, may change.

Joining a sector is voluntary. This means that the decision whether or not to join a sector may be based upon which option—joining a sector or fishing under effort controls in the common pool—offers the greater economic advantage. Since sectors would be granted certain universal exemptions, and may request and be granted additional exemptions from regulatory measures that will apply to common pool vessels, sector vessels would be afforded greater flexibility. Sector members would no longer have groundfish catch limited by DAS allocations and would, instead, be limited by their available ACE. In this manner the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the sector ACE. This change places a premium on timing of landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips.

Unlike common pool vessels, sectors bear the administrative costs associated with preparing an EA, as well as the costs associated with sector management, dockside monitoring, and

at-sea monitoring. The magnitude of the administrative costs for sector formation and operation is estimated to range from $60,000 to $150,000 per sector, and the potential cost for dockside and at-sea monitoring ranges from $13,500 to $17,800 per vessel. These estimates serve to illustrate the fact that the potential administrative costs associated with joining a sector may be expected to influence a vessel owner's decision. The majority of these administrative costs would be subsidized by NMFS in FY 2010. Whether these subsidies, which include providing financial support for preparation of sector EAs, dockside monitoring, and at-sea monitoring, will continue beyond FY 2010 is not known. Nevertheless, these subsidies may make joining a sector a more attractive economic alternative for FY 2010.

The substantial changes affecting vessels that choose to join a sector make it difficult to assess the economic impact on these fishing businesses. The only sector that has submitted an operations plan for FY 2010 that has been operating since a sector allocation was first authorized in 2004 is the GB Cod Hook Sector. The average revenue per sector member increased from $61,000 in FY 2004 to $112,000 in FY 2008. Comparative analysis of vessels using similar gear that did not join a sector suggests that vessels that joined the sector were more technically efficient. Whether this difference in efficiency was because of the flexibility associated with regulatory exemptions, or due to a self-selection effect, is unknown. Nevertheless, available information suggests that economic performance among sector vessels may be expected to improve relative to common pool vessels that remain under effort controls.

Small entity impacts may differ depending on sector-specific operations plans. The number of permits that have enrolled in each sector, as well as the operating characteristics of the sector, may have an economic affect on sector members (Table 1). Sector enrollment in each of the 17 sectors varies from 10 to 54 members and the number of permits enrolled in a sector ranges from 10 to 93. The allocation to any given sector is based on the combined sum of the PSC for each stock associated with all permits enrolled in a sector. All sector operations plans would convert the total ACE into an individual catch share proportional to the PSC that each member brings to the sector. This share would be allocated to the member to be fished by that member or traded to another sector member.

Sector operations plans include a number of harvesting rules designed to track catches, as required, but also contain provisions that would require advance notification of when the sector or sector member may be approaching a harvest share limit or the sector's ACE for a given stock. This system may provide the information needed to allow sector members to more fully utilize their harvest share.

TABLE 4—SUMMARY OF THE NUMBER AND PERCENT OF INDIVIDUAL AND ACTIVE PERMITS FOR CURRENTLY ENROLLED IN A SECTOR FOR FY 2010

Sector	Number of individual permits *	Percent of individual permits	Number of active permits *	Percent of active permits **
Northeast Fishery Sector II	75	5.1	44	7.3
Northeast Fishery Sector III	74	5.0	47	7.8
Northeast Fishery Sector IV	47	3.2	0	0.0
Northeast Fishery Sector V	39	2.6	34	5.7
Northeast Fishery Sector VI	21	1.4	9	1.5
Northeast Fishery Sector VII	25	1.7	19	3.2
Northeast Fishery Sector VIII	22	1.5	16	2.7
Northeast Fishery Sector IX	44	3.0	22	3.7
Northeast Fishery Sector X	33	2.2	27	4.5
Northeast Fishery Sector XI	47	3.2	37	6.2
Northeast Fishery Sector XII	10	0.7	6	1.0
Northeast Fishery Sector XIII	31	2.1	25	4.2
Fixed Gear Sector	88	5.9	39	6.5
Sustainable Harvest Sector	93	6.3	44	7.3
Port Clyde Sector	39	2.6	27	4.5
Tri-State Sector	16	1.1	14	2.3
Northeast Coastal Community Sector	19	1.3	17	2.8
All Sectors	723	48.9	427	71.0
Common Pool	757	51.1	174	29.0

* Number of permits in each sector is from sector operation plans and EAs submitted September 1, 2009.
** In 2007, 601 limited access multispecies vessels and 138 open access vessels landed groundfish.

Economic Impacts of Exemptions Requested in the Proposed Action That Are Not flagged as ''Requested Exemptions for Which There Are Serious Concerns''

The EIS for Amendment 16 to the NE Multispecies FMP compares economic impacts of sector measures with common pool measures, and analyzes costs and benefits of the universal exemptions. This proposed rule provides further discussion on the additional exemptions requested by sectors. Several additional exemptions requested by various sectors could provide economic incentives to enroll in a sector. All exemptions requested by the sectors are intended to provide positive social and economic effects to sector members and ports.

Exemption from the Day gillnet 120-day block requirement out of the fishery is requested by Northeast Fishery Sectors III and XI, the GB Cod Fixed Gear Sector, the Sustainable Harvest Sector, the Tri-State Sector, and the Port Clyde Sector. Existing regulations require that vessels using gillnet gear remove all gear from the water for 120 days per year. Since the time out from fishing is up to the vessel owner to decide (with some restrictions), many affected vessel owners have purchased more than one vessel such that one may be used while the other is taking its 120-

day block out of the groundfish fishery, to provide for sustained fishing income. Acquiring a second vessel adds the expense of outfitting another vessel with gear and maintaining that vessel. The exemption from the 120-day block would allow sector members to realize the cost savings associated with retiring the redundant vessel.

Northeast Fishery Sectors III and XI are requesting exemption from the prohibition on a vessel hauling gear that was set by another vessel. The community fixed gear exemption would allow sector vessels in the Day gillnet category to effectively pool gillnet gear that may be hauled or set by sector members. This provision would reduce the total amount of gear that would have to be purchased and maintained by participating sector members resulting in some uncertain level of cost savings, along with a possible reduction in total gear fished.

The GB Cod Fixed Gear Sector is requesting exemption from the number of hooks that may be fished, and exemption from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. These exemptions would provide vessel owners with the flexibility to adapt the number of hooks fished to existing fishing and market conditions. This exemption would also provide an opportunity to improve vessel profitability. The exemption from the number of hooks that may be fished has been granted to the GB Cod Hook Sector every year since 2004.

The Northeast Coastal Communities Sector, Sustainable Harvest Sector, and Tri-State Sector are requesting exemption from the required 20-day spawning block out of the fishery. Exemption from the 20-day spawning block would improve flexibility to match trip planning decisions to existing fishing and market conditions. Although vessel owners currently have the flexibility to schedule their 20-day block according to business needs and may use that opportunity to perform routine or scheduled maintenance, vessel owners may prefer to schedule these activities at other times of the year, or may have unexpected repairs. Removing this requirement may not have a significant impact, but would still provide vessel owners with greater opportunity to make more efficient use of their vessel.

The Sustainable Harvest Sector is requesting an exemption from the limit on the number of nets (not to exceed 150) that may be deployed by Day gillnet vessels. This would provide greater flexibility to deploy fishing gear by participating sector members according to operational and market needs.

The Sustainable Harvest Sector and Tri-State Sector request exemptions from regulations that currently limit leasing of DAS to vessels within specified length and horsepower restrictions. Current restrictions create a system in which a small vessel may lease DAS from virtually any other vessel, but is limited in the number of vessels that small vessels may lease to. The opposite is true for larger vessels. Exemption from these restrictions would allow greater flexibility to lease DAS between vessels of different sizes. The efficiency gains of doing so are uncertain and may be limited because the exemption would only apply to Tri-State Sector and Sustainable Harvest Sector members. Since DAS would not be required while fishing for groundfish, the economic importance of this exemption would be associated with the need to use groundfish DAS when fishing in other fisheries, for example, monkfish.

Economic Impacts of Requested Exemptions for which there are Serious Concerns

There are several requested exemptions about which NMFS has serious concerns. NMFS has informed the sector managers of these concerns. These exemption requests are from the GOM Rolling Closure Areas beyond the proposed Amendment 16 universal exemption areas, the 72-hr observer notification requirements for NMFS-funded at-sea monitoring, the Atlantic halibut one-fish trip limit during the Maine seasonal halibut fishery, the VMS reporting requirements, the paper VTR requirement, the prohibition on de-hookers, and the minimum fish size requirements. The economic impacts of not approving these exemptions are provided below.

In addition to the universal rolling closure exemptions as described in Section 4.2.3.9 of Amendment 16, six of the Northeast Fishery Sectors and the Sustainable Harvest Sector requested additional exemptions from GOM Rolling Closure Areas. These include statistical blocks 124, 125, 132, and 133 in April; and block 138 in May. The Council voted to exempt sectors from the GOM Rolling Closure Areas, with the exception of portions that the Council believes should remain closed to protect cod spawning aggregations. Exempting sector vessels from additional rolling closures beyond the universal exemptions proposed by the Council in Amendment 16 would likely result in improved profitability, since higher catch rates would mean that the same amount of groundfish could be caught at a lower cost. However, the additional rolling closure area blocks requested for exemption were specifically not exempted by the Council because these areas provide ancillary benefits to spawning fish and, in addition, provide protection for harbor porpoise and other marine mammals.

Eight of the Northeast Fishery Sectors and the GB Cod Fixed Gear Sector requested an exemption from the 72-hr observer notification requirements for NMFS-funded at-sea monitoring. The economic impacts of providing an exemption to the 72-hr observer notification requirement are uncertain, but this exemption could provide vessel owners with additional flexibility when planning and preparing for fishing trips. However, logistical constrains on the NMFS Northeast Observer Program would make granting this exemption very difficult. NMFS is proposing to reduce this requirement from 72 hr to 48 hr in Amendment 16.

The Northeast Coastal Communities Sector requested an exemption that would allow members to fish under Maine state regulations for halibut while fishing in state waters. The exemption would provide additional fishing opportunities to improve sector member profitability. The potential to realize any improved profitability would be limited by Maine state regulations that restrict the number of halibut that may be landed during a prescribed season to 50 fish per person. The halibut stock remains overfished; thus, allowing an exemption from the halibut trip limit specifically to allow sector vessels to participate in a targeted halibut fishery would be inconsistent with the rebuilding program of the FMP.

All of the Northeast Fishery Sectors requested an exemption from the requirement that vessels transmit reports directly to NMFS via VMS. The economic impacts of providing an exemption from this requirement are uncertain. The exemption would likely provide the sector as a whole with some flexibility to more efficiently handle the flow of information between the sector and NMFS in meeting the reporting requirements. Nonetheless, allowing vessels to submit required reports and declarations to a third party, rather than to NMFS directly, creates significant enforcement problems with the chain of custody of information. Denial of this exemption would not preclude sector member vessels from transmitting hails through the sector server for the purpose of dockside monitoring program requirements.

All of the Northeast Fishery Sectors, as well as the Sustainable Harvest and Tri-State Sectors, requested permission to use eVTRs in place of paper VTRs to transmit catch data to NMFS. While this exemption would likely reduce the administrative burden on sectors, NMFS believes it is still premature, as an eVTR system that would address all of the needs of NMFS has not yet been developed. A pilot study is currently being developed that would use eVTRs as well as paper VTRs to determine the viability of eVTRs as a replacement to the paper version. Should the pilot study determine that eVTRs can fulfill all necessary requirements, this option could be considered at a later date.

The GB Cod Fixed Gear Sector requested an exemption from the prohibition on the use of de-hookers with less than 6-inch (15.24-cm) spacing between the fairlead rollers. Not granting this exemption would require modification of long-line gear haulers that are already in use. Exemption from this requirement would provide affected vessel owners with greater flexibility to rig their vessels to maximize operational efficiency. However, the interim final rule implemented in 2002, and Amendment 13 in 2004, prohibited de-hookers with spacing less than 6 inches (15.24 cm) to discourage de-hooking strategies that may reduce survival of discarded fish. Additionally, National Standard 9 requires that NMFS minimize the mortality of bycatch that cannot be avoided.

The GB Cod Fixed Gear Sector and the Tri-State Sector requested exemption from existing regulations that provide for minimum fish sizes for several different species. Any fish caught that is below the minimum size must be discarded. To the extent that some portion of these fish would otherwise be marketable, exemption from minimum fish sizes would improve economic efficiency of member vessel owners. Since all discarded fish are assumed dead and would count against the sector's ACE, opportunities to maximize retention of any marketable fish would increase the total value of the ACE. The magnitude of this potential benefit is uncertain, since the marketability of smaller size fish is unknown. Yet an exemption from the minimum fish size requirement presents significant enforcement issues by allowing two different fish sizes in the marketplace. Moreover, this exemption could potentially increase targeting of juvenile fish.

Economic Impacts of the Alternative to the Proposed Action

Under the No Action alternative, none of the FY 2010 sector operations plans would be approved, and no sector would be approved to operate in FY 2010. While the sectors could remain authorized under proposed Amendment 16, under the No Action alternative for this rule, no sector would receive a LOA to fish or an allocation to fish. Under this scenario, vessels would remain in the common pool and fish under the common pool regulations in the FMP. Because of effort control changes proposed in both Amendment 16 and Framework 44, it is likely that vessels enrolled in a sector for FY 2010 and forced to fish in the common pool would experience revenue losses in comparison to the proposed action. It is more likely under the No Action alternative that the ports and fishing communities where sectors plan to land their fish would be negatively impacted.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on proposed sector operations plans and TAC allocations.

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

Dated: December 16, 2009.

Samuel D. Rauch III,

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

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Notices

Federal Register

Vol. 74, No. 244

Tuesday, December 22, 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.

REAGAN–UDALL FOUNDATION

The Reagan-Udall Foundation Bylaws

ACTION: Notice; request for comments.

SUMMARY: The Reagan-Udall Foundation, which was created by Title VI of the Food and Drug Administration Amendments of 2007, is publishing the bylaws that were adopted by its Board of Directors, for public comment.

DATES: Submit e-mail comments to: *Comments@ReaganUdall.org* on or before January 21, 2010.

FOR FURTHER INFORMATION CONTACT: Jane Reese-Coulbourne, The Reagan-Udall Foundation, (202) 783–7877, *JRCoulbourne@ReaganUdall.org*.

SUPPLEMENTARY INFORMATION:

I. Background

On September 27, 2007, the President signed into law the Food and Drug Administration Amendments Act of 2007 (FDAAA). Title VI of the law creates the Reagan-Udall Foundation, the purpose of which is to ''advance the mission of the Food and Drug Administration to modernize medical, veterinary, food, food ingredient and cosmetic products development, accelerate innovation, and enhance product safety.'' *See* section 770(b) of the act (21 U.S.C. 379dd (b)). The duties of the Foundation include the identification of unmet needs in the development, manufacture, and evaluation (including postmarket evaluation) of the safety and effectiveness of Food and Drug Administration (FDA)-regulated products, and the establishment of scientific and other projects and programs to meet those needs. *See* section 770(c) (21 U.S.C. 379dd(c)).

Among the areas where experts inside and outside the FDA believe the Foundation can support better science are:

- Scientific fellowships and programs to improve the scientific capacity of the FDA;
- Public-private collaboration to enhance the capacity and techniques for monitoring the safety of medical products on the market;
- Development of methods and analyses to promote the safety and effectiveness of medical products and foods; and
- Improvements in the science and technical capabilities of food safety.

The Foundation's Board of Directors has adopted an initial set of bylaws, an important step toward its initiation of activity as a nonprofit organization. Pursuant to section 770(d)(2) of the act (21 U.S.C. 379dd(d)(2)), these bylaws are being published in the **Federal Register** for public comment. The bylaws include provisions on conflicts of interest and the acceptance of donations and grants. The Foundation is committed to the highest standards of science in support of FDA's mission. As the Foundation develops additional information regarding the types of donations and grants (referred to in the bylaws as ''gifts'') it may receive and the types of projects it will undertake and fund, it will adopt additional policies regarding conflicts of interest and other issues. In addition, as the Foundation gains more experience, it will develop detailed policies and procedures regarding gift review and acceptance policies. The Foundation will make these policies and procedures available to the public. Until that time, the Foundation will not accept donations or grants from entities subject to FDA regulation or trade associations of industries subject to FDA regulation. The Board will also monitor the terms of any individual donation or grant.

II. Bylaws of Reagan-Udall Foundation, Inc., for the Food and Drug Administration *(Adopted by the Board of Directors on October 3, 2009)*

Article I

Offices

Section 1. Principal Office. The principal office of the Foundation shall be at such location as the Board of Directors designates, however, such location shall, if practicable be located not more than 20 miles from the District of Columbia.

Section 2. Other Offices. The Foundation may also have an office or offices other than said principal office at such place or places as the Board of Directors shall from time to time determine or the business of the Foundation may require. Such other offices shall also, if practicable, be located not more than 20 miles from the District of Columbia.

Article II

Mission

Section 1. Mission. The Foundation is organized as a non-profit organization exclusively for charitable, scientific and educational purpose as specified in section 501(c)(3) of the Internal Revenue Code of 1986 and Section 770 of the Federal Food Drug and Cosmetic Act (21 U.S.C. 379dd). The purpose of the Foundation shall be to advance the mission of the Food and Drug Administration to modernize medical, veterinary, food, food ingredient, and cosmetic product development, accelerate innovation, and enhance product safety.

Article III

Members

The Foundation shall have no members. All authority that would otherwise be vested in or exercised by members shall be vested in the Board of Directors of the Foundation. Nothing in these bylaws shall be interpreted as requiring the Board of Directors to meet, vote, or otherwise act separately as members of the Foundation in order to exercise powers that would, if there were members of the Foundation, be vested in the members.

Article IV

Board of Directors

Section 1. General Powers. The business and affairs of the Foundation shall be managed under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Foundation and do all such lawful acts and things as provided by statute or the Articles of Incorporation.

Section 2. Composition, Number and Appointment. The Board of Directors of the Foundation shall be composed of 16 members, two ex officio members (non-voting) and 14 appointed (voting) members. The ex officio members shall

be the following individuals or their designees: The Commissioner of Food and Drugs and the Director of the National Institutes of Health. Of the fourteen appointed (voting) members, no more than four members shall be representatives of the general pharmaceutical, device, food, cosmetic and biotechnology industries; three shall be representatives of academic research organizations; two shall be representatives of patient or consumer advocacy organizations, one shall be a representative of health care providers; and four or more shall be at large members with expertise or experience relevant to the purpose of the Foundation. No employee of the Federal Government shall be appointed as a member of the Board.

Section 3. Terms of Office. The term of office of each appointed member of the Board shall be four years except that the terms of offices for the initial appointed members of the Board shall expire on a staggered basis as follows: one industry representative, one academic research representative, and one at-large representative each shall have an initial appointment of two years; two industry representatives, one at-large representative, one academic research representative, and one patient/consumer representative each shall have an initial term of three years; and one industry representative, two at-large representatives, one academic research representative, one patient/consumer representative, and the one health care provider representative each shall have an initial term of four years. A member of the Board of Directors may continue to serve after the expiration of his or her term until a successor is appointed. A member of the Board of Directors may be reappointed for a subsequent term or terms. If a member of the Board does not serve the full term, described herein, the individual appointed, pursuant to section 10, to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

Section 4. Annual Meeting and Annual Reporting. (a) The annual meeting of the Board of Directors shall be held at such time, but in no event later than the end of the fifth month following the end of the fiscal year of the Foundation, and at such place as shall be specified in a notice thereof given as hereinafter provided in section 7 of this Article IV or waiver of notice. (b) The annual meeting shall be open to the public. (c) At the annual meeting the Foundation shall publish a report for the preceding fiscal year, which shall include a comprehensive statement of the operations, activities, financial condition and accomplishments of the Foundation. (d) The Foundation shall make copies of each report submitted under this section 4 of Article IV available to any person for a charge not exceeding the cost of providing such copy.

Section 5. Regular Meeting. Regular meetings of the Board of Directors shall be held at such time and place as the Board of Directors may fix.

Section 6. Special Meetings. Special meetings of the Board of Directors may be called at any time or at the request of the Chair of the Board or the Executive Director. The person or persons authorized to call special meetings of the Board may fix the time and place for holding such special meeting.

Section 7. Notice. Annual and special meetings of the Board of Directors shall be held on notice to the directors. Notice shall state the time and place of the meeting and, in the case of a special meeting, the purpose or purposes for holding such meeting. Notice of each such meeting shall be sent by electronic mail or mailed, postage prepaid, to each director, addressed to him or her at his or her address as shown by the records of the Foundation, at least ten days before the day on which such meeting is to be held, or under extraordinary circumstances be delivered to him or her personally or be given to him or her by telephone, or other similar means, at least twenty-four hours before the time at which such meeting is to be held. Notice of any such meeting need not be given to any director who submits a signed waiver of notice before the meeting or who attends such meeting without protesting, prior to or at its commencement, the lack of notice to him or her.

Section 8. Quorum. A majority of the voting members of the entire Board of Directors shall constitute a quorum for purposes of conducting the business at any meeting of the Board of Directors; but if less than a majority of the voting directors are present at said meeting, a majority of the voting directors present may adjourn the meeting from time to time without further notice. The Chair may, under extraordinary circumstances, in his of her discretion, require the vote of the full Board (all voting members) on a particular matter, provided the Chair discloses to the Board the basis for requiring such a vote. When the vote of the full Board is required, voting members will be permitted to vote at a meeting of the Board or by submitting his or her vote to the Chair in writing.

Section 9. Manner of Acting. The act of a majority of the voting directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or these Bylaws.

Section 10. Vacancies. Any vacancy in the membership of the Board shall not affect the power of the remaining directors to execute the duties of the Board and any such vacancy shall be filled promptly by appointment by the appointed directors by majority vote.

Section 11. Resignations. Any appointed member of the Board of Directors may resign at any time by giving written notice of his or her resignation to the Board of Directors, the Chair of the Board, the Executive Director or the Secretary. Any such resignation shall take effect at the time specified therein if later than the date of its receipt, or if the time when it shall become effective is not specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 12. Removal of Directors. Except as otherwise provided by statute, any director may be removed for cause by the vote of a majority of the voting members of the Board of Directors then in office. The failure to participate in at least half of the meetings and calls scheduled over a one year period shall be a basis for such removal.

Section 13. Compensation. Members of the Board may not receive compensation for service on the Board. Directors may be reimbursed for travel, the reasonable cost of meals and lodging, and other necessary expenses incurred in carrying out the duties of the Board, as set forth in these Bylaws.

Section 14. Informal Action by Board of Directors. Any action required or permitted by law to be taken at a meeting of the Board of Directors may be taken without a meeting if a unanimous written consent, which sets forth the action to be taken, shall be signed by each voting member of the Board and filed with the minutes of proceedings of the Board.

Section 15. Telephonic Meeting. Members of the Board may participate in a meeting by means of a telephone conference or similar communications equipment if all persons participating in the meeting can hear each other at the same time.

Section 16. Emeritus Directors. The Board of Directors may from time to time appoint a former director to the honorary position of ''Director Emeritus.'' Unless otherwise determined by the Board of Directors, the appointment of a Director Emeritus shall continue in effect for the

remainder of the person's life. A former director holding such honorary position shall be entitled to receive notice of, and to attend meetings or portions of meetings of the Board of Directors, but shall have no voting or other rights of a director.

Article V

Committees

Section 1. Committees. The Board of Directors, by resolution adopted by a majority of the voting directors in office, shall designate and appoint an Executive Committee, a Governance Committee and a Finance Committee, and may designate and appoint one or more other committees each of which shall consist of two or more directors, and delegate to such committees any of the powers of the Board of Directors, except the power to amend, alter, and repeal the Bylaws; to elect, appoint or remove any member of such committee or any member of the Board or any officer of the Foundation; to amend or restate the Articles of Incorporation; or to adopt a plan of merger or consolidation with another corporation. The appointment of any committee, the delegation of authority to it, or action by it under that authority shall not operate to relieve the Board of Directors, or any individual member of the Board, of any responsibility imposed upon it or upon him or her by law.

Section 2. Executive Committee. The Executive Committee shall carry out the responsibilities of the Board of Directors between meetings of the Board of Directors.

The Chair of the Board shall be chair of the Executive Committee and the Secretary of the Foundation shall act as secretary thereof. The Chairs of the Governance and Finance Committees shall be members of the Executive Committee. The Executive Director shall be an ex officio, non-voting member of the Executive Committee. In the absence of the Chair, Executive Director or Secretary at any meeting of the Executive Committee, the committee shall appoint a chair or secretary of the meeting as the case may be.

Section 3. Governance Committee. The Governance Committee shall be responsible for making recommendations to the Board on all matters affecting governance, reviewing the Board's performance policies and these Bylaws, and making recommendations to the Board for director nominees and Officer appointments. The Vice Chair of the Board shall chair the Governance Committee.

Section 4. Finance Committee. The Finance Committee shall be responsible for developing and reviewing fiscal procedures and shall make recommendations to the Board regarding the budget and other financial matters. The Treasurer of the Foundation shall chair the Finance Committee.

Section 5. Term of Office. All committees of the Board of Directors shall serve at the pleasure of the Board of Directors. Members of committees who are designated by the Board of Directors shall serve at the pleasure of the Board of Directors. Each chair of a committee shall hold such office for one year and until his or her death, resignation or removal, whichever occurs first. A chair of a committee may continue to serve as chair after the expiration of his or her term until a successor is appointed.

Section 6. Organization, Meetings of Committees. The Board of Directors shall appoint one member of each of the other committees that may be created to be the chair of such committee. All committees may adopt rules governing the time, or the method of call or holding their meetings, and the conduct of their affairs. All committees shall keep a record of their acts and proceedings and shall report thereon to the Board of Directors.

Section 7. Vacancies. A vacancy in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 8. Quorum. Unless otherwise provided in the resolution of the Board of Directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Article VI

Officers, Employees, Agents and Contractors

Section 1. Number and Qualifications of Officers. The Officers of the Foundation (except for the initial Chair, which shall be appointed by the ex-officio directors) shall be elected by the Board of Directors and shall include the Chair and Vice Chair of the Board, the Secretary, the Treasurer, and any other officers as may be necessary or desirable for the business of the Foundation.

Section 2. Election and Term of Office. The officers of the Foundation, except the Chair of the Board, shall be elected annually by the members of the Board of Directors at its annual meeting. Each such officer shall hold office until death, resignation, removal or until the next annual meeting of the Board of Directors and until his or her successor shall be duly elected. The members of the Board of Directors shall elect a member of the Board to serve as the Chair of the Board, who shall serve through the end of his or her term. An officer may be re-elected for subsequent terms.

Section 3. Resignations. Any officer of the Foundation may resign at any time by giving written notice of his or her resignation to the Board of Directors, the Chair of the Board, the Executive Director or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective is not specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of any such resignation shall not be necessary to make it effective.

Section 4. Removal. Any officer of the Foundation elected or appointed by the Board of Directors may be removed by an affirmative vote of a majority of the then incumbent voting members of the Board of Directors whenever in its judgment the best interests of the Foundation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled by the vote of a majority of the voting members of the Board of Directors for the unexpired portion of the term.

Section 6. Chair of the Board. The Chair of the Board shall be a member of the Board, an officer of the Foundation and, if present, shall preside at each meeting of the Board of Directors. He or she shall advise and counsel with the Executive Director and in his or her absence with the other officers of the Foundation, and shall perform such other duties as may from time to time be assigned to him or her by the Board of Directors.

Section 7. Vice-Chair of the Board. The Vice-Chair of the Board shall be a member of the Board, an officer of the Foundation and, if present, shall preside at each meeting of the Board of Directors at which the Chair of the Board is not present, and shall perform the other duties of the Chair of the Board during such times as the Chair of the Board is unavailable to perform such duties.

Section 8. Treasurer. The Treasurer shall be a member of the Board and shall (a) Have charge and custody of, and be responsible for, all the funds and securities of the Foundation; (b) keep or cause to be kept full and accurate

accounts of receipts and disbursements in books belonging to the Foundation; (c) deposit or cause to be deposited all moneys and other valuables to the credit of the Foundation in such depositories as may be designated by the Board of Directors or pursuant to its direction; (d) receive, and give receipts for, moneys due and payable to the Foundation from any source whatsoever; (e) disburse the funds of the Foundation; (f) render to the Board of Directors, whenever the Board of Directors may require, an account of the financial condition of the Foundation; and (g) in general, perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 9. Secretary. The Secretary shall be a member of the Board and shall (a) Keep or cause to be kept the minutes of all meetings of the Board of Directors; (b) see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law; (c) be custodian of the records and the seal of the Foundation and affix and attest the seal to all other documents to be executed on behalf of the Foundation under its seal; (d) see that the books, reports, statements, certificates, and other documents and records required by law to be kept and filed are properly kept and filed; (e) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 10. Executive Director. The Board of Directors shall appoint an Executive Director who shall serve at the pleasure of the Board of Directors. The Executive Director shall be the chief executive officer of the Foundation who shall be responsible for the day-to-day operations of the Foundation. If the Board of Directors has not elected a Chair or Vice Chair of the Board or if the Chair and Vice Chair of the Board are absent, the Executive Director shall preside at such meeting of the Board of Directors. He or she shall perform all duties incident to the office of the Executive Director and such other duties as may from time to time be assigned to him or her by the Board of Directors.

Section 11. Compensation. The Foundation may pay reasonable compensation for services rendered by employees of the Foundation. All amounts paid as compensation by the Foundation to any employee shall be approved by the Board of Directors. The compensation of the Executive Officer shall not be greater than the compensation of the Commissioner of the Food and Drug Administration.

Section 12. Agents and Contractors. The Executive Director shall be responsible for hiring, promoting, and discharging all other employees and agents of the Foundation. The Executive Director shall also be responsible for defining the duties of such employees and agents and determining the compensation to be paid to such employees.

Article VII

Conflicts of Interest

Section 1. General Policy. No director, officer, employee, fellow or trainee of the Foundation (hereinafter ''Interested Persons'') shall take any action on or participate in the consideration or determination of any Foundation matter in which he or she, his or her spouse, minor child, general partner, non-federal organization in which he or she is serving as an officer, director, trustee, general partner or employee, or any person or nonfederal organization with whom he or she is negotiating or has any arrangement concerning potential employment, has a financial interest.

Section 2. Responsibilities of Interested Persons. In addition to actual conflicts of interest, Interested Persons are also obliged to avoid actions that could be perceived or interpreted to be in conflict with the Foundation's best interests. Interested Persons shall disclose their financial interest in entities doing business with the Foundation and refrain from participating in decisions affecting transactions between the Foundation and those other entities without approval by the Board of Directors.

Section 3. Additional Conflict of Interest Policies and Procedures. Appendix A to these Bylaws includes more detailed policies and procedures for identifying and managing conflicts of interest.

Section 4. Oversight Responsibilities. The Chair of the Board shall be responsible for the application of the Foundation's conflicts of interest policies and procedures to Board Members, committee members, and the Executive Director. The Executive Director shall be responsible for the application and interpretation of this policy as it relates to all other employees, fellows, and trainees.

Section 5. Project Specific Conflicts Policies. The Foundation shall, as appropriate, develop conflicts of interest policies and procedures specific to an individual project and/or consortium developed to carry out the goals of the Foundation. Such policies and procedures shall be made available to the public.

Article VIII

Acceptance of Donations and Grants

Section 1. General Policy. It shall be the policy of the Foundation to accept donations and grants (hereinafter ''Gifts'') that further its missions, supporting the Food and Drug Administration. This mission is realized through Gifts that support the programs and projects of the Foundation, Gifts that secure the operation and future growth of the Foundation, or Gifts that otherwise facilitate the Foundation in providing services to the Food and Drug Administration. The Board of Directors shall develop and adopt detailed Gift review and acceptance policies and procedures that define what constitutes acceptable Gifts. Such policies and procedures shall be made available to the public. The Board of Directors shall be responsible for ensuring that the requirements of this Article VIII and the Foundation's Gift policies and procedures are met.

Section 2. Review of Gifts. The Board of Directors has the discretion to accept or refuse all Gifts and is charged with the responsibility of reviewing and properly screening all Gifts made to the Foundation. The Board of Directors shall determine whether acceptance of a gift will reflect unfavorably on, or compromise the integrity of the Foundation. The Board of Directors shall have the discretion to refuse any Gift that is deemed inappropriate for any reason, such as the appearance of, or an actual conflict of interest, unreasonable or burdensome restrictions, costs to the Foundation in fulfilling the terms of, or administering the Gift, or any other reason. The Board of Directors shall make decisions regarding acceptance or refusal of gifts by a majority of voting members present at a regularly scheduled meeting of the Board or by a majority of all voting members if the decision is made between regularly scheduled meetings. If a vote is taken between regularly scheduled meetings, members may vote in writing by regular mail or e-mail.

Section 3. Restrictions on Gifts. The Foundation will accept unrestricted Gifts. The Foundation may also accept Gifts for specific programs and purposes, provided such Gifts are not inconsistent with its mission, purposes, and priorities. The Foundation will not accept Gifts that are too restrictive in purpose or otherwise inappropriate.

Section 4. Availability of Information on Gift Acceptance. Information about

the Foundation's acceptance of Gifts shall be made available to the public.

Article IX

Grants and Contracts

Section 1. Grantee/Contractor Selection and Award Principles. The selection and award of grants and/or contracts by the Foundation will be conducted to ensure fairness, impartiality, and inclusiveness. All grant and contract awards shall be approved by the Board of Directors.

Section 2. Solicitation. The Foundation will take reasonable steps to make each solicitation widely known to the public.

Section 3. Peer Review. An objective peer-review process will be used to assess responses to solicitations and provide recommendations to the Board of Directors.

Section 4. Objectivity. All reviews and assessments shall be made objectively and shall not be based on commercial or proprietary interests.

Section 5. Conflicts of Interest. All participants involved in the development, review, and selection process shall abide by the Foundation's Conflict of Interest policies.

Section 6. Administrative Expenses Cap. Grants, contracts and cooperative agreements shall provide that the administrative expenses allocable to funds provided by the Foundation not exceed 25%.

Section 7. Exclusions. This Article shall not apply to the selection and award of grants and contracts related to running the day-to-day operations of the Foundation.

Article X

Information and Inventions

Section 1. Information and Data. All information and data developed by the Foundation or with Foundation funds shall be released and published, to the extent practicable, to maximize their use by the Food and Drug Administration, nonprofit organizations and academic and industrial researchers to further the goals and priorities of the Foundation. The Foundation may charge cost-based fees for published materials produced by the Foundation.

Section 2. Inventions. The Foundation shall ensure that (a) Action is taken to obtain patents for inventions developed by the Foundation or with funds from the Foundation; (b) action is taken to enable the licensing of such inventions; and (c) executed licenses, memoranda of understanding, material transfer agreements, contracts and other such instruments promote, to the maximum extent practicable, the broadest conversion to commercial and noncommercial applications of licensed and patented inventions of the Foundation to further the goals and priorities of the Foundation. The Foundation may, consistent with the policy to support the widest and least restrictive use of inventions, charge a reasonable royalty for the use of such inventions.

Article XI

Training Fellowships

The Foundation will establish fellowships for: Scientists, doctors and other professionals, who are not employees of any FDA-regulated industry; FDA professionals to obtain training outside the agency; and non-FDA professionals to obtain training at the Foundation, academic or scientific institutions or the FDA. The purpose of such fellowships shall be to foster greater understanding of and expertise in new scientific tools, diagnostics, manufacturing techniques, and potential barriers to translating basic research into clinical and regulatory practice, train scientific or regulatory professionals in regulatory science and policy, and increase the exchange of scientific information between FDA and external entities.

Article XII

Memoranda of Understanding and Cooperative Agreements

Section 1. Review. All memoranda of understanding and cooperative agreements between the Foundation and other entities, including the Food and Drug Administration, shall promote the goals and priorities of the Foundation, shall comply with the Foundation's Conflict of Interest policies and shall be reviewed and approved by the Board of Directors to ensure that such requirements are met.

Section 2. Execution. All memoranda of understanding and cooperative agreements between the Foundation and other entities, including the Food and Drug Administration, shall be signed by the Executive Director, after obtaining appropriate approval of the Board of Directors.

Article XIII

Indemnification

Section 1. Officers and Directors. To the maximum extent permitted by the laws of the State of Maryland in effect from time to time, and subject to compliance with any procedures and other requirements prescribed by said laws and by such rules and regulations, non inconsistent with said laws, as the Board of Directors may in its discretion impose in general or particular cases or classes of cases, any person who is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director or officer of the Foundation shall be indemnified by the Foundation against judgments, penalties, fines, settlements, and reasonable expenses, including attorney's fees, actually and necessarily incurred by him or her in connection with such action, suit or proceeding, or in connection with any appeal therein (which reasonable expenses may be paid or reimbursed in advance of final disposition of any such suit, action, or proceeding subject to the receipt of a written undertaking to repay such expenses in the event that such person is determined not to be entitled to be indemnified).

Section 2. Employees and Agents. To the maximum extent permitted by the laws of the State of Maryland in effect from time to time, and subject to compliance with any procedures and other requirements prescribed by said laws and by such rules and regulations, not inconsistent with said laws, as the Board of Directors may in its discretion impose in general or particular cases or classes of cases, any person who is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was an employee or agent of the Foundation may (but need not) be indemnified by the Foundation against judgments, penalties, fines, settlements, and reasonable expenses, including attorney's fees, actually and necessarily incurred by him or her in connection with such action, suit or proceeding, or in connection with any appeal therein (which reasonable expenses may be paid or reimbursed in advance of final disposition of any such suit, action, or proceeding subject to the receipt of a written undertaking to repay such expenses in the event that such person is determined not to be entitled to be indemnified).

Article XIV

General Provisions

Section 1. Seal. The seal of the Foundation shall be in such form as shall be approved by the Board of Directors.

Section 2. Fiscal Year. The fiscal year of the Foundation shall end on December 31 of each year or on such

other date as may be fixed by resolution of the Board of Directors.

Section 3. Checks, Notes, Drafts, Etc. All checks, notes, drafts, or other orders for the payment of money of the Foundation shall be signed endorsed, or accepted in the name of the Foundation by such officer, person or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

Section 4. Execution of Contracts, Deeds, Etc. The Board of Directors may authorize any officer or officers, the Executive Director, or any agent or agents, in the name and on behalf of the Foundation to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

Section 5. Deposits. All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the Board of Directors may select.

Article XV

Amendments

These Bylaws may be amended, altered or repealed or new Bylaws may be adopted by a majority of the voting directors present at any regular meeting or at any special meeting, if at least two days written notice is given of intention to alter, amend, repeal or adopt new bylaws at such meeting.

Appendix A to Bylaws

Ethical Guidelines for Identifying and Managing Conflicts of Interest

Congress created the Reagan-Udall Foundation (Foundation) to support the mission of the FDA by identifying, funding, and supporting projects and programs that will help equip FDA staff with the highest caliber science and technology to enhance the safety and effectiveness of FDA regulated products. The Foundation will not participate in regulatory matters nor will it offer advice to FDA on policy matters. In addition, to support its independence and to maximize its scientific impact, the Foundation is implementing specific guidelines and procedures that identify and avoid potential bias—and appearances of such bias—and that provide a transparent process for individual and institutional decisions.

I. Individual Conflicts

Article VII of the Bylaws describes an individual's obligations with respect to conflicts of interest as follows: ''No director, officer, employee, fellow or trainee of the Foundation (hereinafter 'Interested Persons') shall take any action on or participate in the consideration or determination of any Foundation matter in which he or she, his or her spouse, minor child, general partner, non-federal organization in which he or she is serving as an officer, director, trustee, general partner or employee, or any person or nonfederal organization with whom he or she is negotiating or has any arrangement concerning potential employment, has a financial interest. In addition to actual conflicts of interest, Interested Persons are also obliged to avoid actions that could be perceived or interpreted to be in conflict with the Foundation's best interests. Interested Persons shall disclose their financial interest in entities doing business with the Foundation and refrain from participating in decisions affecting transactions between the Foundation and those other entities without approval by the Board of Directors.''

Staff

Goal: To ensure that issues involving conflicts of interest are addressed when staff are hired and on an ongoing, annual basis.

(1) *Data Gathering.*

The following FDA Financial Disclosure form is to be filled out by prospective employees prior to being hired and filled out annually by Foundation Employees: FDA's form for Senior FDA Employees at *http://www.oge.gov/forms/form_450.aspx.*

(2) *Process for Review.*

The completed form is to be reviewed by the Foundation's General Counsel (hereinafter General Counsel), who will be responsible for identifying conflicts and determining what actions would be necessary to ensure that a prospective or current employee does not participate in matters in which such a conflict would or could exist. The General Counsel will advise the Executive Committee regarding such conflicts and necessary actions.

(3) *Process for Addressing Conflicts of Interest.*

The General Counsel will advise the Executive Committee and the Board regarding a prospective or current employee for whom conflicts have been identified. With respect to a prospective employee, the Executive Committee will recommend whether a particular person should be hired in light of conflicts, and if so, how such conflicts should be addressed. If conflicts arise after a person has been hired, then the Executive Committee will advise the Board regarding appropriate steps to be taken, including divesting holdings causing the conflict, recusing the employee from particular matters and terminating the employee. The Board will receive all pertinent documents relating to any conflicts and will make the final decision with respect to hiring a person for whom a conflict has been identified and with respect to addressing conflicts that have arisen after an employee has been hired.

Board

Goal: To ensure that the potential for, or the appearance of, conflicts are identified, so appropriate steps can be taken to ensure that the principles in the Bylaws are met.

(1) *Data Gathering.*

Upon appointment, and annually thereafter, each Board member must provide the General Counsel a signed statement that lists any interest, financial or otherwise, that the member, his or her spouse, minor child, general partner or employee has in any company that is regulated by FDA. The statement will also disclose the identity of any FDA regulated firm for whom any adult children of the Board member works and the nature of any business that such children have before the Foundation. Such statement must describe the nature of the interest but need not list its monetary value.

(2) *Process for Review.*

The statement described above will be reviewed by the Foundation's General Counsel, who will be responsible for identifying conflicts and Foundation matters from which such Board member must recuse him or herself from on the basis of such conflicts. The General Counsel will advise the Board member regarding such conflicts and necessary recusals.

(3) *Process for Addressing Conflicts of Interest.*

If it has been determined by the General Counsel that recusal is necessary, then the recused Board member shall not participate in any discussions or votes regarding the matter or matters on which he or she has been recused. Among other things, a recused Board member shall not participate in discussions or votes regarding whether a particular project should be undertaken by the Foundation or to whom a project grant or contract funded by the Foundation may be awarded.

II. Review of Reagan-Udall Foundation Projects

Goal: Strictly guard against conflicts of interest and undue influence while raising funds for worthwhile Foundation projects.

Guidelines: Prior to initiation all specific projects must be reviewed and approved:

(1) By the Reagan-Udall Board of Directors.

Before granting its final approval to a project, the Board shall submit the project to independent review. In selecting reviewers, the Board shall insure that:

- Reviewers are qualified experts on the relevant topics.
- Each reviewer has certified that he or she meets the conflict of interest standard in Article VII.

In the unusual case where a waiver of this requirement is necessary because there is no other practical means of ensuring the necessary expertise, the name of the reviewer and the justification for the waiver will be made public and the Board must determine that the financial interest is not so substantial as to be likely to affect the integrity of the review.

Before granting its final approval to a project, the Board shall also determine that:

- Independent review was sufficient to ensure the objectivity, scientific validity, and feasibility of the proposal.
- The project is likely to advance the mission of the FDA to modernize medical, veterinary, food, food ingredient, or cosmetic product development, accelerate innovation, or enhance product safety.

(2) *By a meaningful independent review.*

- For projects with a total budget over $250,000 (''large projects''), the Board may (i) use an existing independent review process (for example, if one of the project collaborators is an academic institution or foundation with an appropriate independent review mechanism); or (ii) utilize an ad hoc, independent panel to review the project.
- For small projects with a total budget of $250,000 or less (''small projects''), the Board may use an abbreviated independent review process.
- A majority of reviewers must determine that the project design is objective, scientifically valid, and feasible, and that the project is likely to advance the mission of the FDA to modernize medical, veterinary, food, food ingredient, or cosmetic product development, accelerate innovation, or enhance product safety.

III. Policies for Accepting Funds

The Foundation has in place two sets of guidelines for the acceptance of funds.

(1) Core Operating Funds can be accepted from

- Federal Government appropriations process.
- Individuals as tax deductible donations.
- Foundations and other Not for Profit organizations.

(2) Project Funds can be accepted from

- Federal Government appropriations process.
- Individuals as tax deductible donations.
- Foundations and other Not for Profit organizations.
- Other entities.

IV. Violations of Conflicts in Interest Policy

If the Board of Directors has reason to believe that a Foundation employee or Board member has failed to disclose a conflict, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose. If, after hearing the response of such person and making further investigations as may be warranted, the Board determines that the employee or Board member has knowingly or intentionally failed to disclose a conflict of interest it shall take appropriate action, including termination of the employee or Board member.

V. Transparency

The Foundation will post the following on its Web site:

(1) The Foundation Bylaws and Appendix A. Public comment will be sought on these bylaws and on any proposed changes prior to adoption.

(2) A statement about RUF's commitment to transparency.

(3) A copy of the conflict of interest form used by Foundation Staff.

(4) Information regarding particular recusals of Board members or Staff, including the particular matters on which the Board member or staff will be recused and the basis for the recusal.

(5) For each Board member, a list of any interest, financial or otherwise, that the member, his or her spouse, minor child, general partner or employee has in an FDA-regulated company that conducts business in areas where the Foundation is active such that the interest could pose a potential conflict. Such statement will describe the nature of the interest but need not list its monetary value.

(6) In the unusual case when there is a waiver of the requirement that a reviewer have no direct financial interest in the outcome of a project because there is no other practical means of ensuring the necessary expertise, the name of the reviewer and the justification for the waiver.

(7) The amount of each donation and the identity of the donor, including in kind donations.

(8) Information about each project, including:

- An Executive Summary, including a summary of the review process.
- A list of organizational project participants and their role.
- The identity of all funders.
- A list of Board and/or staff members who were recused from discussion and decision making for the project.

(9) The Foundation's 990 IRS filings and annual reports (for all years).

(10) A section for questions, feedback and public input.

Dated: December 15, 2009.

Mark B. McClellan,

Chairman, Reagan-Udall Foundation Board.

[FR Doc. E9–30409 Filed 12–21–09; 8:45 am]

BILLING CODE 4164–04–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Southeast Region Dealer and Interview Family of Forms.

OMB Control Number: 0648–0013.

Form Number(s): 88–12, 88–12B, 88–129, 88–30.

Type of Request: Regular submission.

Number of Respondents: 13,766.

Average Hours per Response: Shrimp and finfish interviews and dealer quota reports, 10 minutes; dealer no-purchase reports, 3 minutes; rock shrimp, golden crab and coral dealer reports, 15 minutes.

Burden Hours: 1,656.

Needs and Uses: The National Marine Fisheries Service, Southeast Fisheries Science Center uses these reporting instruments to collect landings statistics and quota monitoring data from commercial seafood dealers and to conduct interviews with fishermen for effort and fishing locations data. This family of forms includes data collection activities for monitoring fishery quotas, routine collections of monthly statistics from seafood dealers, and interviews with fishermen to collect catch/effort and biological data. Collection of information is authorized by the development of regional fishery management councils under the authority of the Magnuson-Stevens

Fishery Conservation and Management Act.

Affected Public: Business or other for-profit organizations.

Frequency: Weekly, monthly, bimonthly and annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: December 16, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–30328 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Peru Trade Promotion Agreement (U.S.-PERU TPA)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On behalf of the Committee for the Implementation of Textile Agreements (CITA), the Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 22, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Laurie Mease, Office of Textiles and Apparel, Telephone: 202–482–3400, Fax: 202–482–0858, E-mail: *Laurie.Mease@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States and Peru negotiated the U.S.-Peru Trade Promotion Agreement (the ''Agreement''), which entered into force on February 1, 2009. Subject to the rules of origin in Annex 4.1 of the Agreement, pursuant to the textile provisions of the Agreement, fabric, yarn, and fiber produced in Peru or the United States and traded between the two countries are entitled to duty-free tariff treatment. Annex 3–B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Peru or the United States. The fabrics listed are commercially unavailable fabrics, yarns, and fibers, which are also entitled to duty-free treatment despite not being produced in Peru or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Under this provision, interested entities from Peru or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3–B.

Chapter 3, Article 3.3, paragraph 7 of the Agreement requires that the President ''promptly publish'' procedures for parties to exercise the right to make these requests. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (''CITA''), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (''OTEXA'') (See Proclamation No. 8341, 74 FR 4105, Jan. 22, 2009). Interim procedures to implement these responsibilities were published in the **Federal Register** on August 14, 2009. See Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Peru Trade Promotion Agreement Implementation Act and Estimate of Burden for Collection of Information, 74 FR 41111 (Aug. 11, 2009).

The intent of the U.S.-Peru TPA Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Peruvian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Peru, subject to Section 203(o) of the U.S.-PERU TPA.

II. Method of Collection

Participants in a commercial availability proceeding must submit public versions of their Requests, Responses or Rebuttals electronically (via e-mail) for posting on OTEXA's Web site. Confidential versions of those submissions which contain business confidential information must be delivered in hard copy to the Office of Textiles and Apparel (OTEXA) at the U.S. Department of Commerce.

III. Data

OMB Control Number: 0625–0265.

Form Number(s): N/A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 16.

Estimated Time per Response: 8 hours per Request; 2 hours per Response; and 1 hour per Rebuttal.

Estimated Total Annual Burden Hours: 89.

Estimated Total Annual Cost to Public: $5,340.

IV. Request for Comments

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

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

Dated: December 17, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–30384 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–901

Notice of Amended Final Results of the Antidumping Duty Administrative Review of Certain Lined Paper Products from the People's Republic of China

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

EFFECTIVE DATE: December 22, 2009.

FOR FURTHER INFORMATION CONTACT: Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone; (202) 482–5075.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 751(h) and 777(i)(1) of the Tariff Act of 1930, as amended (the ''Act'') on April 14, 2009, the Department of Commerce (''the Department'') published its final results of the administrative review for Certain Lined Paper Products (''CLPP'') from the People's Republic of China (''PRC'') for the period from April 17, 2006, through August 31, 2007. *See Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review*, 74 FR 17160 (April 14, 2009) (''*Final Results*'').

On April 14, 2009, Shanghai Lian Li Paper Products Co., Ltd. (''Lian Li'') timely filed its ministerial error allegations, pursuant to 19 CFR 351.224(c). On April 17, 2009, the Association of American Paper Suppliers (petitioner) filed a summons and complaint with the Court of International Trade challenging various aspects of the *Final Results*. On April 21, 2009, the petitioner filed comments in response to Lian Li's ministerial error allegations, and on April 23, 2009, Lian Li filed comments regarding the petitioner's April 21, 2009, comments. The Department has not found it practicable to analyze the comments received and correct any potential errors within 30 days of the publication for the *Final Results*.

Scope of the Antidumping Duty Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for looseleaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8–3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.*, stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated , included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- unlined copy machine paper;
- writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- index cards;
- printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- newspapers;
- pictures and photographs;
- desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books'');
- telephone logs;
- address books;
- columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- lined continuous computer paper;
- boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper'', and ''letterhead''), whether or not containing a lined header or decorative lines;

- Stenographic pads (''steno pads''), Gregg ruled (''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly pen-top computer. The product must bear the valid trademark Fly (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes : A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar®Advance™ : A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1'' wide elastic fabric band. This band is located 2–3/8'' from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar Flex™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover.

The product must bear the valid trademark FiveStar Flex™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope). Merchandise subject to this order is typically imported under headings 4820.10.2050, 4810.22.5044, 4811.90.9090, 4820.10.2010, 4820.10.2020 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.

Amended Final Results of Review

A ministerial error, as defined in section 751(h) of the Act, ''includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' *See also* 19 CFR 351.224(f). After analyzing the comments we received, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224, that the Department made two ministerial errors in our calculations for the final results with respect to Lian Li.[1] Specifically, the Department inadvertently included a factor for uncoated paper board (UNCOATED__AR) which resulted in double counting the input value of black paper board. Additionally, the Department inadvertently used grey/white paper board's input values for grey paper board. For additional explanation, *see* the Ministerial Error Memo.

Further, we have determined that the other alleged ministerial errors that the Department erroneously combined two factors of production (''FOP'') databases and that the Department incorrectly calculated inland freight are methodological, not ministerial, in nature. Therefore, we have made no changes to our calculations with respect to Lian Li's FOP database or inland freight. For additional explanation, *see* the Ministerial Error Memo.

We are revising the review-specific average rate to reflect the weighted average rate based on the amended results of the companies subject to the instant review. *See* the Ministerial Error Memo. In accordance with section 751(h) of the Act, we are amending the final results of the antidumping duty administrative review of CLPP from the PRC for the period April 17, 2006, through August 31, 2007. As a result of correcting the ministerial errors discussed above, the following margins apply:

[1] *See* ''Memorandum from James Terpstra to Melissa Skinner, Amended Final Results for the First Antidumping Administrative Review of Certain Lined Paper Products from the People's Republic of China: Ministerial Errors,'' dated December 10, 2009. (''Ministerial Error Memo'').

Exporter	Weighted-Average Margin (Percent)
Shanghai Lian Li Paper Products Co., Ltd	16.47
Hwa Fuh Plastics Co., Ltd./Li Teng Plastics (Shenzhen) Co., Ltd	16.47
Leo's Quality Products Co., Ltd./Denmax Plastic Stationery Factory	16.47
The Watanabe Group (consisting of the following companies)	16.47
Watanabe Paper Product (Shanghai) Co., Ltd.	
Watanabe Paper Product (Linqing) Co., Ltd.	
Hotrock Stationery (Shenzhen) Co., Ltd.	

Assessment of Duties

The Department will determine and the U.S. Bureau of Customs and Border Protection (''CBP'') shall assess antidumping duties on all appropriate entries. Except where the Court of International Trade has issued a preliminary injunction enjoining the liquidation of certain entries during the period of review, we intend to issue appropriate assessment instructions directly to CBP 15 days after publication of these amended final results of review. For a general discussion of the application of assessment rates, *see Final Results* at 17165.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of these amended final results for all shipments CLLP from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of these *Final Results* (April 14, 2009), as provided by section 751(a)(2)(C) of the Act: (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 258.21 percent, the PRC-wide rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until further notice.

Reimbursement of Duties

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

Administrative Protective Order

This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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.

These amended final results of administrative review and notice are issued and published in accordance with sections 751(h), and 777(i)(1) of the Act, and 19 CFR 351.224.

Dated: December 15, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–30396 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from an interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbazole violet pigment 23 from India. The review covers one manufacturer/exporter, Alpanil Industries. The period of review is December 1, 2007, through November 30, 2008. We have preliminarily determined that Alpanil Industries made sales below normal value. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 22, 2009.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Yang Jin Chun, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0180 and (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2004, we published in the **Federal Register** the antidumping duty order on carbazole violet pigment 23 (CVP 23) from India. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 From India*, 69 FR 77988 (December 29, 2004). On December 1, 2008, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on CVP 23 from India. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 72764 (December 1, 2008). On December 30, 2008, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), Alpanil Industries (Alpanil) requested an administrative review of the order. On February 2, 2009, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review of the order. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009).

On September 3, 2009, we extended the due date for the completion of the preliminary results of review from September 2, 2009, to November 16, 2009. See *Carbazole Violet Pigment 23 From India: Extension of Time Limit for Preliminary Results of Antidumping*

Duty Administrative Review, 74 FR 45610 (September 3, 2009). On November 20, 2009, we extended the due date for the completion of the preliminary results of review from November 16, 2009, to December 15, 2009. See *Carbazole Violet Pigment 23 From India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 60237 (November 20, 2009).

The administrative review of the order on CVP 23 from India for Alpanil covers the period December 1, 2007, through November 30, 2008.

Scope of the Order

The merchandise subject to the order is CVP 23 identified as Color Index No. 51319 and Chemical Abstract No. 6358–30–1, with the chemical name of diindolo [3,2–b:3′,2′–m][1] triphenodioxazine, 8,18-dichloro-5, 15-diethyl-5, 15-dihydro-, and molecular formula of C34H22Cl2N4O2. The subject merchandise includes the crude pigment in any form (*e.g.*, dry powder, paste, wet cake) and finished pigment in the form of presscake and dry color. Pigment dispersions in any form (*e.g.*, pigment dispersed in oleoresins, flammable solvents, water) are not included within the scope of the order. The merchandise subject to the order is classifiable under subheading 3204.17.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Status of Entry

Alpanil submitted data which indicated that the sole U.S. sales transaction entered the United States as a type 1 entry (not subject to an antidumping (AD) and/or countervailing duty (CVD) order) on October 29, 2008, and that this entry was liquidated on October 9, 2009. Because there was no evidence of any unliquidated entries on the record, there was a question of whether we should rescind the administrative review due to a lack of reviewable entries.

On November 3, 2009, we informed Alpanil that the sole U.S. sales transaction entered as an entry not subject to AD or CVD duties and provided an opportunity for Alpanil to provide evidence that there was an unliquidated entry of subject merchandise into the United States during the period of review. In response to our request, Alpanil indicated that the importer filed the entry erroneously as a type 1 entry (not subject to an AD and/or CVD order), it has since protested the liquidation of the entry, and it has further requested that U.S. Customs and Border Protection (CBP) reclassify this entry as a type 3 entry (subject to an AD and/or CVD order). At this time, we do not know whether CBP has taken any action with respect to this entry. We have decided to proceed with this administrative review, but we intend to rescind the review if we are not satisfied that CBP has changed the status of the entry to a type 3 entry by thirty days prior to the statutory deadline for completion of the final results of review.

Export Price

To determine whether sales of CVP 23 from India to the United States were made at prices less than normal value, we compared the U.S. price to the normal value. For the price of sales by Alpanil to the United States, we used export price as defined in section 772(a) of the Act because the subject merchandise was first sold to an unaffiliated purchaser in the United States. Section 772(a) of the Act defines export price as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).''

We calculated Alpanil's pexport price based on the price of the subject merchandise sold to unaffiliated customers in, or for exportation to, the United States. See section 772(c) of the Act. We made deductions for movement expenses incurred in India and international movement expenses incurred for sales of the subject merchandise to the United States in accordance with section 772(c)(2)(A) of the Act.

Section 772(c)(1)(C) of the Act requires the Department to increase export price by the amount of the CVD imposed on the subject merchandise to offset an export subsidy. The CVD order on CVP 23 from India is currently in effect. See *Notice of Countervailing Duty Order: Carbazole Violet Pigment 23 From India*, 69 FR 77995 (December 29, 2004). In preparing these preliminary results of review, we determined that an adjustment is not appropriate in this case because no CVD deposit was made at entry and no CVD duties were paid at liquidation. In the event we are satisfied that there are suspended entries during the period of review, we will determine whether an adjustment to offset export subsidies is appropriate. For more details on our decision, see the December 15, 2009, Preliminary Analysis Memorandum for Alpanil at 4.

Comparison-Market Sales

In order to determine whether there was a sufficient volume of sales in the comparison market to serve as a viable basis for calculating normal value, we compared the volume of home-market sales of the foreign like product in India to the volume of the U.S. sales of the subject merchandise in accordance with section 773(a)(1) of the Act. Based on this comparison of the aggregate quantities of the home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of the foreign like product sold by Alpanil in the home market was greater than five percent of its aggregate volume of the sales of the subject merchandise and therefore sufficient to permit a proper comparison with the sales of the subject merchandise, pursuant to section 773(a)(1) of the Act. Thus, we determined that Alpanil's home market was viable as the comparison market during the period of review. See section 773(a)(1) of the Act.

Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value for the respondent on the prices at which the foreign like product was first sold for consumption in India in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the comparison-market sales. *See* the ''Level of Trade'' section below for more details.

Model-Matching Methodology

We compared U.S. sales with sales of the foreign like product in the home market. Specifically, in making our comparisons, we attempted to make comparisons to weighted-average monthly home-market prices that were based on all sales of the identical product. Because no identical match was found, we matched similar merchandise on the basis of the comparison product which was closest in terms of the physical characteristics to the product sold in the United States. These characteristics are, in the order of importance, form, stability, dispersion, and tone. We made comparisons to weighted-average monthly home-market

[1] The bracketed section of the product description, [3,2-b:3′,2′-m], is not business-proprietary information. In this case, the brackets are simply part of the chemical nomenclature. *See* Carbazole Violet Pigment 23 From India: Final Results of Antidumping Duty Administrative Review, 73 FR 74141 (December 5, 2008).

prices that were based on all sales of the most similar product to the U.S. product. Because we were able to match all U.S. sales to home-market sales of similar products, we did not need to calculate the constructed value of the U.S. product as the basis for normal value.

Normal Value

We based normal value for Alpanil on the prices of the foreign like products sold to its home-market customers. When applicable, we made adjustments for differences in packing and movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. Because we calculated normal value using sales of similar merchandise, we also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made circumstance-of-sale adjustments by deducting home-market direct selling expenses from, and adding U.S. direct selling expenses to, normal value.

Based on our findings at verification, we have changed the short-term interest rate for calculating Alpanil's home-market credit expenses in this review. Due to the business-proprietary nature of our calculation methodology, please see the Preliminary Analysis Memorandum for Alpanil at 5 for more details.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined normal value based on sales in the home market at the same level of trade as the export-price sales. The normal-value level of trade is based on the starting price of the sales in the home market. For export-price sales, the U.S. level of trade is based on the starting price of the sales to the U.S. market.

We examined the differences in selling activities reported in Alpanil's responses to our requests for information. Alpanil reported two customer categories and one channel of distribution for its home-market sales. The two customer categories are end-users and distributors.

With respect to its home-market sales, Alpanil reported that it incurred expenses for the following selling functions and activities for both customer categories: sales forecasting, sales promotion, inventory maintenance, order input/processing, direct sales personnel, and sales/marketing support. We examined Alpanil's selling activities and found them to be similar with respect to sales forecasting, sales promotion, inventory maintenance, order input/processing, direct sales personnel, and sales/marketing support. Therefore, we find that Alpanil has one level of trade in its home market.

Alpanil reported one channel of distribution for two categories of U.S. customers, end-users and trading companies. Alpanil reported that the selling activities were identical for all U.S. customer categories. With respect to its sole export-price sale, Alpanil reported that it incurred expenses for sales forecasting, inventory maintenance, and order input/processing. We examined Alpanil's selling activities and found them to be similar for both categories of U.S. customers. Therefore, we find that sales in the U.S. market were made at one level of trade.

We find that the U.S. level of trade was the same as that of the home-market level of trade, given that Alpanil's selling functions associated with its home-market level of trade were similar with no meaningful differences to those associated with the U.S. market level of trade. They were similar with respect to sales forecasting, inventory maintenance, order input/processing, and freight and delivery. Thus, we were able to match Alpanil's export-price sale to sales at the same level of trade in the home market and no level-of-trade adjustment was necessary.

Verification

As provided in section 782(i) of the Act, we have verified Alpanil's home-market and U.S. sales information using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report dated October 20, 2009, which is on file in the Central Records Unit, room B–099 of the main Department of Commerce building.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin on CVP 23 from India for the period December 1, 2007, through November 30, 2008, for Alpanil is 71.74 percent.

We will disclose the calculations used in our analysis to parties to this review within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) the party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed.

Issues raised in the hearing will be limited to those raised in the case briefs. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. The final results of administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, are due not later than 120 days after the date of publication of this notice.

Assessment Rates

In the event we are satisfied that there are suspended entries during the period of review and we complete the final results of review, pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate by dividing the total dumping margin for the reviewed sale by the total entered value of the reviewed sale.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the period of review produced by Alpanil for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies)

involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of CVP 23 from India entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for Alpanil will be the rate established in the final results of this review; (2) for a previously investigated or reviewed company, the cash-deposit rate will continue to be the company-specific rate; (3) if the exporter is not a firm covered in this review, or a previous review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 27.48 percent, the all-others rate published in the less-than-fair-value investigation (69 FR at 77989) . These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importer

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

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 15, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–30434 Filed 12–21–09; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 58–2009]

Foreign-Trade Zone 2—New Orleans, LA, Area Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Commissioners of the Port of New Orleans, grantee of FTZ 2, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 14, 2009.

FTZ 2 was approved by the Board on July 16, 1946 (Board Order 12), had eleven boundary changes from 1950–1969 (Board Orders 22, 36, 40, 45, 49, 52, 56, 64, 67, 70 and 79), and was expanded on April 9, 1984 (Board Order 245), on May 8, 1986 (Board Order 331), on November 13, 1991 (Board Order 544), on August 25, 1998 (Board Order 1000), and on December 30, 2003 (Board Order 1310).

The current zone project includes the following sites: *Site 1* (2 acres, expires 7/1/2011)—Abbott Laboratories International Company, 1015 Distributors Row, Harahan; *Site 2* (76 acres)—Almonastar-Michoud Industrial District, Inner Harbor Navigation Canal and the Mississippi River Gulf Outlet; *Site 3* (534 acres)—Newport Industrial Park, Paris Road, New Orleans; *Site 4* (4 acres)—200 Crofton Road, Kenner (adjacent to the New Orleans International Airport); *Site 6* (136 acres)—Arabi Terminal and Industrial Park located at Mile Point 90.5 on the Mississippi River, Arabi; *Site 7* (216 acres)—Chalmette Terminal and Industrial Park, Old Kaiser Plant, St. Bernard Highway, New Orleans; *Site 8* (1.49 acres)—Metro International Trade Services (MITS), 4501 North Galvez Street, New Orleans; *Site 9* (1.42 acres)—MITS, 1560 Tchoupitoulas Avenue, New Orleans; *Site 10* (3.15 acres)—MITS, 5301 Jefferson Highway, New Orleans; *Site 11* (4.59 acres)—MITS, 700 Edwards Avenue, New Orleans; *Site 12* (6.65 acres, expires 8/31/2011)—Port Cargo Service, LLC (PCS), 333 Edwards Avenue, Jefferson Parish; *Site 13* (4.05 acres, expires 8/31/2011)—PCS, 415 Edwards Avenue, Jefferson Parish; *Site 14* (2.29 acres, expires 8/31/2011)—PCS, 5725 Powell Street, Jefferson Parish; *Site 15* (7.6 acres, expires 8/31/2011)—PCS, 6040 Beven Street, Jefferson Parish; *Site 16* (5 acres, expires 8/31/2011)—PCS, 325 Hord Street, Jefferson Parish; *Site 17* (19.12 acres, 4 parcels, expires 8/31/2011)—MITS, Port of New Orleans Nashville Avenue Terminal Complex located at Nashville Avenue and Grain Elevator Road; *Site 18* (5.5 acres, expires 8/31/2011)—Pacorini Metals USA (Pacorini), 5050 Almonster Avenue, New Orleans; *Site 19* (4.89 acres, expires 8/31/2011)—Pacorini, 5042 Bloomfield Street, Jefferson; *Site 20* (1.4 acres, expires 8/31/2011)—Pacorini, Port of New Orleans, Alabo Street Terminal; *Site 21* (17.23 acres, 6 parcels, expires 8/31/2011)—Neeb-Kearney, Inc. (NKI), Port of New Orleans Louisiana Avenue Marine Terminal Complex; *Site 22* (29.34 acres, expires 8/31/2011)—Dupuy Storage & Forwarding Corporation (Dupuy), 4300 Jourdan Road, New Orleans; *Site 23* (10.58 acres, expires 8/31/2011)—Dupuy, 13601 Old Gentilly Road, New Orleans; *Site 24* (27.3 acres, expires 8/31/2011)—Transportation Consultants, Inc., 4010 France Road Parkway, New Orleans; *Site 25* (7 acres)—Pacorini & PCS, 5200 Coffee Drive, New Orleans; *Site 26* (2 acres)—Pacorini, 601 Market Street, New Orleans; *Site 27* (2 acres)—Pacorini, 1601 Tchoupitoulas Street, New Orleans; *Site 28* (12 acres)—Dupuy, 5630 Douglas Street, New Orleans; *Site 29* (9 acres)—MITS, 6230 Bienvenue Street, New Orleans; *Site 30* (7 acres)—Dupuy, 1400 Montegut Street, New Orleans; *Site 31* (1 acre)—Pacorini, 1645 Tchoupitoulas Street, New Orleans; *Site 32* (1 acre)—London Metal Exchange (LME) warehouse, 1770 Tchoupitoulas Street, New Orleans; *Site 33* (9 acres)—MITS, 1930 Japonica Street, New Orleans; *Site 34* (2 acres)—Pacorini, 2941 Royal Street, New Orleans; *Site 35* (2.52 acres)—MITS, 600 Market Street, New Orleans, 1662 St. Thomas Street, New Orleans and 619 St. James Street, New Orleans; *Site 36* (1 acre)—MITS, 3101 Charters Street, New Orleans; *Site 37* (1 acre)—Dupuy, 2601 Decatur Street, New Orleans; *Site 38* (1 acre)—Dupuy, 2520 Decatur Street, New Orleans; *Site 39* (13 acres)—Dupuy, 5300 Old Gentilly Boulevard, New

Orleans; *Site 40* (8 acres)—PCS, 4400 Florida Avenue, New Orleans; *Site 41* (2 acres)—PCS, 410/420/440 Josephine Street, New Orleans and 427 Jackson Avenue, New Orleans; *Site 42* (7 acres)—MITS, 500 Louisiana Avenue, New Orleans; *Site 43* (1 acre)—Dave Streiffer Warehouse, 500 N. Cortez Street, New Orleans; *Site 44* (3 acres)—LME warehouse, 720 Richard Street, New Orleans; *Site 45* (12 acres)—PCS, 701/801 Thayer Street, New Orleans and 700/800 Atlantic Street, New Orleans; *Site 46* (9 acres)—PCS, 500 Edwards Avenue, New Orleans; *Site 47* (9 acres)—NKI, 14100 Chef Menteur Highway, New Orleans; *Site 48* (1 acre)—PCS, 2114–2120 Rousseau Street, New Orleans; *Site 49* (10 acres)—LME warehouse, 1000 Burmaster Street, New Orleans; *Site 50* (7 acres)—LME warehouse, 6025 River Road, New Orleans; *Site 51* (17 acres)—PCS, 620/640 River Road, New Orleans; *Site 52* (1 acre)—Stoyonoff Warehouses, 1806 Religious Street, New Orleans; *Site 53* (3 acres)—Delivery Network, 1050 S. Jeff Davis Parkway, New Orleans; *Site 54* (2 acres)—PCS, 1600 Annunciation Street, New Orleans; *Site 55* (5 acres)—Pacorini, 402 Alabo Street, New Orleans; *Site 56* (4 acres)—NKI, 4400 N. Galvez Street, New Orleans; *Site 57* (2 acres)—LME warehouse, 1883 Tchoupitoulas Street, New Orleans; *Site 58* (2 acres)—LME warehouse, 2311 Tchoupitoulas Street, New Orleans; *Site 59* (2 acres)—Pacorini, 2940 Royal Street, New Orleans; *Site 60* (1.62 acres)—NKI, 4403/4405 Roland Street, New Orleans; and, *Site 61* (3 acres)—Dupuy, 6101 Terminal Drive, New Orleans.

The grantee's proposed service area under the ASF would be Orleans, Jefferson and St. Bernard Parishes, Louisiana. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the New Orleans Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project as follows: Sites 2, 4, 6 and 7 would become ''magnet'' sites; Sites 1 and 8–61 would become ''usage-driven'' sites; and, Site 3 would be removed from the zone project due to changed circumstances. The applicant proposes that Site 2 be exempt from ''sunset'' time limits that otherwise apply to sites under the ASF. No new magnet or usage-driven sites are being requested at this time. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 2's authorized subzones.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 22, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 8, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: December 14, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–30397 Filed 12–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 97–10A03]

Export Trade Certificate of Review

ACTION: Notice of Application (#97–10A03) to amend an Export Trade Certificate of Review issued to the Association for the Administration of Rice Quotas, Inc.

SUMMARY: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5l3l (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, DC 20230, or transmit by E-mail at *oetca@ita.doc.gov.* Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 97–10A03.''

The original Certificate for the Association for the Administration of Rice Quotas, Inc. was issued on January 21, 1998 (63 FR 4220, January 28, 1998). The Certificate has been previously amended nine times. The last amendment was issued on March 31, 2009 (74 FR 16363, April 10, 2009). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Association for the Administration of Rice Quotas, Inc. (AARQ), c/o AARQ Chairman, Christian Bonnesen of ADM Rice, Inc., 660 White Plains Road, Tarrytown, New York 10591.

Contact: M. Jean Anderson, Esq., Counsel to Applicant, Telephone: (202) 682–7217.

Application No.: 97–10A03.

Date Deemed Submitted: December 11, 2009.

Proposed Amendment: AARQ seeks to amend its Certificate to reflect the following changes:

1. Add the following companies as new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.(1)): ADM Grain Company, Decatur, Illinois (a subsidiary of Archer Daniels Midland Company) and TRC Trading Corporation, Roseville, California (a subsidiary of The Rice Company).

2. Amend the listing of the following Members: ''American Commodity Company, LLC Robbins, California'' should be amended to read ''American Commodity Company, LLC, Williams, California''; ''American Rice, Inc., Houston, Texas (a subsidiary of SOS Cuetara USA, Inc.)'' should be amended to read ''American Rice, Inc., Houston, Texas (a subsidiary of SOS Corporation Alimentaria, SA)''; ''Cargill Americas, Inc., and its subsidiary CAI Trading Company LLC, Coral Gables, Florida'' should be amended to read ''Cargill Americas, Inc. and its subsidiary CAI Trading, LLC, Coral Gables, Florida; ''JFC International Inc., San Francisco, California (a subsidiary of Kikkoman Corp.)'' should be amended to read ''JFC International Inc., Los Angeles, California (a subsidiary of Kikkoman Corp.)''; and ''Nidera, Inc., Stamford, Connecticut (a subsidiary of Nidera Handelscompagnie BV (Netherlands))'' should be amended to read ''Nidera, Inc., Wilton, Connecticut (a subsidiary of Nidera Handelscompagnie BV (Netherlands)).''

Dated: December 16, 2009.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. E9–30346 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ91

Fisheries of the Pacific Region; Mid-Atlantic Region, Gulf of Mexico Region

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

ACTION: Notification of determination of overfishing and or an overfished condition.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that in the Pacific Region, the canary rockfish stock, as well as the Queets coho stock and the Western Straights of Juan de Fuca coho stocks, have been determined to be in an overfished condition. In addition, the Gulf of Mexico stock of gag grouper has been determined to be in an overfished condition. Finally, the Mid-Atlantic stock of black sea bass was found to be experiencing overfishing in 2007. However, since this determination, an updated assessment using 2008 data has been completed and NMFS has determined that overfishing is no longer occuring.

For any stocks which NMFS determines to be experiencing overfishing in 2009, the applicable fishery management council (Council) must amend the stock's Fishery Management Plan (FMP) to establish a mechanism for specifying Annual Catch Limits (ACLs) and Accountability Measures (AMs) and specify ACLs and AMs in 2010, if possible, but no later than 2011. For stocks which NMFS determines to be in or approaching an overfished condition and provides notice to the applicable Council(s) after July 12, 2009, the applicable Council(s) must, within two years of such notification, prepare and implement an FMP amendment or proposed regulations to rebuild such stocks.

FOR FURTHER INFORMATION CONTACT: Mark Nelson, (301) 713–2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS, on behalf of the Secretary, notifies Councils whenever it determines; a stock or stock complex is approaching an overfished condition; a stock or stock complex is overfished; or existing action taken to prevent previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress. NMFS also notifies Councils when it determines a stock or stock complex is subject to overfishing.

For a fishery determined to be overfished or approaching an overfished condition, NMFS also requests that the appropriate Council, or the Secretary, for fisheries under section 302(a)(3) of the Magnuson-Stevens Act, take action to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks. Councils (or the Secretary) receiving notification after July 12, 2009, that a fishery is overfished must, within 2 years of notification, implement a rebuilding plan, through an FMP Amendment or proposed regulations, which ends overfishing immediately and provides for rebuilding the fishery in accordance with 16 U.S.C. 1854(e)(3)-(4) as implemented by 50 CFR 600.310(j)(2)(ii). Councils receiving a notice that a fishery is approaching an overfished condition must prepare and implement, within two years, an FMP amendment or proposed regulations to prevent overfishing from occurring. When developing rebuilding plans Councils (or the Secretary), in addition to rebuilding the fishery within the shortest time possible in accordance with 16 U.S.C. 1854(e)(4) and 50 C.F.R. 600.310(j)(2)(ii), must ensure that such actions address the requirements to amend the FMP for each affected stock or stock complex to establish a mechanism for specifying and actually specify Annual Catch Limits (ACLs) and Accountability Measures (AMs) to prevent overfishing in accordance with 16 U.S.C. 1853(a)(15) and 50 CFR 600.310(j)(2)(i).

On July 31, 2009, NMFS informed the Pacific Fisheries Management Council that both the Queets stock of coho salmon and the Western Straight of Juan de Fuca stocks of coho salmon failed to meet their escapement goals for the third consecutive year, which has triggered an overfished status determination.

In addition, on September 9, 2009, NMFS notified the Pacific Fisheries Management Council that the latest stock assessment for canary rockfish estimated the current biomass to be below the overfished threshold.

During the third quarter of 2009, the first stock assessment for the Gulf of Mexico stock of gag grouper was finalized. The assessment found that the

stock is in an overfished condition. The Gulf of Mexico Fisheries Management Council was notified of the status determination on August 11, 2009.

On April 22, 2009, NMFS notified the Mid-Atlantic Fisheries Management Council that the Mid-Atlantic coast stock of black sea bass was experiencing overfishing. This determination was based on an assessment using data up to 2007. Since this determination the assessment has been updated using 2008 data. The updated assessment found that the fishing mortality in 2008 was below the overfishing threshold, and NMFS has determined that overfishing is no longer occurring.

As noted above, within 2 years of determination that a fishery is overfished, the respective Council (or the Secretary) must adopt and implement a rebuilding plan, through an FMP Amendment or proposed implementing regulations, which ends overfishing immediately and provides for rebuilding. In addition, for the fisheries experiencing overfishing, the responsible Councils (or the Secretary) must propose, and NMFS must adopt, effective ACLs and AMs by fishing year 2010, if possible, but no later than 2011 to end overfishing.

Dated: December 15, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. E9–30387 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XT34

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Interspecies Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, January 19, 2010, at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

1. Topics to be discussed include the Committee's work plan, a buyback for the Northeast multispecies fishery, the status of monitoring programs in all fisheries, and NOAA's recent draft report on catch share policy;

2. Other items may also be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: December 16, 2009.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30329 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U.S. Coral Reef Task Force Public Meeting and Public Comment

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of public meeting, Notice of public comment.

SUMMARY: Notice is hereby given of a public meeting of the U.S. Coral Reef Task Force. The meeting will be held in Washington, DC. This meeting, the 23rd bi-annual meeting of the U.S. Coral Reef Task Force, provides a forum for coordinated planning and action among Federal agencies, State and territorial governments, and nongovernmental partners. Please register in advance by visiting the Web site listed below. This meeting has time allotted for public comment. All public comment must be submitted in written format. A written summary of the meeting will be posted on the Web site within two months of its occurrence.

DATES: The meeting will be held Tuesday, February 23 and Wednesday, February 24, 2010. Registration is requested for all events associated with the meetings. Advance public comments can be submitted to the e-mail, fax, or mailing address listed below from Friday, January 15—Friday, January 29.

Location: The meeting will be held at the Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230 on February 23, 2010 and the Department of the Interior, 1849 C Street, NW., Washington, DC 20240 on February 24, 2010.

FOR FURTHER INFORMATION CONTACT: Steven Thur, NOAA U.S. Coral Reef Task Force Steering Committee Point of Contact, Coral Reef Conservation Program, 1305 East-West Highway, Silver Spring, Maryland, 20910 (*Phone:* 301–713–3155 ext. 147, *Fax:* 301–713–4389, *e-mail: Steven.Thur@noaa.gov*, Sarah Bobbe, U.S. Coral Reef Task Force Department of the Interior liaison, 1849 C Street NW., Room 5013 Washington, DC 20240 (*Phone:* 202–208–1378, *e-mail: Sarah Bobbe@ios.doi.gov*), or visit the U.S. Coral Reef Task Force Web site at *http://www.coralreef.gov*.)

SUPPLEMENTARY INFORMATION: Established by Presidential Executive Order 13089 in 1998, the U.S. Coral Reef Task Force mission is to lead, coordinate, and strengthen U.S. government actions to better preserve and protect coral reef ecosystems. Co-chaired by the Departments of Commerce and the Interior, Task Force members include leaders of 12 Federal agencies, seven U.S. States and territories, and three freely associated States. For more information about the meeting, registering, and submitting public comment go to *http://www.coralreef.gov*.

Dated: December 3, 2009.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–30259 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 95th Interim Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Conference on Weights and Measures (NCWM) 95th Interim Meeting will be held January 24 to 27, 2010. Publication of this notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals contained in this notice or in the publications of the NCWM mentioned below. The meetings are open to the public but a paid registration is required. Please see registration information in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The meeting will be held on January 24 to 27, 2010.

ADDRESSES: The meeting will be held at the Hilton Nashville Downtown, 121 Fourth Avenue South, Nashville, Tennessee 37201.

FOR FURTHER INFORMATION CONTACT: Carol Hockert, Chief, NIST, Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600 or by telephone (301) 975–5507 or by e-mail at *Carol.Hockert@nist.gov*.

SUPPLEMENTARY INFORMATION: The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, federal agencies, and private sector representatives. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration and enforcement. NIST participates to promote uniformity among the states in laws, regulations, methods, and testing equipment that comprise the regulatory control of commercial weighing and measuring devices and other trade and commerce issues. To register to attend the meeting, please see NCWM Publication 15 ''Interim Meeting Agenda'' at *http://www.ncwm.net* or *http://www.nist.gov/owm* that contains meeting agendas, registration forms and hotel reservation information.

The following are brief descriptions of some of the significant agenda items that will be considered along with other issues at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals. This meeting also includes work sessions in which the Committees may also accept comments and where they will finalize recommendations for NCWM consideration and possible adoption at its Annual Meeting to be held at the Crown Plaza St. Paul Riverfront in St. Paul, Minnesota on July 11 to 15, 2010. The Committees may withdraw or carry over items that need additional development.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices (NIST Handbook 44).'' Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of product sold among businesses.

Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of legal metrology and engine fuel quality'' and NIST Handbook 133 ''Checking the Net Contents of Packaged Goods.''

NCWM Specifications and Tolerances Committee

The following items are proposals to amend NIST Handbook 44:

General Code

Item 310–1. G–S.8. Provision for Sealing Electronic Adjustable Components, G–S.8.1. Access to Calibration and Configuration Adjustments, and G–S.8.2.—The S&T Committee will consider a proposal to add new requirements to G–S.8. intended to improve the security of access to the calibration and other configuration features on weighing or measuring devices. The purpose of the proposal is to ensure that prohibited features cannot be activated and that the accuracy of the device cannot be altered after a weights and measures official applies security seals or another approved means of providing security.

Item 310–3. Software, G–S.1. Identification—The S&T Committee will consider a proposal that is intended to amend the identification requirements for all electronic devices manufactured after a specified date by requiring metrological software version or revision information. Additionally, the proposal will list other optional methods for providing the required information.

Liquid-Measuring Devices Code

Item 360–1. Tentative Code for Hydrogen Gas-Measuring Devices—The S&T Committee will consider a proposal to establish legal metrology requirements for gaseous hydrogen refueling dispensers. These devices are in operation in 24 states and these requirements will provide state weights and measures programs and manufacturers with specifications, tolerances and other technical requirements for these measuring devices.

Item 330–1. Automatic Temperature Compensation for Liquid-Measuring Devices—The S&T Committee will consider a proposal to add provisions to Handbook 44 to allow retail motor-fuel dispensers to be equipped with the automatic means to deliver engine fuels with the volume compensated to a reference temperature.

Item 331–2. For Vehicle Mounted Measuring Devices, UR.2.5.2.1. Automatic Temperature Compensation for Refined Petroleum Products—The S&T Committee will consider a proposal to add user requirements to NIST Handbook 44 related to measuring devices equipped with automatic temperature compensators. If adopted, users would be required to operate the compensators on a year round basis and all measuring devices used at a single business location would be required to be equipped with compensators to ensure all of the fuels sold from that location are dispensed on the same basis.

NCWM Laws and Regulations Committee

The following items are proposals to amend NIST Handbook 130 or NIST Handbook 133:

NIST Handbook 133

Item 260–1. Guidance on Allowing for Moisture Loss and Other Revisions—The L&R Committee will consider proposals to revise and update the 4th Edition of this handbook that was last revised in 2005. Some proposed changes will clarify guidance on moisture allowances and inspection procedures and others will correct errors in the current edition.

Method of Sale of Commodities Regulation

Item 270–4. Method of Sale and Engine Fuel Quality Requirements for Hydrogen—The L&R Committee will consider a proposal to adopt a uniform method of sale and preliminary engine

fuel quality standards for hydrogen used to refuel highway vehicles.

Item 270–5. Seed Count for Agricultural Seeds—The L&R Committee will consider a proposed method of sale and related test procedures for the inspection of packaged agricultural seed (specifically corn seed, soybean seed, field bean seed, and wheat seed) by ''count.'' (This item also includes proposed changes to NIST Handbook 133.)

Item 270–6. Polyethylene Products, Method of Sale Regulation Section 2.13.4. ''Declaration of Weight.''—The L&R Committee will consider a proposal to revise the density values used to calculate the net weights on some packages of polyethylene products to recognize that heavier density plastics are now being used in some sheeting and bags. (See also Item 270–7 Handbook 133, Chapter 4.7. Polyethylene Sheeting—Test Procedure—Footnote to Step 3.)

Item 270–9. Packaged Printer Ink and Toner Cartridges—The L&R Committee will consider a proposed method of sale that would clarify the labeling requirements for packaged inkjet and toner cartridges to ensure that consumers are informed about the net quantity of contents of these products so that value comparisons can be made.

Item 270–11. Measurement of the Volume of Bagged Mulch—The L&R Committee will consider a proposal to revise the procedures used to verify the net quantity of contents of packaged mulch. The revisions include a proposal to require open dating so that allowances for moisture loss and decomposition can be made.

Dated: December 17, 2009.

Patrick Gallagher,

Director.

[FR Doc. E9–30421 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XT36

New England Fishery Management Council; Public Hearings

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

ACTION: Notice; public hearings.

SUMMARY: The New England Fishery Management Council (Council) will hold three public hearings to solicit comment on Draft Amendment 4 and a Draft Environmental Assessment to the Atlantic Herring Fishery Management Plan (FMP).

DATES: The hearings will be held between January 6, 2010 and January 11, 2010. For specific dates and times, see SUPPLEMENTARY INFORMATION.

ADDRESSES: The Draft Amendment 4 document can be downloaded from our website at www.nefmc.org or obtained by contacting the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

Meeting addresses: The Council will take comments at the public hearings to be held in Gloucester, MA, Fairhaven, MA and Portland, ME. For specific locations, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: Written public comments must be received on or before 5 p.m. EST, on Wednesday, January 13, 2010.

Comments may be sent to Paul J. Howard, Executive Director, 50 Water Street, Mill #2, Newburyport, MA 01950 or emailed to: *comments@nefmc.org* attention/subject line: (Herring Draft Amendment 4 Comments).

The agendas for the following three hearings are as follows: NEMFC staff will brief the public on the draft herring amendment and the contents of the draft environmental assessment prior to opening the hearing for public comments and the schedules are as follows:

Public Hearing Meetings: Locations and Schedules.

1. *Wednesday, January 6, 2010, from 5–7 p.m.*; Massachusetts Department of Marine Fisheries Annisquam River Station, 30 Emerson Avenue, Gloucester, MA 01950; telephone: (978) 282–0308.

2. *Thursday, January 7, 2010, from 5–7 p.m.*; Hampton Inn, Fairhaven, One Hampton Way, Fairhaven, MA 02719; telephone: (508) 990–8500

3. *Monday, January 11, 2010, from 5–7 p.m.*; Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**), at least 5 working days prior to the meeting date.

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

Dated: December 16, 2009.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30331 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XT35

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Herring Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, January 25, 2010, from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. Review the range of alternatives under consideration, related analyses, and public comments regarding Amendment 4 to the Herring FMP; management measures proposed in Amendment 4 will modify the Atlantic herring fishery specification process for consistency with the provisions in the Magnuson-Stevens Fishery Conservation and Management Act to establish annual catch limits (ACLs) and accountability measures (AMs) in the herring fishery;

2. Develop Committee recommendations for Council consideration regarding the selection of final measures for Amendment 4;

3. Other business may also be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: December 16, 2009.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–30330 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* December 22, 2009.

SUMMARY: The Department of Commerce (''the Department'') has preliminarily determined that the respondents in this review, for the period December 1, 2007, through November 30, 2008, have made sales of subject merchandise at less than normal value. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries.

The Department invites interested parties to comment on these preliminary results. The Department intends to issue the final results no later than 120 days from the publication date of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

FOR FURTHER INFORMATION CONTACT: Alexander Montoro or Joseph Shuler, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0238 and (202) 482–1293, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994, the Department published in the **Federal Register** an antidumping duty order on certain cased pencils (''pencils'') from the People's Republic of China (''PRC''). *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China,* 59 FR 66909 (December 28, 1994). On December 1, 2008, the Department published a notice of opportunity to request an administrative review of this order covering the period December 1, 2007, through November 30, 2008. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 73 FR 72764 (December 1, 2008). On December 9, 2008, in accordance with 19 CFR 351.213(b), Shandong Rongxin Import and Export Co., Ltd. (''Rongxin''), a foreign exporter/producer, requested that the Department review its sales of subject merchandise. On December 31, 2008, the following exporters/producers requested reviews of themselves, in accordance with 19 CFR 351.213(b): China First Pencil Co., Ltd. (''China First''), Shanghai Three Star Stationery Industry Co., Ltd. (''Three Star''), and Orient International Holding Shanghai Foreign Trade Corporation (''SFTC''). On December 31, 2008, the petitioners [1] requested a review of the following companies: China First (including subsidiaries Shanghai First Writing Instrument Co., Ltd. (''Fusite''); Shanghai Great Wall Pencil Co., Ltd. (''Great Wall''); and China First Pencil Fang Zheng Co., Ltd. (''Fang Zheng'')); Three Star; Guangdong Provincial Stationery & Sporting Goods Import & Export Corporation (''Guangdong Stationery''); Rongxin; Tianjin Custom Wood Processing Co., Ltd. (''Tianjin Wood''); Beijing Dixon Stationery Company Ltd. (''Dixon''); and Anhui Import & Export Co., Ltd. (''Anhui I&E'').

On February 2, 2009, the Department published a notice of initiation for this administrative review covering the companies listed in the requests received from the interested parties named above. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 5821 (February 2, 2009). On July 14, 2009, we extended the time limit for the preliminary results in this review until December 15, 2009. *See Certain Cased Pencils From the People's Republic of China: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review,* 74 FR 36164 (July 22, 2009).

Scope of the Order

Imports covered by the order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.,* with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: (1) *Length:* 13.5 or more inches; (2) *sheath diameter:* not less than one-and-one quarter inches at any point (before sharpening); and (3) *core length:* not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known

[1] The petitioners include Sanford L.P., Musgrave Pencil Company, RoseMoon Inc., and General Pencil Company.

producer or exporter of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers if it is not practicable to examine all exporters or producers involved in the review.

On February 5, 2009, the Department released CBP data showing entries of the subject merchandise during the period of review (''POR'') under administrative protective order (''APO'') to all interested parties having an APO, and invited comments regarding the CBP data and respondent selection. The Department did not receive comments from any interested parties. On February 25, 2009, the Department issued its respondent selection memorandum after assessing its resources and determining that it could reasonably examine two exporters. *See* Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Yasmin Nair, International Trade Compliance Analyst, AD/CVD Operations, Office 1, ''Selection of Respondents for the Antidumping Duty Review of Certain Cased Pencils from the People's Republic of China,'' February 25, 2009. Pursuant to section 777A(c)(2)(B) of the Act, the Department selected China First and Three Star as mandatory respondents.

The Department issued antidumping duty questionnaires to China First and Three Star on February 26, 2009. China First submitted the Section A Questionnaire Response on April 9, 2009, the Section C Questionnaire Response on April 27, 2009, and the Section D Questionnaire Response on May 12, 2009. Three Star submitted the Section A Questionnaire Response on April 9, 2009, the Section C Questionnaire Response on April 27, 2009, and the Section D Questionnaire Response on May 13, 2009. The Department issued supplemental questionnaires to China First and Three Star between July 2009 and November 2009. Both companies timely filed their responses to those supplemental questionnaires.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004–2005 Administrative Review and Notice of Rescission of 2004–2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country and Surrogate Values

When the Department investigates imports from an NME country and available information does not permit the Department to determine NV pursuant to section 773(a) of the Act, then, pursuant to section 773(c)(4) of the Act, the Department bases NV on an NME producer's factors of production (''FOPs''), to the extent possible, valued in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department determined that India, Indonesia, the Philippines, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See* Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Susan H. Kuhbach, Director, Office 1, March 27, 2009. On July 29, 2009, the Department invited the interested parties to comment on surrogate country selection and surrogate value data. *See* the Department's Letter to All Interested Parties, ''Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Request for Comments on Surrogate Country and Surrogate Value Selection,'' July 29, 2009. No parties provided comments with respect to selection of a surrogate country or surrogate values.

As explained above, we determined that India is comparable to the PRC. Furthermore, India is a significant producer of comparable merchandise. *See* Memorandum from Alexander Montoro to the File, ''2007–2008 Antidumping Duty Administrative Review on Certain Cased Pencils from the People's Republic of China: Selection of a Surrogate Country,'' December 15, 2009. Finally, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from those countries. In this instance, India has publicly available, reliable data. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, March 1, 2004.

Therefore, because India is at a comparable level of economic development to the PRC, is a significant producer of comparable merchandise, and has publicly available and reliable data, we have selected India as the primary surrogate country for this review. The Department notes that India has been the primary surrogate country in past segments of this case.

Separate Rates Determination

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(c) of the Act. Accordingly, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty deposit rate (*i.e.,* a country-wide rate). *See, e.g.,* Department Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April 5, 2005; *see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006) (''*Diamond Sawblades''*).

It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. *See, e.g., Diamond Sawblades,* 71 FR at 29307. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. *Id.* The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) (''*Sparklers''*), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585, 22586–87 (May 2, 1994) (''*Silicon Carbide''*). However, if the Department determines that a company is wholly foreign-owned or located in a market economy (''ME''), then a separate rate analysis is not necessary to

determine whether it is independent from government control. *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

In addition to the two mandatory respondents, the Department received separate rate applications or certifications from the following three companies: Dixon, Rongxin, and SFTC. The three remaining respondents for which a review was requested did not submit either a separate-rate application or certification. Consequently, Guangdong Stationery, Tianjin Wood, and Anhui I&E have not satisfied the criteria for separate rates for the POR and are considered as being part of the PRC-wide entity.

In its separate rate application, Dixon reported that it is owned wholly by an entity located and registered in an ME country (*i.e.,* the United States). Thus, because we have no evidence indicating that Dixon is under the control of the PRC government, a separate-rate analysis is not necessary to determine whether it is independent from government control, and we determine Dixon has met the criteria for the application of a separate rate. *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review,* 66 FR 44331 (August 23, 2001), results unchanged from *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth New Shipper Review,* 66 FR 29080, 29081 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company); *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review,* 66 FR 27063 (May 16, 2001) (where the respondent was wholly owned by a company located in Hong Kong), results unchanged from *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review,* 66 FR 1303, 1306 (January 8, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly owned by persons located in Hong Kong).

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. The evidence provided by China First, Three Star, Rongxin, and SFTC supports a preliminary finding of *de jure* absence of government control.

China First and Three Star have placed on the administrative record a copy of their business licenses. China First additionally submitted a copy of its articles of association on the record of this administrative review. None of these documents contain restrictions with respect to export activities.

In their respective separate rates certifications, SFTC and Rongxin certified that during the POR: (1) As with the segment of the proceeding in which the firm was previously granted a separate rate (''previous Granting Period''), there were no government laws or regulations that controlled the firm's export activities; (2) the ownership under which the firm registered itself with the official government business license issuing authority remains the same as for the previous Granting Period; (3) the firm had a valid PRC Export Certificate of Approval, now referred to and labeled as a Registration Form for Foreign Trade Operator; (4) as in the previous Granting Period, in order to conduct export activities, the firm was not required by any level of government law or regulation to possess additional certificates or other documents related to the legal status and/or operation of its business beyond those discussed above; and (5) PRC government laws and legislative enactments applicable to SFTC and Rongxin remained the same as in the previous Granting Period. SFTC attached copies of its business license and foreign trade operator registration form to its separate rate certification to document the absence of *de jure* government control. Rongxin attached copies of its business license to its separate rate certification to document the absence of *de jure* government control.

In prior cases, we have found an absence of *de jure* control absent proof on the record to the contrary. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544 (May 8, 1995) (''*Furfuryl Alcohol*''). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we determine that the evidence on the record supports a preliminary finding of absence of *de jure* government control for China First, Three Star, SFTC, and Rongxin.

Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide,* 59 FR at 22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87, and *Furfuryl Alcohol,* 60 FR at 22545.

China First and Three Star have asserted the following: (1) Each establishes its own export prices; (2) each negotiates contracts without guidance from any government entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent's questionnaire responses indicate that its pricing during the POR was not coordinated among exporters. As a result, there is a sufficient basis to preliminarily determine that China First (and its affiliates) and Three Star have demonstrated a *de facto* absence of government control of their export functions and they are both entitled to separate rates.

The Department also conducted a separate rates analysis for SFTC and

Rongxin. SFTC certified the following: (1) There was no government participation in setting export prices; (2) the firm had independent authority to negotiate and sign export contracts; (3) the firm had autonomy from all levels of government in making decisions regarding the selection of management; (4) SFTC did not submit the names of its candidates for managerial positions to any governmental entity for approval; and (5) there were no restrictions on the use of export revenue. In our analysis of the information on the record, we found no information indicating the existence of government control of SFTC's export activities. *See* SFTC's submission of March 4, 2009. Consequently, we preliminarily determine that SFTC has met the criteria for the application of a separate rate.

Rongxin certified the following: (1) The 10 largest shareholders of the firm and all of their shareholders had no significant relationship with a PRC state asset management company or the PRC national government or its ministries/agencies; (2) there was no government participation in setting export prices; (3) the firm had independent authority to negotiate and sign export contracts; (4) the firm had autonomy from all levels of government in making decisions regarding the selection of management; (5) Rongxin did not submit the names of its candidates for managerial positions to any governmental entity for approval; and (6) there were no restrictions on the use of export revenue. In our analysis of the information on the record, we found no information indicating the existence of government control of Rongxin's export activities. *See* Rongxin's submission of March 4, 2009. Consequently, we preliminarily determine that Rongxin has met the criteria for the application of a separate rate.

Application of Facts Available to China First

Sections 776(a)(1) and (2) of the Act provide that, if necessary information is not available on the record, or if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information in a timely matter or in the form or manner requested subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(d) of the Act additionally states that if the party submits further information that is unsatisfactory or untimely, the administering authority may, subject to subsection (e), disregard all or part of the original and subsequent responses. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority with respect to the information; and (5) the information can be used without undue difficulties.

In calculating freight costs for certain FOPs, we are limited to the lesser of the weighted average actual distance between the supplier and the respondent, or the distance between the respondent and the port. *See Sigma Corporation* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997) (''*Sigma*''). In its May 12, 2009, Section D Questionnaire Response, China First reported that six facilities were engaged in the production of subject merchandise. In its response, China First provided the distance between the facility and the closest port for two of these factories, Great Wall and China First. *See* Section C Questionnaire Response at 18. It did not provide the distance to the port for Fusite, Shanghai Glamor Chemistry Co., Ltd. (''Glamor''), China First Pencil Huadian Co., Ltd. (''Huadian''), and Fang Zheng. At page 18 of the April 9, 2009 Section A Questionnaire Response, China First reported the locations of these all six of its facilities, including the four for which we do not have reported distances. Three of these facilities are located in the same cities as the Great Wall and China First factories. Therefore, for these three facilities, we are assigning the same distance to port as was reported by China First for the Great Wall and China First factories. For the remaining facility, we are relying on the greater distance (as reported for the Great Wall factory) as the distance to port for purposes of calculating supplier distance for these FOPs. We intend to issue a supplemental questionnaire following these preliminary results to solicit specific information about the distances to port for these facilities. *See* Memorandum from Joseph Shuler, Analyst, Office 1, to the File, ''Analysis for the Preliminary Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: China First Pencil Company, Ltd, December 15, 2009 (''China First Preliminary Calculation Memorandum'').

Additionally, for certain factors of production, China First reported the distances, but we are unable to calculate a weighted-average distance because of differences in the reported units. Therefore, for these factors, we are using a simple average of the reported distances. *See* China First Preliminary Calculation Memorandum.

Fair-Value Comparisons

To determine whether the respondents' sales of subject merchandise were made at less than NV, we compared the NV to individual export price (''EP'') transactions in accordance with section 777A(d)(2) of the Act. *See* ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

In accordance with section 772(a) of the Act, EP is ''the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,'' as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EPs for sales by China First and Three Star to the United States because the first sale to an unaffiliated party was made before the date of importation, and constructed export price methodology was not otherwise indicated. We based EP on the price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions for movement expenses, where appropriate.

For China First, movement expenses included expenses for foreign inland freight and foreign brokerage and handling.

For Three Star, movement expenses included expenses for foreign inland freight, foreign brokerage and handling, where applicable, and international freight, where applicable. Certain of these services were provided by an NME vendor and thus, for the reasons explained in the section below, we based the amounts of the deductions for those movement charges on values from a surrogate country.

For a detailed description of all adjustments, *see* China First Preliminary Calculation Memorandum; and Memorandum from Alexander Montoro, Analyst, Office 1, to the File, ''Analysis for the Preliminary Results of Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China: Shanghai Three Star Stationery Industry Co., Ltd.'', December 15, 2009.

We valued brokerage and handling using a simple average of the brokerage and handling costs reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. We calculated the inflation or deflation adjustments for those values using the wholesale price indices (''WPI'') for India as published in the *International Financial Statistics* (''IFS'') *Online Service* maintained by the Statistics Department of the International Monetary Fund at the Web site *http://www.imfstatistics.org. See* Memorandum from Alexander Montoro to File, ''Factor Valuation for the Preliminary Results Memorandum,'' December 15, 2009 (''Factor Valuation Memorandum'').

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department will base NV on FOPs where the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under our normal ME methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by the respondents for materials, energy, labor, and packing.

Factor Valuations

In accordance with section 773(c)(3) of the Act, we calculated NV based on FOPs reported by the respondents for the POR. We multiplied the reported per-unit factor quantities by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneousness of the data.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. If we were unable to obtain surrogate values that were in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor and utilities, using the India WPI as published in the IFS.

When relying on prices of imports into India as surrogate values, we have disregarded prices that we have reason to believe or suspect may be subsidized. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part,* 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1. We have found that Indonesia, South Korea, and Thailand maintain broadly available, non-industry-specific export subsidies. Accordingly, it is reasonable to infer that exports to all markets from those countries may be subsidized. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 54007, 54011 (September 13, 2005), results unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review,* 71 FR 14170 (March 21, 2006); and *China Nat'l Machinery Import & Export Corp. v. United States,* 293 F. Supp. 2d 1334, 1336 (Ct. Int'l. Trade 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004).

In avoiding the use of prices that may be subsidized, the Department does not conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590–91 (1988), *reprinted* in 1988 U.S.C.C.A.N. 1547, 1623. Rather, the Department relies on information that is generally available at the time of its determination. Therefore, we have not used prices from those countries in calculating the Indian import-based surrogate values. *See* Factor Valuation Memorandum.

As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the Indian import surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory, where appropriate. This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma.*

We valued the FOPs as follows:

(1) Except where noted below, we valued all reported material, energy, and packing inputs using Indian import data from the World Trade Atlas for December 2007 through November 2008.

(2) To value lindenwood pencil slats, we used publicly available, published U.S. prices for American basswood lumber because price information for Chinese lindenwood and American basswood is not available from any of the potential surrogate countries.[2] The U.S. lumber prices for basswood for the period December 1, 2006, through November 30, 2007 are published in the Hardwood Market Report. We adjusted this value, to account for inflation between the effective period and the POR. For further discussion, *see* Factor Valuation Memorandum. We received additional factors valuation information from China First regarding slats processing. *See* China First's Third

[2] In the antidumping investigation of certain cased pencils from the PRC, the Department found Chinese lindenwood and American basswood to be virtually indistinguishable and thus used U.S. prices for American basswood to value Chinese lindenwood. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China,* 59 FR 55625, 55632 (November 8, 1994). This methodology was upheld by the Court of International Trade. *See Writing Instrument Mfrs. Ass'n, Pencil Section, et. al.* v. *United States,* 984 F. Supp. 629, 639 (Ct. Int'l. Trade 1997), aff'd 178 F.3d 1311 (Fed. Cir. 1998).

Supplemental Questionnaire Response, December 4, 2009. Because these factors are already accounted for in the pencil slats surrogate value, we are not incorporating them in the calculation methodology to avoid double-counting. This is consistent with the methodology used to value pencil slats in previous administrative reviews.

(3) We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled ''Electricity Tariff & Duty and Average Rates of Electricity Supply in India,'' dated March 2008. Those electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. *See* Factor Valuation Memorandum.

(4) We calculated the surrogate value for steam based upon the April 2007–March 2008 financial statement of Hindalco Industries Limited. *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 74 FR 10545 (March 11, 2009), and accompanying Issues and Decision Memorandum at Comment 4. *See* Factor Valuation Memorandum.

(5) For China First, we valued steam coal using data obtained for grade D non-long flame non-coking coal reported on the 2007 Coal India Data Web site. For Three Star, we valued steam coal using data obtained for grade B for non-long flame non-coking coal reported on the 2007 Coal India Data Web site. *See* Factor Valuation Memorandum.

(6) Section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. Therefore, we valued labor using the regression-based wage rate for the PRC published on Import Administration's Web site. The source of the wage rate data on the Import Administration's Web site is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. *See 2009 Calculation of Expected Non-Market Economy Wages,* 74 FR 65092 (December 9, 2009), and *see also* Expected Wages of Selected NME Countries (revised October 2009) (available at *http://ia.ita.doc.gov/wages/index.html*) and Factor Valuation Memorandum. Since this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor.

(7) We derived ratios for factory overhead, depreciation, and selling, general and administrative expenses, interest expenses, and profit for the finished product using the 2006–2007 financial statement of Triveni Pencils Ltd. (''Triveni''), an Indian producer of pencils, in accordance with the Department's practice with respect to selecting financial statements for use in NME cases. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 2. The Department prefers to derive financial ratios using data from those surrogate producers whose financial data is not distorted or otherwise unreliable. Reliance upon Triveni's financial statements is consistent with the 2006–2007 administrative review.

(8) We valued inland truck freight expenses using a per-unit average rate calculated from data on the following publicly accessible Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Since the truck rate value is based on an annual per-unit rate and falls within the POR (August 2008 through July 2009), we are treating the derived average rate as contemporaneous. For rail freight, we used 2006–2007 data from the publicly accessible Web site *www.Indianrailways.gov.in/* to derive, where appropriate, input-specific train rates on a rupees-per-kilogram per-kilometer basis (''Rs/kg/km''). Since the effective period for this rate falls within the POR, we have not inflated this rate.

(9) For any sale with reported international freight, we used a surrogate international freight value from *www.maerskline.com. See* Factor Valuation Memorandum.

For further discussion of the surrogate values we used for these preliminary results of review, see the Factor Valuation Memorandum, which is on file in the Central Records Unit (''CRU'') in Room 1117 of the main Department of Commerce building.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period December 1, 2007, through November 30, 2008:

Manufacturer/exporter	Margin (percent)
China First Pencil Company, Ltd. (which includes subsidiaries Shanghai First Writing Instrument Co., Ltd.; Shanghai Great Wall Pencil Co., Ltd.; and China First Pencil Fang Zheng Co., Ltd.)	13.86
Shanghai Three Star Stationery Industry Co., Ltd.	62.06
Beijing Dixon Stationery Company Ltd.	37.96
Orient International Holding Shanghai Foreign Trade Corporation	37.96
Shandong Rongxin Import and Export Co., Ltd.	37.96
PRC-wide Entity[3]	114.90

As stated above in the ''Separate-Rates Determination'' section of this notice, Dixon, Rongxin, and SFTC qualify for a separate rate in this review. Moreover as stated above in the ''Respondent Selection'' section of this notice, we limited this review by selecting the largest exporters and did not select Dixon, Rongxin, and SFTC as mandatory respondents. Therefore, Dixon, Rongxin, and SFTC are being assigned dumping margins based on the calculated margins of mandatory respondents, in accordance with Department practice. Accordingly, we have assigned Dixon, Rongxin, and SFTC the simple-average of the dumping margins assigned to China First and Three Star.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable

[3] The PRC-wide entity includes Guangdong Stationery, Tianjin Wood, and Anhui I&E.

deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) no later than 30 days after publication of these preliminary results of review, and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a compact disk containing the public version of those comments. We will issue a memorandum identifying the date and time of a hearing, if one is requested.

The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this administration review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. For assessment purposes, we calculated exporter/importer-specific (or customer-specific) assessment rates for merchandise subject to this review.

China First and Three Star did not report entered values for their U.S. sales. Therefore, we calculated a per-unit assessment rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)—specific *ad valorem* ratios based on the estimated entered value. Where an importer-specific (or customer-specific) rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to liquidate that importer's (or customer's) entries of subject merchandise without regard to antidumping duties.

As noted above, Dixon, Rongxin, and SFTC qualified for separate-rate status, and will be assigned the simple-average dumping margin based on the calculated margins of mandatory respondents which are not *de minimis* or based on adverse facts available, in accordance with Department practice. We will instruct CBP to assess antidumping duties on those companies' entries equal to the margins those companies receive in the final results, regardless of the importer or customer.

As explained above, the three remaining companies covered by this review, Guangdong Stationery, Tianjin Wood, and Anhui I&E, did not provide separate rate information. As a result, those three companies will be considered part of the PRC-wide entity, and their entries will be subject to the PRC-wide rate.

Cash Deposit Requirements

The following cash-deposit requirements will apply to all shipments of certain cased pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate established in the final results of this review; and (4) the cash-deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: December 15, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–30410 Filed 12–21–09; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

Establishment of a Public Consumer Product Safety Incident Database: Notice of Public Workshop

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public workshop.

SUMMARY: The Consumer Product Safety Commission (''Commission'' or ''CPSC'') is announcing a two day staff-conducted public workshop to receive views from all interested parties on establishing a public consumer product safety incident database. The workshop, to be held on January 11 and 12, 2010 in Bethesda, Maryland, seeks input from stakeholders on five aspects of the public database: Data analysis and reporting; reports of harm; manufacturer notification and response; additional database content, and materially inaccurate information. Participation by members of the public is invited.

DATES: The workshop will be held from 9 a.m. to 4 p.m. on January 11 and 12, 2010, with a one hour break for lunch. Requests to make oral presentations and the written text of any oral presentation must be received by the Office of the Secretary not later than 5 p.m. Eastern Standard time (EST) on January 4, 2010.

Written comments must be received by the Office of the Secretary not later than 5 p.m. Eastern Standard time (EST) on January 29, 2010.

ADDRESSES: The public workshop will be held at CPSC's headquarters, Bethesda Towers Building, 4330 East West Highway, Bethesda, Maryland 20814, in the 4th Floor Hearing Room. Persons interested in attending the workshop should register online at ''*www.cpsc.gov/meetingsignup.html.*'' The CPSC web link also has more information about the workshop, and interested persons can request to make oral presentations online. Requests to make oral presentations also can be made by sending an electronic mail (e-mail), calling, or writing to Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *cpsc-os@cpsc.gov;* telephone (301) 504–7923; facsimile (301) 504–0127 not later than 5 p.m. EST on January 4, 2010. Written comments and texts of oral presentations should be captioned ''Public Workshop on Consumer Product Incident Database'' and further captioned by one of the five workshop topics available: ''Data Analysis and Reporting;'' ''Reports of Harm;'' ''Manufacturer Notification and Response;'' ''Additional Database Content;'' and ''Materially Inaccurate Information.'' Written comments and the texts of oral presentations should be sent by e-mail to *cpsc-os@cpsc.gov,* or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814. Oral presentations must be received not later than 5 p.m. EST on January 4, 2010, and written comments must be received not later than 5 p.m. EST on January 29, 2010. The CPSC may impose time limitations on all presentations and further restrictions to avoid duplication of presentations.

FOR FURTHER INFORMATION CONTACT: Ming Zhu, Office of Information & Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; *mzhu@cpsc.gov;* telephone (301) 504–7517.

SUPPLEMENTARY INFORMATION: Section 212 of the Consumer Product Safety Improvement Act of 2008 (''CPSIA'') (Pub. Law 110–314) amended the Consumer Product Safety Act (''CPSA'') to create a new section 6A of the CPSA, titled ''Publicly Available Consumer Product Safety Information Database.'' Section 6A(a)(1) of the CPSA states that the Commission shall ''establish and maintain a database on the safety of consumer products, and other products or substances regulated by the Commission * * *'' The statute declares that the database must be publicly available, searchable, and accessible through the Commission's Web site.

Contents of the Public Database

The public database must contain: (i) Reports of harm, meaning reports of injury, illness, or death, or reports of any risk of injury, illness or death as determined by the Commission, relating to the use of consumer products or other products or substances regulated by the Commission; (ii) information derived by the Commission from voluntary and mandatory recall notices; and (iii) comments that a manufacturer or private labeler of a consumer product wants to include about a report of harm involving its product. Section 6A(b)(1) of the CPSA. In addition, section 6A(b)(3) of the CPSA requires the Commission to include in the database, consistent with the requirements of section 6(a) and (b) of the CPSA, any additional information it determines to be in the public interest.

Reports of Harm

Section 6A(b)(1)(A) of the CPSA requires the public database to include reports of harm received by the Commission from: (i) Consumers; (ii) local, State, or Federal government agencies; (iii) health care professionals; (iv) child service providers; and (v) public safety entities. Reports of harm submitted for inclusion in the public database must include, at a minimum: (i) A description of the consumer product (or other product or substance regulated by the Commission) concerned; (ii) identification of the manufacturer or private labeler of the consumer product (or other product or substance regulated by the Commission); (iii) a description of the harm relating to the use of the consumer product (or other product or substance regulated by the Commission); (iv) contact information for the person submitting the report; and (v) a verification by the person submitting the information that the information submitted is true and accurate to the best of the person's knowledge and that the person consents that such information be included in the database. Section 6A(b)(2)(B) of the CPSA.

Although contact information for the person submitting a report of harm is required in order for the report to be included in the database, section 6A(b)(6) of the CPSA provides that the Commission, under this section, may not disclose the name, address, or other contact information of any individual or entity that submits a report of harm. However, the Commission may provide such contact information to the manufacturer or private labeler of the product with the express written consent of the person who submitted the report of harm. Consumer information provided to a manufacturer or private labeler under this section may not be used or disseminated to any other party for any purpose other than verifying a report of harm.

Unless the Commission determines that a report of harm or manufacturer comment submitted for inclusion in the database contains materially inaccurate information, all such reports of harm and comments that meet the criteria set forth in the statute must be included in the public database not later than the tenth business day after the date on which the report of harm was transmitted to the manufacturer or private labeler. Section 6A(c)(3)(A) of the CPSA. Section 6(a) and (b) of the CPSA do not apply to the disclosure of reports of harm in the public database. Section 6A(f)(1) of the CPSA.

Manufacturer Notification and Response

To the extent practicable, the Commission must transmit a report of harm to the manufacturer or private labeler identified in the report not later than 5 business days after receiving a report that meets all of the minimum qualifications for inclusion in the public database set forth in section 6A(b)(2)(B). Section 6A(c)(1) of the CPSA. A manufacturer or private labeler may comment on the information contained in such report, and may request the comment to be included in the public database. Section 6A(c)(2)(A)–(B) of the CPSA. Unless the Commission determines the comment to be materially inaccurate, the Commission must include the comment in the public database at the same time as the report of harm or as soon as practicable thereafter. Section 6A(c)(3)(B) of the CPSA.

Moreover, a manufacturer or private labeler may review a report of harm for confidential information and request that portions of the report be designated confidential. If the Commission determines that the report does contain trade secret, commercial or confidential information as set forth in the statute, the Commission must redact such information in the report before it is placed in the database. Section 6A(c)(2)(C)(i)–(ii) of the CPSA. If, however, the Commission determines that the designated information is not

confidential, the Commission must notify the manufacturer or private labeler and include the information in the public database. A manufacturer or private labeler must bring suit against the agency in an appropriate U.S. district court in order to seek removal of the information. Section 6A(c)(2)(C)(iii) of the CPSA.

Materially Inaccurate Information/ Disclaimer

If the Commission determines that a report of harm or manufacturer comment contains materially inaccurate information *before* it is made available in the public database, the Commission, under section 6A(c)(4)(A) of the CPSA, must: (i) Decline to add the materially inaccurate information; (ii) correct the materially inaccurate information; or (iii) add information to correct the materially inaccurate information. For information already available in the public database, if, after investigation, the Commission determines that such information is materially inaccurate or duplicative, the Commission must, within seven business days of such determination: (i) Remove such information from the public database; (ii) correct such information; or (iii) add information to correct inaccurate information in the public database. Section 6A(c)(4)(B) of the CPSA.

Database users must be provided with clear and conspicuous notice that the Commission does not guarantee the accuracy, completeness, or adequacy of the database contents. Section 6A(b)(5) of the CPSA.

Data Analysis and Reporting

Under section 6A(b)(4) of the CPSA, the CPSC must categorize information available in the public database in a manner consistent with the public interest and in a manner to facilitate easy use by consumers. To the extent practicable, the database must be sortable and accessible by: (i) The date on which the information is submitted for inclusion in the database; (ii) the name of the consumer product (or other product or substance regulated by the Commission); (iii) the model name; (iv) the manufacturer's or private labeler's name; and (v) such other elements as the Commission considers in the public interest.

CPSC Workshop Details

The CPSC will hold the workshop on January 11 and 12, 2010, focusing on five aspects of the public database: data analysis and reporting; reports of harm; manufacturer notification and response; additional database content; and dealing with materially inaccurate information.

Monday, January 11, 2010

Workshop 1—Data Analysis and Reporting 9 a.m.–12 p.m.

The CPSC staff invites discussion and comment on data analysis and reporting from the public database, including comments on the following topics:

- Should the CPSC design the online incident reporting form to ensure the capture of data that can be used in scientific statistical analysis? If so, how?
- What can the CPSC do, from a system design perspective, to ensure the accuracy of submitted data?
- What can the CPSC do, from a system design perspective, to ensure the ongoing and perpetual integrity of submitted data?
- In what formats should the CPSC make data available to the public? Please explain your reasoning.
- What types of data analysis and reporting tools are being used by third-party analysts in the public and industry? What are these tools' relative merits and drawbacks?
- What data sets, including information from reports of harm and mandatory and voluntary recall notices, should be made available for public search and reporting? Why?

Workshop 2—Reports of Harm (Incident Report Form) 1 p.m.–4 p.m.

The CPSC staff invites discussion and comment on issues related to reports of harm, including comment on the following topics:

- How should the CPSC design the incident report form so that it is clear and easy for users to complete?
- From a design perspective, how should the CPSC deal with incomplete reports of harm?
- Should the incident report form check for inaccurate information? How?
- What, if any, instruction to users should be included on the incident reporting form?
- Should the incident report form contain links to outside websites? Please explain your reasoning.
- What, if any, disclaimers or qualifications should appear on the incident report form?
- Should any category of persons be excluded from submitting reports of harm for inclusion in the public database, and, if so, by what means?
- Should reports of harm submitted by telephone or paper meet the same statutory time frames for submission in the public database?
- What should a description of the consumer product entail and why?
- What means can the CPSC employ to ensure that the correct manufacturer and/or private labeler are identified in a report of harm?
- What contact information must be provided, at minimum, to meet the statutory requirement for inclusion in the database?
- How should the incident report form address the submitter's verification of the information submitted?
- How should the incident report form address the submitter's consent for: (i) inclusion in the public database; and (ii) release of contact information to the manufacturer or private labeler? Are there any other issues related to the user's consent that the CPSC should consider?

Tuesday, January 12, 2010

Workshop 3—Manufacturer Notification and Response 9 a.m.–12 p.m.

The CPSC staff invites discussion and comment on manufacturer notification and response with regard to reports of harm, including comment on the following topics:

- What means should the CPSC employ to notify manufacturers and private labelers regarding a report of harm within the five day statutory time frame?
- Given the statutory timeframe for notification, should manufacturers and private labelers be able to ''register'' contact information with the Commission for the purposes of notification of a report of harm? Please explain your reasoning. What form of contact information should be acceptable, *i.e.,* electronic mail only? What other issues should the CPSC consider?
- What, if any, authority does the CPSC have to withhold a report of harm from the public database if a manufacturer or private labeler claims the report contains materially inaccurate or confidential information?
- What means should the CPSC employ to allow manufacturers and private labelers to submit comments regarding a report of harm or to designate confidential information? What issues should the CPSC take into consideration when developing such process?
- If a manufacturer or private labeler requests that a comment associated with the report of harm be made available in the public database, what, if any, circumstances should prevent such comment from inclusion in the public database?
- What, if any, circumstances may arise which restart any timeframes contemplated in the statute with regard to manufacturer notification and responses?
- How can the CPSC ensure that manufacturers and/or private labelers

do not use a submitter's contact information for purposes other than verification of a report of harm? By what means can the CPSC enforce such provision?

Workshop 4—Additional Database Content 1 p.m.–2:20 p.m.

The CPSC staff invites discussion and comment on what additional information, other than reports of harm, manufacturer comments, and information derived from mandatory and voluntary recall notices, the Commission should include in the public database, including comment on the following topics:

- What additional categories of information should the CPSC include in the public database and why?
- What, if any, information cannot be included in the public database pursuant to the statute and why?
- Under what circumstances are the provisions of section 6(a) and (b) of the CPSA relevant to the provisions of section 6A of the CPSA, especially with regard to additional categories of information that may be included in the public database?

Workshop 5—Materially Inaccurate Information 2:30 p.m.–4 p.m.

The CPSC staff invites discussion and comment on dealing with materially inaccurate information contained in reports of harm and manufacturer comments, including comment on the following topics:

- Is the CPSC's responsibility with regard to materially inaccurate information limited to reports of harm and manufacturer comments? Why or why not?
- What, if any, measures should the CPSC employ to prevent the submission of fraudulent reports of harm while not discouraging the submission of valid reports?
- What types of information constitute materially inaccurate information? Please explain your reasoning.
- How should the CPSC process a claim that a report of harm or a manufacturer comment contains materially inaccurate information, both before and after such information has been made available in the public database?
- How should the CPSC allow a submitter or others to claim that a manufacturer has submitted materially false information?
- Given the statutory timeframe, how should the CPSC review claims of materially inaccurate information?
- What specific disclaimers should the CPSC make with regard to the accuracy of the information contained in the public database and why? Where should such disclaimers appear and why?

Please refer to the **DATES** and **ADDRESSES** sections above for more information on relevant dates and times, how to register to attend the workshop, how to submit written comments, and how to request to make an oral presentation at the workshop. The Commission staff may hold additional public workshops in the coming months to follow up on issues discussed at the January 11 and 12, 2010 workshop and to solicit input on additional aspects of the publicly searchable database from stakeholders.

Dated: December 16, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–30376 Filed 12–21–09; 8:45 am]

BILLING CODE 6355–01–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 21, 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 17, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: National Student Loan Data System (NSLDS) Collection.

Frequency: Weekly; Monthly; Quarterly; Semi-Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; Private Sector; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 40,872.
Burden Hours: 157,456.

Abstract: The U.S. Department of Education will collect data through the NSLDS system from postsecondary schools and guaranty agencies (GAs) about Federal Perkins, Federal Family Education, and William D. Ford Direct Student Loans to be used to determine eligibility for Title IV student financial aid.

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 4158. 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* 202–401–0563. 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. E9–30370 Filed 12–21–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 22, 2010.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 16, 2009.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Formula Grant EASIE (Electronic Application System for Indian Education).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 11,270.

Burden Hours: 9,440.

Abstract: The Office of Indian Education (OIE) of the Department of Education (ED) requests clearance for the Indian Education Formula Grant Application authorized under Title VII, Part A, Subpart 1 of the Elementary and Secondary Education Act, as amended. The Indian Education Formula Grant (CFDA 84.060A), is not competitive or discretionary and requires the annual submission of the application from the local education agency and or tribe. The grant applications submitted for this program assist applicants to provide Indian students with the opportunity to meet the same challenging state standards as all other students and meet the unique educational and culturally related academic needs of American Indian and Alaska Native students. The amount of the award for each applicant is determined by a formula based on the reported number of American Indian/Alaska Native students identified in the application and the state per pupil expenditure.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 4177. 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 *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* 202–401–0563. 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. E9–30375 Filed 12–21–09; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2008–4b; FRL–9094–4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for East Kentucky Power Cooperative, Inc.—Hugh L. Spurlock Generating Station; Maysville (Mason County), KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act (CAA) Section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an Order, dated November 30, 2009, both granting and denying, in part, a petition to object to a merged prevention of significant deterioration (PSD) and state operating permit issued by the Kentucky Division for Air Quality (KDAQ) to East Kentucky Power Cooperative, Inc. (EKPC) for its Hugh L. Spurlock Generating Station located in Maysville, Mason County, Kentucky. This Order constitutes a final action on the remaining two issues raised in the petition submitted by Sierra Club (Petitioner) on April 28, 2008. Pursuant to section 505(b)(2) of the CAA, any person may seek judicial review of the Order in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307(b) of the Act.

ADDRESSES: Copies of the Order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/spurlock_2nd_response2008.pdf*.

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air Permits Section, EPA

Region 4, at (404) 562–9115 or *hofmeister.art@epa.gov*.

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Petitioner submitted a petition regarding the EKPC Spurlock Generating Station on April 28, 2008, requesting that EPA object to Revision 2 to the EKPC merged PSD and title V operating permit. Pursuant to a proposed Consent Decree, EPA agreed to address the issue regarding the lack of hazardous air pollutant emission limits under section 112(g) of the CAA in an order that was issued on September 21, 2009. The remaining two issues are addressed in this Order. The issues are: (1) The permit revision proposed by KDAQ fails to include the required heat input limit applicable to Unit 2 and unlawfully attempts to increase that limit without going through PSD (or any other CAA title I) permitting and (2) KDAQ's review of low-sulfur coal was not adequate.

On November 30, 2009, the Administrator issued an Order both granting and denying, in part, the petition with respect to the remaining two issues. The Order explains EPA's rationale for granting the petition with respect to issue 2 and denying the petition with respect to issue 1.

Dated: December 11, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region IV.

[FR Doc. E9–30401 Filed 12–21–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9094–6; Docket ID No. EPA–HQ–ORD–2009–0229]

Draft Toxicological Review of Ethyl Tertiary Butyl Ether: In Support of the Summary Information in 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 Ethyl Tertiary Butyl Ether: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–08/019A). 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 October 19, 2009) for the draft document in the **Federal Register** on August 20, 2009 (74 FR 42069). 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 August 20, 2009, **Federal Register** notice (74 FR 42069) 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 held on Tuesday, January 26, 2010, starting at 8:30 a.m. and ending no later than 5 p.m.

ADDRESSES: The peer-review workshop will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024; phone: 202–479–4000. The EPA contractor, ERG, is organizing, convening, and conducting the peer-review workshop. To attend the workshop as an observer, register by Tuesday, January 19, 2010, via the Internet at *https://www2.ergweb.com/projects/conferences/peerreview/register-etbeworkshop.htm.*

You may also register by e-mailing *meetings@erg.com* (subject line: ETBE Workshop); by calling, phone: 781–674–7374 or toll free at 800–803–2833 (ask for the ETBE peer review coordinator, Laurie Waite); or by faxing a registration request to 781–674–2906 (please reference the ''ETBE Workshop'' and include your name, title, affiliation, full address, and contact information).

The draft ''Toxicological Review of Ethyl Tertiary Butyl Ether: 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 Ethyl Tertiary Butyl Ether: 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 Ethyl Tertiary Butyl Ether 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: ETBE 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; by e-mail: *meetings@erg.com*, or by phone: 781–674–7374. To request accommodation of a disability, please contact the ETBE Coordinator, Laurie Waite, of ERG, preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

If you have questions about the document, contact Scott Wesselkamper, National Center for Environmental Assessment, 26 West Martin Luther King, MS A–110, Cincinnati, Ohio 45268; telephone: 513–569–7256; or e-mail: *wesselkamper.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information about IRIS

IRIS is a database that contains information about potential adverse human health effects 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 15, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–30385 Filed 12–21–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[MN89; FRL–9094–5]

Notice of Issuance Federal Operating Permit to Great Lakes Gas Transmission Limited Partnership

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that, on October 2, 2009, pursuant to Title V of the Clean Air Act, EPA issued a Title V Permit to Operate (Title V permit) to Great Lakes Gas Transmission Limited Partnership (Great Lakes Gas). This permit authorizes Great Lakes Gas to operate two natural gas-fired turbine/compressors and one natural gas-fired standby electrical generator at Compressor Station #4 (CS#4) near Deer River, Minnesota. CS#4, which is located on privately-owned fee land within the exterior boundaries of the Leech Lake Band of Ojibwe Indian Reservation, adds pressure to natural gas in Great Lakes' pipeline, causing the natural gas to flow to the next compressor station.

DATES: During the public comment period, which ended August 24, 2009, EPA received timely written comments from Great Lakes Gas on the draft Title V permit. EPA responded to these comments and issued the final permit on October 2, 2009. No one appealed the final permit to the Environmental Appeals Board, therefore, in accordance with 40 CFR 71.11(i)(2), the final permit became effective 30 days after issuance, on November 2, 2009.

ADDRESSES: The final signed permit and the response to comment document is available for public inspection online at *http://yosemite.epa.gov/r5/r5ard.nsf/Tribal+Permits!OpenView*, or during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 353–4761, or *damico.genevieve@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What is the Background Information?
B. What is the Purpose of This Notice?

A. What is the Background Information?

Great Lakes Gas operates nearly 2,000 miles of large diameter underground pipeline, which transports natural gas for delivery to customers in the midwestern and northeastern United States and eastern Canada. The Great Lakes pipeline system and other interstate natural gas transmission pipelines make up the long-distance link between natural gas production fields, local distribution companies, and end users. The pipeline's 14 compressor stations, located approximately 75 miles apart, operate to keep natural gas moving through the system. Compressors at these stations add pressure to natural gas in the pipeline, causing it to flow to the next compressor station. The pipeline normally operates continuously, but at varying load, 24 hours per day and 365 days per year. CS#4 currently consists of two stationary natural gas-fired turbines, which in turn drive two natural gas compressors. Additionally, one natural gas-fired standby electrical generator provides electrical power for critical operations during temporary electrical power outages and during peak loading.

CS#4 is located approximately 3 miles west of the City of Deer River, in Itasca County, Minnesota. The area is designated attainment for all criteria pollutants. CS#4, which occupies an area of approximately 20 acres, is owned and maintained by Great Lakes Gas on privately-owned fee land within the exterior boundaries of the Leech Lake Band of Ojibwe Indian Reservation. EPA is responsible for issuing and enforcing any air quality permits for the source until such time that the Tribe has EPA approval to do so.

CS#4 is subject to Title V because it has the potential to emit greater than 100 tons per year of nitrogen oxide and carbon monoxide. Great Lakes Gas submitted to EPA on February 25, 2009, a Title V permit application to renew its 2004 Title V operating permit for CS#4. On July 23, 2009, EPA published a draft Title V permit to operate for public comment. The public comment period ended on August 24, 2009. We received written comments from Great Lakes Gas on the permit. EPA responded to these comments and issued the final permit on October 2, 2009. No one appealed the final permit to the Environmental Appeals Board, therefore, in accordance with 40 CFR 71.11(i)(2), this permit became effective 30 days after issuance, on November 2, 2009.

EPA is not aware of any outstanding enforcement actions against Great Lakes Gas and believes the issuance of this permit is non-controversial.

B. What is the Purpose of This Notice?

EPA is notifying the public of the October 2, 2009 issuance and November 2, 2009 effective dates of the Great Lakes Gas CS#4 Title V permit.

Dated: December 10, 2009.

Walter W. Kovalick, Jr.

Acting Regional Administrator, Region 5.

[FR Doc. E9–30407 Filed 12–21–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9094–8]

National Environmental Justice Advisory Council; Notification of Public Meeting and Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering for public comment, please see **SUPPLEMENTARY INFORMATION**. Due to limited space, seating at the NEJAC meeting will be on a first-come basis.

DATES: The NEJAC meeting will convene Wednesday, January 27, 2010 from 1 p.m. to 3:30 p.m., and reconvene Thursday, January 28, 2010 from 8:45 a.m. to 5 p.m., and Friday, January 29, 2010, from 8:45 a.m. to 2 p.m. All noted times are Central Time.

One public comment session relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Wednesday, January 27, from 3:45 p.m. to 6:45 p.m. All noted times are Central Time. Members of the public who wish to participate in the public comment period are encouraged to pre-register by January 11, 2010.

ADDRESSES: The NEJAC meeting will be held at the New Orleans Marriott Hotel, 555 Canal Street, New Orleans, Louisiana 70130, telephone (504) 581–1000, FAX (504) 523–6755 or toll-free: (888) 364–1200.

FOR FURTHER INFORMATION CONTACT: Questions concerning the meeting should be directed to Mr. Aaron Bell, U.S. Environmental Protection Agency, at 1200 Pennsylvania Avenue, NW., (MC2201A), Washington, DC 20460; by telephone at (202) 564–1044, via e-mail at *Bell.Aaron@epa.gov*; or by FAX at (202) 501–0936. Additional information about the meeting is available on the following Web site: *http://www.epa.gov/compliance/environmentaljustice/nejac/meetings.html.*

Pre-registration by January 11, 2010, for all attendees is highly recommended. To register online, visit the Web site above. Requests for pre-registration forms should be sent to Ms. Estela Rosas, EPA Contractor, APEX Direct, Inc., at 877–773–0779 or *meetings@AlwaysPursuing Excellence.com*. Non-English speaking attendees wishing to arrange for a foreign language interpreter also may make appropriate arrangements using these numbers.

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the Administrator on areas that may include, among other things, ''advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory, and economic issues related to environmental justice.''

The meeting shall be used to receive comments, discuss, and provide recommendations regarding these primary areas: (1) Environmental Justice and Rulemaking; (2) Climate Adaptation; (3) School Air Toxics Monitoring, (4) EPA's Response to the NEJAC Goods Movement Report; (5) EPA's Environmental Justice Enforcement Priorities; (6) Nationally Consistent Environmental Justice Screening Approaches; and (7) EPA's National Enforcement Priorities.

A. Public Comment: Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. Only one representative of a community, organization, or group will be allowed to speak. Any number of written comments can be submitted for the record. The suggested format for individuals providing public comments is as follows: Name of Speaker, Name of Organization/Community, Address, Telephone, E-mail, Description of Concern and its Relationship to a Specific Policy Issue(s), and Recommendations or Desired Outcome. Written comments received by January 11, 2010 will be included in the materials distributed to the members of the NEJAC. Written comments received after that date will be provided to the NEJAC as logistics allow. All information should be sent to the address, e-mail, or fax number listed in the **CONTACT** section above.

B. Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Ms. Estela Rosas, EPA Contractor, APEX Direct, Inc., at 877–773–0779 or *meetings@AlwaysPursuing Excellence.com.* To request special accommodations for a disability, please contact Ms. Rosas, at least 10 days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, e-mail, or FAX number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: December 16, 2009.

Victoria Robinson,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. E9–30400 Filed 12–21–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9094–3]

Protection of Stratospheric Ozone: Request for Applications for Essential Use Allowances for 2011 and 2012

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is requesting applications for essential use allowances for calendar years 2011 and 2012. Essential use allowances provide exemptions from the phaseout of production and import of ozone-depleting substances (ODSs). Essential use allowances must be authorized by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol). The U.S. Government will use the applications received in response to this notice as the basis for its nomination of essential uses at the 22nd Meeting of the Parties to the Protocol, to be held in 2010.

DATES: Applications for essential use allowances must be submitted to EPA no later than January 21, 2010 in order for the U.S. Government to complete its review and to submit nominations to the United Nations Environment Programme and the Protocol Parties in a timely manner.

ADDRESSES: Send two copies of application materials to: Jennifer Bohman, Stratospheric Protection

Division (6205J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. For applications sent via courier service, use the following direct mailing address: 1310 L Street, NW., Washington, DC 20005, Room 1047A.

Confidentiality: Application materials that are confidential should be submitted under separate cover and be clearly identified as ''trade secret,'' ''proprietary,'' or ''company confidential.'' Information covered by a claim of business confidentiality will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed only to the extent and by means of the procedures set forth in that subpart. Please note that data will be presented in aggregate form by the United States as part of the nomination to the Parties. If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

FOR FURTHER INFORMATION CONTACT: Jennifer Bohman at the above address, or by telephone at (202) 343–9548, by fax at (202) 343–2363, or by e-mail at *bohman.jennifer@epa.gov.* General information may be obtained from EPA's stratospheric protection Web site at *http://www.epa.gov/ozone/strathome.html.*

SUPPLEMENTARY INFORMATION:

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I. Background on the Essential Use Nomination Process

The Parties to the Protocol agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, that non-Article 5 Parties (developed countries) would phase out the production and consumption of halons by January 1, 1994, and the production and consumption of other class I substances (under 40 CFR part 82, subpart A), except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing ''essential use'' exemptions from the phaseout of production and import of controlled substances. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Decision IV/25, paragraph 1(a), states that ''* * * a use of a controlled substance should qualify as 'essential' only if: (i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.'' In addition, the Parties agreed ''that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances * * *'' Decision XII/2 of the Twelfth Meeting of the Parties states that any CFC metered dose inhaler (MDI) product approved after December 31, 2000, is nonessential unless the product meets the criteria in Decision IV/25, paragraph 1(a).

The first step in obtaining essential use allowances is for the user to consider whether the use of the controlled substance meets the criteria of Decision IV/25. If the essential use request is for an MDI product, the user should also consider whether the product meets the criteria of Decision XII/2. In addition, the user should consult recent and ongoing rulemakings by the Food and Drug Administration (FDA) concerning the essential use determination of various MDI moieties. In particular, users should consider FDA's November 19, 2008 final rulemaking that removes the essential use designation for epinephrine used in MDIs as of December 31, 2011 (73 FR 69532) and FDA's June 11, 2007 proposed rulemaking that proposes removing the essential use designations for flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil used in MDIs as of December 31, 2009 (72 FR 32030).

Users requesting essential use allowances for calendar years 2011 and 2012 should send a completed application to EPA on the candidate use. The application should include information that U.S. Government agencies and the Parties to the Protocol can use to evaluate the candidate use according to the criteria in the Decisions described above.

Upon receipt of applications, EPA reviews the information and works with other interested Federal agencies to determine whether the candidate use meets the essential use criteria and warrants nomination by the United States for an exemption. In the case of multiple exemption requests for a single use, such as for MDIs, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review is to ensure that the aggregate request for a particular future year adequately reflects the total market need for CFC MDIs and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not account for such factors, the U.S. Government may adjust the aggregate request to better reflect true market needs.

Nominations submitted by the United States and other Parties are forwarded by the United Nations Ozone Secretariat to the Montreal Protocol's Technical and Economic Assessment Panel (TEAP) and its Medical Technical Options Committee (MTOC), which reviews the submissions and make recommendations to the Parties for essential use exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential, and authorize an exemption from the Protocol's production and consumption phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Clean Air Act. Applicants should be aware that essential use exemptions granted to the United States under the Protocol in recent years have been limited to CFCs for MDIs to treat asthma and chronic obstructive pulmonary disease. Applicants should also be aware that the Parties last authorized an essential use exemption for United States in 2008 for the 2010 calendar year.

The Parties review nominations for essential use exemptions for the following year and subsequent years. This means that, if nominated, applications submitted in response to today's notice for an exemption in 2011 and 2012 will be considered by the Parties in 2010 for final action. The quantities of controlled substances that are requested in response to this notice, if approved by the Parties to the Montreal Protocol, will then be allocated as essential use allowances to the specific U.S. companies through notice-and-comment rulemaking, to the extent that such allocations are consistent with the Clean Air Act.

II. Information Required for Essential Use Applications for Production or Import of Class I Substances in 2011 and 2012

Through this action, EPA requests applications for essential use exemptions for all class I substances, except methyl bromide, for calendar years 2011 and 2012. This notice is the last opportunity to submit new or revised applications for 2011. This notice is also the first opportunity to submit requests for 2012. Companies will have an opportunity in 2010 to submit new, supplemental, or amended applications for 2012. All requests for exemptions submitted to EPA should present information as requested in the current version of the TEAP-*Handbook on Essential Use Nominations,* which was updated in 2005. The handbook is available electronically on the Web at *http://ozone.unep.org/teap/Reports/TEAP_Reports/EUN-Handbook2005.pdf.*

In brief, the TEAP Handbook states that applicants should present information on:

- Role of use in society;
- Alternatives to use;
- Steps to minimize use;
- Recycling and stockpiling;
- Quantity of controlled substances requested; and
- Approval date and indications (for MDIs).

In addition, entities should address the following points to ensure that their applications are clear and complete. First, entities that request CFCs for multiple companies should clearly state the amount of CFCs requested for each company. Second, all essential use applications for CFCs should provide a breakdown of the quantity of CFCs necessary for each MDI product to be produced. This detailed breakdown will allow EPA and FDA to make informed decisions regarding the amount of CFCs to be nominated by the U.S. Government for the years 2011 and 2012. Third, all new drug application (NDA) holders for CFC MDI products produced in the United States should submit a complete application for essential use allowances either on their own or in conjunction with their contract filler. In the case where a contract filler produces a portion of an NDA holder's CFC MDIs, the contract filler and the NDA holder should determine the total amount of CFCs necessary to produce the NDA holder's entire product line of CFC MDIs. The NDA holder should provide an estimate of how the CFCs would be split between the contract filler and the NDA holder in the allocation year. This estimate will be used only as a basis for determining the nomination amount, and may be adjusted prior to allocation of essential use allowances. Since the U.S. Government does not forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including comprehensive information pertaining to the research and development of alternative CFC MDI products per Decision VIII/10, para. 1 as specified in the Supplement to Nomination Request (pg. 46).

Finally, consistent with Decision XIX/13 taken in September 2007 at the 19th Meeting of the Parties, when requesting essential use CFCs for MDIs, applicants should provide the following information: (1) The company's commitment to the reformulation of the concerned products; (2) the timetable in which each reformulation process may be completed; and (3) evidence that the company is diligently seeking approval of any CFC-free alternative(s) in its domestic and export markets and transitioning those markets away from its CFC products.

The accounting framework matrix in the Handbook (Table IV) entitled ''Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical Applications'' requests data for the year 2009 on the amount of ODSs exempted for an essential use, the amount acquired by production, the amount acquired by import and the country(s) of manufacture, the amount on hand at the start of the year, the amount available for use in 2009, the amount used for the essential use, the quantity contained in exported products, the amount destroyed, and the amount on hand at the end of 2009. Because all data necessary for applicants to complete Table IV will not be available until after the control period ends on December 31, 2009, companies should not include this chart with their essential use applications in response to this notice. Instead, companies should report their data as required by 40 CFR 82.13(u)(2) in Section 5 of the report entitled ''Essential Use Allowance Holders and Laboratory Supplier Quarterly Report and Essential Use Allowance Holder Annual Report.'' This form may be found on EPA's Web site at *http://www.epa.gov/ozone/record/downloads/EssentialUse_ClassI.doc.* EPA will then compile each company's responses and complete the U.S Accounting Framework for Essential Uses for submission to the Parties to the Montreal Protocol by the end of January 2010. EPA may also request additional information from companies to support the U.S. nomination using its information gathering authority under Section 114 of the Act.

EPA anticipates that the Parties' review of MDI essential use requests will focus extensively on the United States' progress in phasing out CFC MDIs, including education programs to inform patients and health care providers of the CFC phaseout and the transition to alternatives. Accordingly, applicants are strongly advised to present detailed information on these educational programs, including the scope and cost of such efforts and the medical and patient organizations involved in the work. In addition, EPA expects that Parties will be interested in research and development activities being undertaken by MDI manufacturers to develop and transition to alternative CFC-free MDI products. To this end, applicants are encouraged to provide detailed information on these efforts. Applicants should submit their exemption requests to EPA as noted in the **ADDRESSES** section above.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this notice under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170.

Dated: December 3, 2009.

Brian J. McLean,

Director, Office of Atmospheric Programs.

[FR Doc. E9–30404 Filed 12–21–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

December 15, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a)

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by February 22, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street, SW, Washington, DC 20554. To submit your comments by e-mail send then to: PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection send an e-mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0678.

Title: Streamlining and Other Revisions of Part 25 of the Commission's Rules.

Form No.: FCC Form 312 and Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit.

Number of Respondents/Responses: 1,030 respondents; 1,030 responses.

Estimated Time Per Response: 0.25–24 hours per response.

Frequency of Response: On occasion and annual reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C.154(i), 157(a), 161, 303(c), 303(f), 303(g), and 303(r).

Total Annual Burden: 9,791 hours.

Annual Cost Burden: $27,749,170.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: The Federal Communications Commission (''Commission'') is revising OMB Control No. 3060–0678 to add the following rule sections that were previously included under OMB Control No. 3060–1007: 47 CFR 25.113, 25.131, 25.154, 25.164 and 25.165. Additionally, we are revising the information collection to include the respondents, annual burden hours and annual costs associated with these rule sections.

Upon OMB approval of the revisions to this information collection, OMB Control No. 3060–1007 also titled, ''Streamlining and Other Revisions of Part 25 of the Commission's Rules'' will be discontinued.

Currently, OMB Control No. 3060–0678 includes rule sections 47 CFR 25.110, 25.114, 25.115, 25.116, 25.117, 25.118 and 25.130. We will continue to maintain these rule sections in the information collection.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–30372 Filed 12–21–09 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission, Comments Request

December 16, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by February 22, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554. To submit your comments by e–mail send then to: PRA@fcc.gov and Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collections send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1088.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Report and Order and Third Order on Reconsideration, CG Docket No. 05–338, FCC 06–42.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; Individuals or households.

Number of Respondents and Responses: 5,000,000 respondents; 5,122,500 responses.

Estimated Time per Response: 3 minutes (.05 hours) to 30 minutes (.50 hours).

Frequency of Response: Annual, monthly, and on occasion reporting requirements; recordkeeping and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. The authorizing statutes for this information collection are: Telephone Consumer Protection Act of 1991, Pub. L. No. 102–243, 105 Stat. 2394 (1991); Junk Fax Prevention Act, Pub. L. No. 109–21, 119 Stat. 359 (2005).

Total Annual Burden: 3,311,250 hours.

Total Annual Cost: $8,000,000.

Nature and Extent of Confidentiality: Assurances of confidentiality are being provided to the respondents. The Commission is requesting that individuals (consumers/respondents) submit their names, addresses, and telephone numbers, which the Commission's staff needs to process the complaints. A privacy statement is included on all FCC forms accessed through our Internet web site. In addition, respondents are made aware of the fact that their complaint information may be released to law enforcement officials and other parties as mandated by law (Le. court–ordered subpoenas). PII is contained in the operations support for complaint analysis and resolution (OSCAR), the consumer information management system (CIMS), and the consumer case management system (CCMS) databases, which are covered under the Commission's SORN, FCC/CGB–1, ''Informal Complaints and Inquiries.'' The PII covered by this system of records notice is used by Commission personnel to handle and to process informal complaints from individuals and groups. The Commission will not share this information with other federal agencies except under the routine uses listed in the SORN.

Privacy Impact Assessment: The PIA that the FCC completed on June 28, 2007 gives a full and complete explanation of how the FCC collects stores, maintains, safeguards, and destroys the PII, as required by OMB regulations and the Privacy Act, 5 U.S.C. 552a. The PIA may be viewed at: http://www.fcc.gov/omd/privacyact/Privacy_Impact_ Assessment.html.

Needs and Uses: On April 5, 2006, the Commission adopted a Report and Order and Third Order on Reconsideration, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2Q05, CG Docket Nos. 02–278 and 05–338, FCC 06–42, which modified the Commission's facsimile advertising rules to implement the Junk Fax Prevention Act. The Report and Order and Third Order on Reconsideration contained information collection requirements pertaining to: (1) Opt–out Notice and Do–Not–Fax Requests Recordkeeping in which the rules require senders of unsolicited facsimile advertisements to include a notice on the first page of the facsimile that informs the recipient of the ability and means to request that they not receive future unsolicited facsimile advertisements from the sender; (2) Established Business Relationship Recordkeeping whereas the Junk Fax Prevention Act provides that the sender, e.g., a person, business, or a nonprofit/institution, is prohibited from faxing an unsolicited advertisement to a facsimile machine unless the sender has an ''established business relationship'' (EBR) with the recipient; (3) Facsimile Number Recordkeeping in which the Junk Fax Prevention Act provides that an EBR alone does not entitle a sender to fax an advertisement to an individual or business. The fax number must also be provided voluntarily by the recipient; and (4) Express Invitation or Permission Recordkeeping where in the absence of an EBR, the sender must obtain the prior express invitation or permission from the consumer before sending the facsimile advertisement.

On October 14, 2008, the Commission released an Order on Reconsideration, FCC 08–239, addressing certain issues raised in petitions for reconsideration and/or clarification filed in response to the Commission's Report and Order and Third Order on Reconsideration (''Junk Fax Order–), FCC 06–42. In document FCC 08–239, the Commission clarified that: (1) Facsimile numbers compiled by third parties on behalf of the facsimile sender will be presumed to have been made voluntarily available for public distribution so long as they are obtained from the intended recipient's own directory, advertisement, or Internet site; (2) Reasonable steps to verify that a recipient has agreed to make available a facsimile number for public distribution may include methods other than direct contact with the recipient; and (3) a description of the facsimile sender's opt–out mechanism on the first webpage to which recipients are directed in the opt–out notice satisfies the requirement that such a description appear on the first page of the Web site. The Commission believes these clarifications will assist senders of facsimile advertisements in complying with the Commission's rules in a manner that minimizes regulatory compliance costs while maintaining the protections afforded consumers under the Telephone Consumer Protection Act (TCPA).

OMB Control Number: 3060–0874.

Title: Consumer Complaint Forms: General Complaints, Obscenity or Indecency Complaints, Complaints under the Telephone Consumer Protection Act, and Slamming Complaints.

Form Number(s): FCC Form 2000 A through F, FCC Form 475–B, FCC Form 1088 A through H, and FCC Form 501.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for–profit entities; Not–for–profit institutions; State, local or Tribal Government.

Number of Respondents and Responses: 1,496,027 (FCC Form 2000: 58,772; FCC Form 475–B: 1,271,332; FCC Form 1088: 162,323; and FCC Form 501: 3,600).

Estimated Time per Response: 15 to 30 minutes per form on average.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 690,301 (FCC Form 2000: 29,386 hours; FCC Form 475–B: 635,666 hours; FCC Form 1088: 24,349; and FCC Form 501: 900 hours).

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice, FCC/CGB–1, ''Informal Complaints and Inquiries.''

Privacy Impact Assessment: The Privacy Impact Assessment for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.

Needs and Use: The FCC Form 2000 Consumer Complaint Forms asks the complainants to provide their contact information, including address, telephone number, and e–mail address, and to briefly describe the nature of the complaint, including the communications entities against which the complaint is lodged, the consumer's account number(s), if applicable, the date(s) on which the incident(s) occurred, and the type of resolution the consumer is seeking. The Commission uses the information to resolve the consumer's informal complaint(s). The

FCC Form 2000 A through F will remain unchanged.

The FCC Form 475–B Consumer Complaint Form asks complainants to provide their contact information, including address, telephone number, and e–mail address, and to describe their complaint(s) and issue(s) concerning the practices of telecommunications entities, which they believe may have aired obscene, profane, and/or indecent programming. The FCC Form 475–B will remain unchanged.

The FCC Form 1088 Consumer Complaint Form asks complainants to provide their contact information, including address, telephone number, and e–mail address, and to describe their complaints and issues regarding ''Do Not Call'' and ''Junk Fax'' as well as other related consumer protection issues such as prerecorded messages, automatic telephone dialing systems, and unsolicited commercial e–mail messages to wireless telecommunications devices. The FCC Form 1088 A through H will remain unchanged.

The FCC Form 501 Consumer Complaint Form asks complainants to provide their contact information, including address, telephone number, and e–mail address, and to describe their complaints and issues regarding alleged slamming violations. The FCC Form 501 will remain unchanged.

All of the FCC Complaint Forms are being consolidated into this collection (and being deleted from OMB Control Number 3060–1088 and discontinued in OMB Control Number 3060–0968) in order to allow the Commission to better manage all forms used to collect informal consumer complaints.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–30373 Filed 12–21–09 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 6, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Clary Anthony Family Irrevocable Trust No. 101; Lynda June Anthony, both of Shreveport, Louisiana; Luther Clary Anthony, Jr., Atlanta, Texas, Co Trustees; Lynda June Anthony, Shreveport, Louisiana; Luther Clary Anthony, Jr., Atlanta, Texas; and Luther Clary Anthony Sr., Springhill, Louisiana, individually, to retain voting shares of and acquire additional shares of Citizens Bankshares of Springhill, Inc., and thereby indirectly retain and acquire additional voting shares of Citizens Bank & Trust Company, both of Springhill, Louisiana.

Board of Governors of the Federal Reserve System, December 17, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–30362 Filed 12–21–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Investigator Registration and Financial Disclosure for Investigational Trials in Cancer Treatment (NCI)

SUMMARY: In compliance with the requirement of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Cancer Institute (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collected below. This proposed information collection was previously published in the **Federal Register** on June 10, 2009 (74 FR 27552), and allowed 60-days for public comment. One public comment was received regarding pharmaceutical testing. The submitter responded to the e-mail. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a valid OMB control number.

Proposed Collection: Title: Investigator Registration and Financial Disclosure for Investigational Trials in Cancer Treatment (NCI). *Type of Information Collection Request:* Existing Collection in Use without an OMB Number. *Need and Use of Information Collection:* Food and Drug Administration (FDA) regulations require requires sponsors to obtain information from the investigator before permitting the investigator to begin participation in investigational studies. The National Cancer Institute, (NCI) as a sponsor of investigational drug trials, has the responsibility to assure the FDA that investigators in its clinical trials program are qualified by training and experience as appropriate experts to investigate the drug. In order to fulfill these requirements, a standard Statement of Investigator (FDA Form 1572 modified), Supplemental Investigator Data Form, Financial Disclosure Form and Curriculum vitae (CV) are required. The NCI will accept the investigator's CV in any format. All investigators maintain a CV as part of their academic and professional practice. The data obtained from these forms allows the NCI to evaluate the qualifications of the investigator, identify appropriate personnel to receive shipment of investigational agent, ensure supplies are not diverted for inappropriate protocol or patient use and identify financial conflicts of interest. Comparisons are done with the intention of ensuring protocol, patient safety and drug compliance for patient and drug compliance for patient safety and protections. *Frequency of Response:* Annually. *Affected Public:* Public sector, businesses or other for-profit that will include Federal agencies or employees, non-profit institutions and a very small number of private practice physicians. *Type of Respondents:* Investigators. The annual reporting burden is limited to those physicians who choose to participate in NCI sponsored investigational trials to identify new medicinal agents to treat and relieve those patients suffering from cancer. The annualized respondents' burden for record keeping is estimated to require 8,564 hours (see table below).

TABLE—ESTIMATES OF ANNUAL BURDEN

Type of respondents	Form	Number of respondents	Frequency of response	Average time per response	Total hour burden
Investigators and Designee	Statement of Investigator	17,128	1	0.25 (15 minutes).	4,282
	Supplemental Investigator	17,128	1	0.167 (10 minutes).	2,855
	Financial Disclosure	17,128	1	0.083 (5 minutes).	1,427
Totals		17,128			8,564

There are no capital costs, operating costs, or maintenance costs.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov.* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Charles L. Hall, Jr., Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division of the Cancer Treatment and Diagnosis, and Centers, National Cancer Institute, Executive Plaza North, Room 7148, 9000 Rockville Pike, Bethesda, MD 20892 or call non-toll-free number 301–496–5725 or E-mail your request, including your address, to: *Hallch@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days following the date of this publication.

Dated: December 15, 2009.

Kristine Miller,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E9–30390 Filed 12–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0600]

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

Model Performance Evaluation Program for Mycobacterium tuberculosis and Non-tuberculous Mycobacterium Drug Susceptibility Testing (OMB Control No. 0920–0600, expiration date 03/31/2010)—Revision—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As part of the continuing effort to support both domestic and global public health objectives for treatment of tuberculosis (TB), prevention of multi-drug resistance, and surveillance programs, CDC is requesting approval from the Office of Management and Budget to revise a currently approved data collection, the Model Performance Evaluation Program for *Mycobacterium tuberculosis* and Non-tuberculous Mycobacterium Drug Susceptibility Testing. This request includes changes to the Results Form and re-introduction of the Laboratory Practices Questionnaire.

While the overall number of cases of TB in the U.S. has decreased, rates still remain high among foreign-born persons, prisoners, homeless populations, and individuals infected with HIV in major metropolitan areas. The rate of TB cases detected in foreign-born persons has been reported to be more than nine times higher than the rate among the U.S. born population. CDC's goal to eliminate TB will be virtually impossible without considerable effort in assisting heavy disease burden countries in the reduction of tuberculosis. The Model Performance Evaluation Program for *Mycobacterium tuberculosis* and Non-tuberculous Mycobacterium Drug Susceptibility Testing program supports this role by monitoring and evaluating the level of performance and practices among national and international laboratories performing *M. tuberculosis* susceptibility testing. Participation in this program is one way laboratories can ensure high-quality laboratory testing, resulting in accurate and reliable testing results.

By providing an evaluation program to assess the ability of the laboratories to test for drug resistant M. tuberculosis and selected strains of Non-tuberculous *Mycobacteria* (NTM), laboratories also have a self-assessment tool to aid in optimizing their skills in susceptibility testing. The information obtained from laboratories on susceptibility testing practices and procedures is used to establish variables related to good performance, assessing training needs, and aid with the development of practice standards.

Participants in this program include clinical and public health laboratories.

Participants register by submitting an Enrollment Form. Data collection from domestic laboratory participants occurs twice per year. The data collected in this program will include the susceptibility test results of primary and secondary drugs, drug concentrations, and test methods performed by laboratories on a set of performance evaluation (PE) samples. The PE samples are sent to participants twice a year. Participants also report demographic data such as laboratory type and the number of tests performed annually. Participants report this data every two years. The burden for the Laboratory Practices Questionnaire has been adjusted for the average per year, since responses are received every other year. Participants may submit changes about their laboratory using the Laboratory Information Change Form.

There is no cost to respondents to participate other than their time. The total annualized burden for this information collection request is 166 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Form	Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Enrollment form	Labs	4	1	5/60
Laboratory Change form	Labs	4	1	5/60
Susceptibility Testing Results Form	Labs	132	2	30/60
Laboratory Practices Questionnaire	Labs	66	1	30/60

Dated: December 14, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–30339 Filed 12–21–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application for the Emergency Form for CSBG/ARRA Expenditure Report.

OMB No.: 0970–0369.

Description: On February 17 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Recovery Act provided for $1 billion in additional funds to the Community Services Block Grant (CSBG) program for Federal Fiscal Year 2009; however the grant period runs through FY 2010. As with regularly appropriated CSBG funds, Recovery Act funds may be used for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient.

To be in compliance with Recovery Act (Pub. L. 111–5) Section 1512(c)(1) through (B) a backup sheet was created to identify the various activities that make up the total Federal share of outlays reported on the 269A Report line 10(a). The CSBG/ARRA Fund provides resources to States, Territories, and Tribes to support work and families during this difficult economic period. We plan to issue a backup sheet for the 269A Report with instructions for jurisdictions to complete; which would provide detail information to support line 10(a) of the aforementioned document.

Failure to collect this data would compromise ACF's ability to monitor expenditure patterns by the grantees.

Documentation maintenance on financial reporting for the CSBG Fund is governed by 45 CFR 96.30.

Respondents: State, Territory, and Tribal agencies administering the Community Service Block Grant(CSBG) Program Fund.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CSBG/ARRA Plan	103	4	4	1,648

Estimated Total Annual Burden Hours: 1,648

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: December 17, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–30369 Filed 12–21–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0013]

International Conference on Harmonisation; Guidance on Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the International Conference on Harmonisation Regions; Annex 8 on Sterility Test General Chapter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 8: Sterility Test General Chapter.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance provides the results of the ICH Q4B evaluation of the Sterility Test General Chapter harmonized text from each of the three pharmacopoeias (United States, European, and Japanese) represented by the Pharmacopoeial Discussion Group (PDG). The guidance conveys recognition of the three pharmacopoeial methods by the three ICH regulatory regions and provides specific information regarding the recognition. The 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. In the **Federal Register** of February 21, 2008 (73 FR 9575), FDA made available a guidance on the Q4B process entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions.''

DATES: Submit written or electronic comments on agency guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), 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 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. Requests and comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Robert H. King, Sr., Center for Drug Evaluation and Research (HFD–003), 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 the **Federal Register** of February 17, 2009 (74 FR 7446), FDA published a notice announcing the availability of a draft tripartite guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 8: Sterility Test General Chapter.'' The notice gave interested persons an opportunity to submit comments by April 20, 2009.

After consideration of the comments received and revisions to the guidance, a final draft guidance entitled ''Q4B Evaluation and Recommendation of Pharmacopoeial Texts for Use in the ICH Regions; Annex 8: Sterility Test General Chapter'' was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in June 2009.

The guidance provides the specific evaluation outcome from the ICH Q4B process for the Sterility Test General Chapter harmonization proposal originating from the three-party PDG. This guidance is in the form of an annex to the core ICH Q4B guidance. When implemented, the annex will provide guidance for industry and regulators on the use of the specific pharmacopoeial texts evaluated by the ICH Q4B process. Following receipt of comments on the draft, no substantive changes were made to the annex.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on 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, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written comments on the 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 16, 2009.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning, and Budget.

[FR Doc. E9–30326 Filed 12–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; SBIR Contract.

Date: January 21, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Guo Zhang, PhD, Scientific Review Officer, National Center For Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, ROOM 1064, MSC 4874, Bethesda, MD 20892–4874, 301–435–0812, *zhanggu@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: December 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30391 Filed 12–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Nephrolithiasis Program Project.

Date: February 25, 2010.

Time: 1 p.m. to 5 p.m.

*Agenda:*To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Atul Sahai, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30393 Filed 12–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, January 6, 2010, 1 p.m. to January 6, 2010, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on December 8, 2009, 74 FR 64703.

The starting time of the meeting on January 6, 2010 has been changed to 11 a.m. until adjournment at 1p.m.

The meeting date and location remain the same. The meeting is closed to the public.

Dated: December 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30395 Filed 12–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NEUROAIDS SEP

Date: January 5, 2010.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30394 Filed 12–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel, NIDCR Review of R34 Applications (PAR–08–195).

Date: January 15, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Rebecca Wagenaar Miller, PhD, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 6701 Democracy, Rm 666, Bethesda, MD 20892, 301–594–0652, *rwagenaa@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, Teleconference Review of R01 and R34 applications.

Date: February 17, 2010.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer, Natl Inst of Dental and Craniofacial Research, National Insitutes of Health, 6701 Democracy Blvd., Room 664, Bethesda, MD 20892, 301–594–4859, *horsforj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30392 Filed 12–21–09; 8:45 am]

BILLING CODE 4140–01–P

Department of Homeland Security

National Protection and Programs Directorate; Infrastructure Protection Data Call

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day Notice and request for comments; New Information Collection Request: 1670-NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate, has submitted the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until February 22, 2010. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to NPPD/IP/IICD, Attn.: Ribkha Hailu, *iicd@dhs.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Homeland Security (DHS) is the lead coordinator in the national effort to identify and prioritize the country's critical infrastructure and key resources (CIKR). At DHS, this responsibility is managed by the Office of Infrastructure Protection (IP) in the National Protection and Programs Directorate (NPPD). In FY2006, IP engaged in the annual development of a list of CIKR assets and systems to improve IP's CIKR prioritization efforts; this list is called the Critical Infrastructure List. The Critical Infrastructure List includes assets and systems that, if destroyed, damaged or otherwise compromised, could result in significant consequences on a regional or national scale.

The IP Data Call is administered out of the Infrastructure Information Collection Division (IICD) in the Office of Infrastructure Protection (IP). The IP Data Call provides opportunities for States and territories to collaborate with DHS and its Federal partners in CIKR protection. DHS, State and territorial Homeland Security Advisors (HSA), Sector Specific Agencies (SSA), and territories build their CIKR data using the IP Data Call application. To ensure that HSAs, SSAs and territories are able to achieve this mission, IP requests opinions and information in a survey from IP Data Call participants regarding the IP Data Call process and the Web-based application used to collect the CIKR data. The survey data collected is for internal IICD and IP use only.

IICD and IP will use the results of the IP Data Call Survey to determine levels of customer satisfaction with the IP Data Call process and the IP Data Call application and prioritize future improvements. The results will also allow IP to appropriate funds cost-effectively based on user need, and improve the process and application.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis:

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Infrastructure Protection Data Call.

Form: Not Applicable.

OMB Number: 1670-NEW.

Affected Public: Federal, State, Local, Tribal.

Number of Respondents: 558.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 140 annual burden hours.

Total Burden Cost (operating/maintaining): $14,430.00.

Dated: December 8, 2009.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E9–30357 Filed 12–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0142]

The National Infrastructure Advisory Council

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Council Meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, January 12, 2010 at the National Press Club's Ballroom, 529 14th Street, NW., Washington, DC 20045.

DATES: The National Infrastructure Advisory Council will meet Tuesday, January 12, 2010 from 1:30 p.m. to 4:30 p.m. Please note that the meeting may close early if the committee has completed its business.

For additional information, please consult the NIAC Web site, *http://www.dhs.gov/niac*, or contact the NIAC Secretariat by phone at 703–235–2888 or by e-mail at *NIAC@dhs.gov*.

ADDRESSES: The meeting will be held at the National Press Club's Ballroom, 529 14th Street, NW., Washington, DC 20045. While we will be unable to accommodate oral comments from the public, written comments may be sent to Nancy J. Wong, Department of Homeland Security, National Protection and Programs Directorate, Washington, DC 20528. Written comments should reach the contact person listed no later than December 29, 2009. Comments must be identified by DHS–2009–0142 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: NIAC@dhs.gov*. Include the docket number in the subject line of the message.
- *Fax:* 703–235–3055
- *Mail:* Nancy J. Wong, Department of Homeland Security, National Protection and Programs Directorate, Washington, DC 20528. (IP/POD/PPIS Mail Stop 0607, B1, 3rd Floor)

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Nancy J. Wong, National Infrastructure Advisory Council Designated Federal Officer, Department of Homeland Security, Washington, DC 20528; telephone 703–235–2888.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The National Infrastructure Advisory Council shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

The National Infrastructure Advisory Council will meet to address issues relevant to the protection of critical infrastructure as directed by the President. The January 12, 2010 meeting will explore new topics of study for the National Infrastructure Advisory Council to undertake.

The meeting agenda is as follows:

I. Opening of Meeting
II. Roll Call of Members
III. Opening Remarks and Introductions
IV. Approval of October 2009 Minutes
V. Working Group Resilience follow-on Study
VI. Working Group Prioritizing the Support for Sector Response & Recover Based Upon Timing of Impact
VII. New Business
VIII. Closing Remarks
IX. Adjournment

Procedural

While this meeting is open to the public, participation in the National Infrastructure Advisory Council deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the NIAC Secretariat at 703–235–2888 as soon as possible.

Signed: December 11, 2009.

Nancy J. Wong,

Designated Federal Officer for the NIAC.

[FR Doc. E9–30360 Filed 12–21–09; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–103]

Impact of Housing and Services Interventions for Homeless Families

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The purpose of this study is to test experimentally the effects of various housing and service interventions on homeless families, including subsequent housing stability and adult and child well-being.

DATES: *Comments Due Date: January 21, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Impact of Housing and Services Interventions for Homeless Families.

OMB Approval Number: 2528–New.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The purpose of this study is to test experimentally the effects of various housing and service interventions on homeless families, including subsequent housing stability and adult and child well-being.

Frequency Of Submission: On occasion.

	Number of respondents	Annual Responses	×	Hours per response	=	Burden hours
Reporting Burden:	3,300	1		1.181		3,900

Total Estimated Burden Hours: 12,000

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *December 17, 2009.*

Lillian Deitzer

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–30414 Filed 12–21–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–21903–87; LLAK964000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Tanana, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 3 S., R. 28 E.,
Secs. 1, 2, and 3;
Secs. 10 to 15, inclusive;
Secs. 22 to 27, inclusive;
Secs. 33 to 36, inclusive.

Containing approximately 11,729 acres. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until January 21, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. E9–30380 Filed 12–21–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Final Environmental Impact Statement for Disposition of the Former Bureau of Mines Twin Cities Research Center Main Campus, Minnesota

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c), the National Park Service (NPS) announces the availability of a final Environmental Impact Statement (EIS) for disposition of the former Bureau of Mines Twin Cities Research Center Main Campus (Center), Hennepin County, Minnesota.

DATES: The final EIS will remain available for public review for 30 days following the publishing of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Copies of the final EIS are available from the Superintendent, Mississippi National River and Recreation Area, Suite 105, 111 Kellogg Boulevard East, St. Paul, Minnesota 55101; telephone 651–290–4160. You may also view the document via the Internet through the NPS Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov*); simply click on the link to Mississippi National River and Recreation Area.

SUPPLEMENTARY INFORMATION: The NPS prepared a draft EIS for the Center. The draft was made available for public review for 60 days (August 25–October 24, 2007) during which time the NPS distributed over 275 copies of the draft. The draft was also made available at the park offices, on the Internet, and at area libraries. Based on several requests for greater time to review and comment on

the document, the NPS extended the comment period 30 days to November 27, 2007.

By the close of the official comment period, a total of 509 comments on the draft EIS were received via oral comments, written letters, e-mail, and through the NPS Planning, Environment, and Public Comment system. Public and Agency comments addressed future management authorities, impacts to cultural and historical resources, interpretation of the Center's history, and restoration of the Center to more natural conditions, as well as pointing out factual errors and shortcomings of the draft EIS.

The Notice of Availability for the draft EIS also solicited written proposals for the future use of the Center property. Public Law 104–134 included provisions which would allow the transfer of the Center property to a local, State, or Tribal government or university entity. At the close of the comment period, six written proposals were received from qualified Agencies for the transfer of the Center property.

Finally, the draft EIS did not identify the preferred alternative because at the time of its release, the Department of the Interior had not indicated a preference. The final EIS identifies the preferred alternative as alternative D. Under alternative D, the Federal Government would manage and bear the costs for modification of all or part of the land, structures, or other improvements prior to conveyance or retention of the Center.

Following completion of the modifications, the property would be disposed through transfer to a university or nonfederal government entity without restrictions (alternative B), transfer to a university or nonfederal government entity with restrictions (alternative C), or retention by the Federal Government for use such as those described under the three conceptual land-use scenarios. Under the preferred alternative, the preferred land use scenario is open space/park.

FOR FURTHER INFORMATION: Contact Superintendent Paul Labovitz, Mississippi National River and Recreation Area, at the address or telephone number above.

Dated: October 21, 2009.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. E9–30356 Filed 12–21–09; 8:45 am]

BILLING CODE 4312–98–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2009–N242; 80221–1112–0000–F2]

Issuance of an Incidental Take Permit to Shell Wind Energy for Construction and Operation of the Bear River Ridge Wind Power Project (Multiple Species Habitat Conservation Plan), Humboldt County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a joint Environmental Impact Report (EIR) and Environmental Impact Statement (EIS) and notice of public scoping meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), intend to prepare an Environmental Impact Statement (EIS), under the National Environmental Policy Act (NEPA) regarding an application from Shell Wind Energy for an incidental take permit for take of threatened wildlife species in accordance with section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The USFWS and the County of Humboldt will be developing a combined EIR and EIS document for the proposed project. Shell Wind Energy is proposing to construct and operate the Bear River Ridge Wind Power Project near Ferndale, in Humboldt County, California. The project would consist of up to 25 wind turbines with a generating capacity of 50 megawatts (MW) of electricity. Activities Shell Wind Energy will propose for permit coverage in its habitat conservation plan (Plan) include construction, operation, maintenance, and decommissioning of the Bear River Ridge Wind Power project and associated off-site improvements. The Plan may also cover certain proposed off site mitigation activities. We are furnishing this notice to announce the initiation of a public scoping period, during which we invite other agencies and the public to provide written comments on the range of alternatives and scope of issues to be included in the EIS.

DATES: To ensure consideration, please send your written comments by February 22, 2010. We will hold two public scoping meetings:

1. Tuesday, February 2, 2010, 7–9 p.m., Fortuna, CA.
2. Wednesday, February 3, 2010, 7–9 p.m., Eureka, CA.

ADDRESSES:

Public Meeting Locations

1. Tuesday, February 2, 2010, at the Riverlodge, 1800 Riverwalk Drive Fortuna, CA 95540.
2. Wednesday, February 3, 2010, at the Wharfinger Building, #1 Marina Way, Eureka, CA 95501.

EIS Preparation and NEPA Process: Address any information, written comments or questions related to the preparation of the EIS and NEPA process to Mr. James Bond, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521. Alternatively, you may fax written comments to 707–822–8411. Comments we receive will be available for public inspection, by appointment, during normal business hours (Monday through Friday; 8–4:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James Bond, at the Arcata address above, or by telephone: 707–822–7201; fax: 707–822–8411; or e-mail: *james_bond@fws.gov*.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2)(A) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), Shell Wind Energy is preparing a habitat conservation plan in support of an application for a permit from USFWS to incidentally take the marbled murrelet (*Brachyramphus marmoratus*), and northern spotted owl (*Strix occidentalis caurina*) in connection with the construction, operation and decommissioning of the Bear River Ridge Wind Power Project in Humboldt County, California. Both the marbled murrelet and the northern spotted owl are listed as threatened species under the Act. To facilitate a consistency determination under the California Endangered Species Act from the California Department of Fish and Game for the proposed project, the Plan is also expected to include the yellow-billed cuckoo (*Coccyzus americanus*) and willow flycatcher (*Empidonax traillii*) as covered species.

Background

Shell Wind Energy proposes to construct, operate, and decommission the Bear River Wind Power Project in Humboldt County, California. The Bear River Wind Power Project would be located on private property, primarily along the Bear River Ridge within the northern Coast Ranges around Cape Mendocino in Humboldt County, California. Shell Wind Energy has obtained long-term agreements (wind leases) with local landowners to develop the property for the wind energy project. The project area is currently used primarily for agriculture

(*i.e.,* cattle production) and timberland management.

The Bear River Wind Project proposes to operate up to 25 wind turbines with an anticipated total generating capacity of up to approximately 50 MW. The wind turbines would be arranged within turbine ''strings'' and be sited within 500-foot-wide corridors.

In addition to turbines, Shell Wind Energy's proposed project includes the following components:

- Approximately 5 miles of newly constructed access roads, turbine string roads and turn-around areas;
- Up to three permanent meteorological towers;
- A site-control and data acquisition system;
- A 34.5-kilovolt (kV) power collection system that will deliver power generated by the turbines to the project substation. Collector cables will be placed in trenches and buried underground between turbine locations. The underground collection system would terminate at the project substation;
- A project substation where power from the 34.5-kV collection system would be stepped up to the voltage required for the interconnection to the regional transmission system.
- An approximately 12-mile-long overhead transmission line that would transfer power from the project substation to the Pacific Gas and Electric (PG&E) regional transmission system in the City of Rio Dell; and
- An operations and maintenance (O&M) facility, including a main building with offices, spare parts storage, restrooms, a shop area, outdoor parking facilities, a turn-around area for larger vehicles, outdoor lighting, and a gated access with partial or full-perimeter fencing located in the City of Rio Dell near the existing PG& E substation.

Construction of the proposed project would also require a staging area on the project site and potentially a temporary concrete batch plant. During construction, a total of approximately 3 million gallons of water would be required for road compaction, underground collection line installation, dust suppression, and concrete mixing. Approximately half the water consumption would be for dust control and the other half for all other construction activities. No new wells would be drilled or springs developed. Water needed for the construction activities would be provided through a nearby water source with a permitted water right issued through the State of California, State Water Resources Control Board Division of Water Rights.

Construction of the project's roads, facilities, and electrical/communication lines would occur at about the same time, using individual vehicles for multiple tasks. Based on data provided for typical wind energy projects of similar size, it is anticipated that during the construction period, there would be approximately 60 daily round trips by vehicles transporting construction personnel to the site. Over the entire construction period, there will be approximately 850 trips of large trucks delivering the turbine components and related equipment to the project site and approximately 2,500 truck trips by dump trucks, concrete trucks, water trucks, cranes, and other construction and trade vehicles. After construction, project O&M activities would require approximately three round trips per day using pickups or other light-duty trucks.

Construction traffic would be routed from Humboldt Bay along State and county roads, ultimately accessing the project site through Ferndale and/or Rio Dell. It is anticipated that improvements to county roads would be required to enable the passing of trucks transporting large turbine components.

Routine maintenance would consist primarily of daily travel by technicians that would test and maintain the wind facilities. Operation and Maintenance staff would travel in pickup or other light-duty trucks. Occasionally, the use of a crane or equipment transport vehicles may be necessary for cleaning, repairing, adjusting, or replacing the rotors or other components of the turbines. Cranes used for maintenance activities are not as large as the large track-mounted cranes needed to erect the turbine towers and are likely to be contracted at the time of service and not stored at the facility.

Monitoring the operations of the Project will be conducted from computers located in the base of each turbine tower and from the O&M building using telecommunication links and computer-based monitoring. Over time, it will be necessary to clean or repaint the blades and towers and periodically exchange lubricants and hydraulic fluids in the mechanisms of the turbines.

Decommissioning would involve removing the turbines, support towers, transformers, substation, and the upper portion of foundations. Site reclamation after decommissioning would be based on site-specific requirements and techniques commonly employed at the time the area will be reclaimed. Techniques could include regrading, spot replacement of topsoil, and revegetation of all disturbed areas with an approved native seed mix. Turbine tower and substation foundations would be removed to a depth as agreed upon with landowners.

Activities that Shell Wind Energy will propose for permit coverage include construction, operation, maintenance and decommissioning of the wind power project and associated offsite improvements. The company may also request permit coverage for certain off-site mitigation activities. Construction, operation and decommissioning of the wind farm, and actions to minimize and mitigate project impacts, have the potential to take wildlife species protected under the Act. Section 10(a)(1)(B) of the Act authorizes the Service to issue incidental take permits to non-Federal land owners for the take of endangered and threatened species, provided that, among other requirements, the take will be incidental to otherwise lawful activities, will not appreciably reduce the likelihood of the survival and recovery of the species in the wild and will be minimized and mitigated to the maximum extent practicable. Shell Wind Energy is preparing a habitat conservation plan that is intended to provide for management of the project site over its lifetime in a manner that will minimize and mitigate the impacts of take of the Federally listed marbled murrelet and northern spotted owl and certain other wildlife species that may be listed during the life of the Plan. Once completed, it is expected that Shell Wind Energy will submit the Plan to USFWS as part of an application for the incidental take permit.

Environmental Impact Statement

We will conduct an environmental review of the permit application, including the Plan. We will prepare an Environmental Impact Statement (EIS) in accordance with NEPA requirements, as amended (42 U.S.C. 4321 *et seq.*), and NEPA implementing regulations (40 CFR parts 1500 through 1508), and in accordance with other applicable Federal laws and regulations, and the policies and procedures of the USFWS for compliance with those regulations. The Shell Wind Energy project will also require a conditional use permit from Humboldt County. The County is the lead agency pursuant to the California Environmental Quality Act and is responsible for preparing an Environmental Impact Report for the project. The County and USFWS intend to prepare a joint EIR/EIS that we anticipate will be available for public review in late 2010. The EIR/EIS will analyze the environmental impacts of the proposed wind energy project and associated incidental take of species

proposed to be covered under the Plan. The EIR/EIS will also analyze the impacts of the conservation strategy proposed by Shell Wind Energy to minimize and mitigate those impacts to the maximum extent practicable. We anticipate that the conservation strategy will identify several biological goals, including development of high quality, suitable habitat necessary for the long-term persistence of the covered species and retention and recruitment of specific habitat elements, including older, larger and more structurally complex or decadent trees to provide for successful reproduction of marbled murrelets and spotted owls. The environmental review will analyze a full range of reasonable alternatives to the proposed action, including a No Action alternative, and describe the associated environmental impacts of each. We are currently in the process of developing alternatives for analysis.

In connection with developing alternative approaches, we will consider, for example, modified lists of covered species, modified permit coverage areas (*i.e.,* portions of the landscape subject to permit coverage), modified permit terms, and different resource management strategies that would serve the purpose of minimizing and mitigating the impacts of incidental take. We will consider other reasonable project alternatives recommended during this scoping process in order to develop a full range of alternatives.

We invite comments and suggestions from all interested parties to ensure consideration of a full range of reasonable alternatives related to development of the EIR/EIS. The USFWS requests that comments be as specific as possible. Comments are requested to include information, issues and concerns regarding:

(1) The direct, indirect, and cumulative effects that implementation of any reasonable alternatives could have on endangered and threatened species and their habitats;

(2) Other reasonable alternatives, and their associated effects;

(3) Measures that would minimize and mitigate potentially adverse effects of the proposed project;

(4) Baseline environmental conditions in and adjacent to the covered lands;

(5) Adaptive management or monitoring provisions that may be incorporated into the alternatives, and their benefits to listed species;

(6) Other plans or projects that might be relevant to this project; and

(7) Any other information pertinent to evaluating the effects of this project on the human environment.

The environmental review will analyze the effects that the considered alternatives would have on the marbled murrelet, spotted owl, yellow-billed cuckoo and willow flycatcher, as well as on other components of the human environment, including but not limited to cultural resources, social resources (including public safety), economic resources, water and air quality, global climate change, and environmental justice.

Direct any comments or questions to the USFWS contact listed above in **ADDRESSES**. All comments and materials we receive, including names and addresses, will become part of the administrative record and may be released to the public. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Reasonable Accommodation

Persons needing reasonable accommodations to attend and participate in public meetings should contact James Bond (*see* **FOR FURTHER INFORMATION CONTACT**) as soon as possible. To allow sufficient time to process requests, please call no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Ken McDermond,

U.S. Fish and Wildlife Service, Region 8, Sacramento, California.

[FR Doc. E9–30340 Filed 12–21–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000–L10200000.DF0000; HAG 9–0189]

Notice of Intent To Prepare an Environmental Impact Statement for the Trout Creek Geographic Management Area, Jordan Resource Area, Vale District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM) Vale District Office, Vale, Oregon intends to prepare an Environmental Impact Statement (EIS) for proposed actions pertaining to livestock grazing systems and rangeland developments that will affect 10 livestock grazing permit terms and conditions in the Trout Creek Geographic Management Area (TCGMA) Vale District. Actions may include, for example, installation and/or removal of fences and water developments, changes to duration or season of use of grazing, and other changes to the terms and conditions of affected grazing permits. By this notice the BLM is announcing the beginning of the scoping process and soliciting input on the identification of issues.

DATES: To identify relevant issues, the BLM will announce public scoping meetings through local news media, newsletters, and the BLM Web site: *http:www.blm.gov/or/districts/vale/plans/tcgma_eis.php* at least 15 days prior to each meeting.

ADDRESSES: You may submit comments on issues related to the TCGMA EIS by any of the following methods:

- *District Web site: http:www.blm.gov/or/districts/vale/plans/valermp.php.*
- *E-mail: TCGMA_EIS@blm.gov*
- *Fax:* (541) 473–6213.
- *Mail:* Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, OR 97918.

Documents pertinent to this proposal may be examined at the Vale District Office during regular business areas.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Trisha Skerjanec, (541) 473–6222; or e-mail *trisha_skerjanec@blm.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM District Office, Vale, Oregon, intends to prepare an EIS for proposed actions for livestock grazing systems and rangeland developments that will affect 10 livestock grazing permit terms and conditions in the TCGMA. The project area covers about 627,900 acres of co-mingled Federal, private, and State land located in Southeastern Oregon and Northwestern Nevada. About 586,900 acres (or 94.4 percent) of the land is public domain administered by the BLM. Subsequent grazing decisions will be based on the EIS and Record of Decision (ROD) and conform to the BLM grazing regulations at 43 CFR subpart 4180, Fundamentals of Rangeland Health Standards and Guidelines for Grazing Administration, and the Southeastern Oregon Resource Management Plan and ROD.

The analysis will involve a variety of issues pertaining to the following: rangeland vegetation, rangeland grazing use, wild horses, special status plants, water resources and riparian areas, fish and aquatic habitat, including a Federal threatened species of fish, wildlife, and wildlife habitat, special status animals, recreation, wilderness study areas, land outside of wilderness study areas possessing wilderness characteristics, and archeological and paleontological materials.

This document also announces the beginning of the public scoping process and seeks public input on the aforementioned issues. The BLM has previously held scoping meetings for this land area in preparation for an Environmental Assessment and Finding of No Significant Impact. However, for reasons related to ongoing litigation, the Vale District now will examine its proposed action through an EIS. Thus, for procedural reasons, a second opportunity for public scoping is available with this EIS. The purpose of the public scoping is to determine concerns and ideas that will help guide the decision-making process. You may submit comments on the aforementioned issues in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To have your name added to the mailing list, reply to the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

To be most helpful, you should submit comments by January 21, 2010. 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. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed.

The BLM will evaluate identified issues, and will place them into one of three categories:

1. Issues to be resolved in the EIS;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this EIS.

The BLM will provide an explanation in the EIS as to why we placed an issue in category two or three.

Carolyn R. Freeborn,

Jordan Field Manager, Vale District Office.

[FR Doc. E9–30379 Filed 12–21–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–01–1020–PG]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held January 12 and 13, 2010.

The meetings will be in the Bureau of Land Management—Central Montana District Office conference room (920 NE Main St.), Lewistown, Montana.

The January 12 meeting will begin at 10 a.m. with a 30-minute public comment period and will adjourn at 5:30 p.m.

The January 13 meeting will begin at 8 a.m. with a 30-minute public comment period and will adjourn at 3 p.m.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During these meetings the council will participate in/discuss/act upon:

RAC comments and discussions;
Introductions of staff and RAC members;
A RAC charter review;
The consensus format;
Orientation for new RAC members;
RAC expectations;
District managers' and Oil and Gas Field Station Updates;
A RAC work plan for 2010;
An update on the HiLine RMP;
An update on Sage grouse;
Initial discussion on monument amenity fees;
Bison discussion and possible RAC subgroup;
Potential for expanding review of Forest Service fee proposals;
A review of the recent Cottonwood Workshop;
Stewardship agreements;
A general discussion; and

Administrative details (next meeting date, location, travel vouchers, etc.). All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: Gary L. ''Stan'' Benes, Central Montana District Manager, Central Montana District Office, P.O. Box 1160, Lewistown, Montana 59457, 406/538–1900.

Dated: December 11, 2009.

Gary L. Benes,

Central Montana District Manager.

[FR Doc. E9–30443 Filed 12–21–09; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–682]

Certain Collaborative System Products and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Granting Consent Motion To Terminate the Investigation Based on a Settlement Agreement; Termination of the Investigation

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. 7) of the presiding administrative law judge (''ALJ'') granting a consent motion by complainant to terminate the investigation based on a settlement agreement with respondent.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. 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: On August 7, 2009, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by eInstruction Corporation of Denton, Texas (''eInstruction'') on July 2, 2009, and supplemented on July 10, 2009 and July 23, 2009. 74 FR 39712 (Aug. 7, 2009). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain collaborative system products and components thereof by reason of infringement of certain claims of United States Patent No. 6,930,673. The complaint named QOMO HiteVision, LLC of Wixom, Michigan as respondent.

On November 10, 2009, eInstruction filed a consent motion to terminate the investigation in its entirety based on a settlement agreement with Respondent. On November 19, 2009, the Commission investigative attorney filed a response in support of the consent motion to terminate the investigation.

On December 2, 2009, the ALJ issued Order No. 7 granting the consent motion to terminate the investigation. None of the parties petitioned for review of Order No. 7. The Commission has determined not to review the ID. Accordingly, this investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: December 16, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–30333 Filed 12–21–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–695]

Certain Silicon Microphone Packages and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint and motion for temporary relief was filed with the U.S. International Trade Commission on November 12, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Knowles Electronic LLC of Itasca, Illinois. A supplement to the complaint was filed on December 1, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain silicon microphone packages and products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,781,231 and U.S. Patent No. 7,242,089. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

The motion for temporary relief requests that the Commission issue a temporary limited exclusion order and temporary cease and desist order prohibiting the importation into and the sale within the United States after importation of certain silicon microphone packages and products containing the same that infringe claim 1 of U.S. Patent No. 6,781,231 and claims 1, 2, 7, 15, 16, 17, 18, and 20 of U.S. Patent No. 7,242,089 during the course of the Commission's investigation.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 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.*

FOR FURTHER INFORMATION CONTACT: Mareesa A. Frederick, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2055.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 16, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of silicon microphone packages and products containing the same that infringe one or more of claim 1 of U.S. Patent No. 6,781,231 and claims 1, 2, 7, 15, 16, 17, 18, and 20 of U.S. Patent No. 7,242,089, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.58 of the Commission's Rules of Practice and Procedure, 19 CFR 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, is provisionally accepted and referred to the presiding administrative law judge for investigation;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Knowles Electronics LLC, 1151 Maplewood Drive, Itasca, IL 60143.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Analog Devices Inc., One Technology Way, P.O. Box 9106, Norwood, MA 02062–9106.

(c) The Commission investigative attorney, party to this investigation, is Mareesa A. Frederick, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondent in accordance with sections 210.13 and 210.59 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13 and 210.59. Pursuant to 19 CFR 201.16(d), 210.13(a), and 210.59, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint, motion for temporary relief, and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, the motion for temporary relief, and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: December 16, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–30334 Filed 12–21–09; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference; Advisory Committee on Criminal Rules

AGENCY: Judicial Conference of the United States Advisory Committee on Criminal Rules.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Criminal Procedure, has been canceled:

Criminal Rules Hearing, January 11, 2010, in Atlanta, GA.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United State Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 15, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–30267 Filed 12–21–09; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Criminal Rules

AGENCY: Judicial Conference of the United States Advisory Committee on Criminal Rules.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Criminal Procedure, has been canceled:

Criminal Rules Hearing, January 8, 2010, in Phoenix, AZ.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United State Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: December 15, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–30271 Filed 12–21–09; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference; Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States Advisory Committee on Bankruptcy Rules.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Bankruptcy Procedure, has been canceled:

Bankruptcy Rules Hearing, January 6, 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 15, 2009.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. E9–30275 Filed 12–21–09; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTN International

Notice is hereby given that, on December 3, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et secr. (''the Act''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. 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, ASTM has provided an updated list of current, ongoing ASTN standards activities originating between September 2009 and December 2009 designated as work items. A complete listing of ASTM work items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM 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 November 10, 2004 (69 FR 65226).

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 54595)

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–30211 Filed 12–21–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 16, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of Labor Management Standards.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Form LM–30 Labor Organization Officer and Employee Report.

OMB Control Number: 1215–0205.

Agency Form Number: LM–30.

Affected Public: Private Sector—Not-for-profit institutions.

Total Estimated Number of Respondents: 1,932.

Total Estimated Annual Burden Hours: 1,127.

Total Estimated Annual Costs Burden (does not include hourly wage costs): $0.

Description: The Labor-Management Reporting and Disclosure Act (LMRDA) requires labor organization officers and employees to disclose potential conflicts of interest between the labor organization officials and their labor organization. The Department of Labor established the Form LM–30, Labor Organization Officer and Employee Report, pursuant to this LMRDA requirement. For additional information, see related notice published in the **Federal Register** at Volume 74 FR 45255 on September 1, 2009.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–30368 Filed 12–21–09; 8:45 am]

BILLING CODE 4510–CP–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–111)]

Notice of Intent To Grant an Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in the following U.S. Patent Application: ''Miniaturized Double Latching Solenoid Valve'' Application Serial No. 11/861,038 NASA Case No. GSC–15039–1 to Mindrum Precision, Incorporated having its principal place of business in Rancho Cucamonga, California. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. Bryan A. Geurts, Chief Patent Counsel/140.1, Goddard Space Flight Center, Greenbelt, MD 20771, (301) 286–7351.

FOR FURTHER INFORMATION CONTACT: Darryl Mitchell, Innovative Partnerships Program Office/504, Goddard Space Flight Center, Greenbelt, MD 20771 (301) 286–5810. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/*.

Dated: December 16, 2009.

Richard W. Sherman,

Deputy General Counsel.

[FR Doc. E9–30344 Filed 12–21–09; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0517; Docket Nos. 50–250 and 50–251; License Nos. DPR–31 and DPR–41]

Florida Power and Light Company; Receipt of Request for Action Under 10 CFR 2.206; Correction Notice

A notice of receipt of a request for action under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 2.206 of the Commission's regulations was previously published on November 30, 2009 (74 FR 62609). In the petition dated January 11, 2009, Mr. Thomas Saporito had requested that the NRC take action with regard to Florida Power & Light Company's Turkey Point Nuclear Generating Units 3 and 4. The previous notice listed the issues that would be the subject of the Petition

Review Board's review. That list omitted an issue that is included below:

The retention bonus agreement requires a promise to not make derogatory statements against Florida Power & Light Company.

Dated at Rockville, Maryland, this 11th day of December 2009.

For the Nuclear Regulatory Commission.

Thomas B. Blount,

Deputy Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E9–30383 Filed 12–21–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0043]

Office of New Reactors; Notice of Availability Standard Review Plan Section 9.5.1.2 on Risk-Informed, Performance-Based Fire Protection Program

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: The NRC is issuing its Final Guidance on NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' Section 9.5.1.2 on staff guidance on Risk-Informed (RI), Performance-Based (PB) Fire Protection Program (FPP) for Operating Nuclear Power Plants (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092590527). This guidance is being issued as an alternate to the existing guidance currently provided under Standard Review Plan (SRP) Section 9.5.1.1. This is stand alone guidance and is provided for the benefit of licensees of existing plants who choose to adopt RI/PB FPP that meets the requirements of National Fire Protection Association (NFPA) Standard 805.

The NRC staff issues notices to facilitate timely implementation of the current staff guidance and to facilitate activities associated with the review of amendment applications for transitioning to RI/PB FPPs. The NRC staff will also incorporate the approved SRP section 9.5.1.2 into the next revisions of Regulatory Guide (RG) 1.205 and any related guidance documents. This guidance is applicable only to currently operating nuclear reactor licensees. This SRP is not endorsing NFPA 805, since that standard is already a part of Title 10 of the *Code of Federal Regulations,* Section 50.48(c) rule (10 CFR 50.48(c)). In addition, this SRP does not directly endorse the guidance document issued by the industry (Nuclear Energy Institute (NEI) 04–02, ''Guidance for Implementing a Risk Informed, Performance-Based Fire Protection Program under 10 CFR 50.48(c),'' Revision 2) for plants transitioning to an NFPA 805 FPP. RG 1.205 provides the staff's positions with respect to NEI 04–02.

Background: The draft SRP, which was published for public comment in the **Federal Register** in January 2009, is in ADAMS under Accession No. ML090050052. This SRP section was issued initially as Revision 0, and as a new guidance in January 2009, and was offered to stakeholders for comments under the agency's **Federal Register** notice published on February 5, 2009 (74 FR 6181). Numbers of comments were received as result of the proposed notice and are being dispositioned and the guidance is being issued as final with this revision. The public comments can be found at ADAMS Accession Nos. ML091100448, ML091480255, and ML091480256.

ADDRESSES: The NRC ADAMS provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Alexander R. Klein, Chief, Fire Protection Branch, Division of Risk Assessment, Office of the Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone at 301–415–2822 or e-mail at *Alex.Klein@nrc.gov.*

SUPPLEMENTARY INFORMATION: The agency posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this 15th day of December 2009.

For the Nuclear Regulatory Commission.

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E9–30382 Filed 12–21–09; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–8A; File No. 270–135; OMB Control No. 3235–0175.

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 (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The Investment Company Act of 1940, as amended (''1940 Act'') (15 U.S.C. 80a–1 *et seq.*), requires investment companies to register with the Commission before they conduct any business in interstate commerce. Section 8(a) of the 1940 Act provides that an investment company shall be deemed to be registered upon receipt by the Commission of a notification of registration in such form as the Commission prescribes. Form N–8A (17 CFR 274.10) is the form for notification of registration that the Commission has adopted under section 8(a). The purpose of such notification of registration provided on Form N–8A is to notify the Commission of the existence of investment companies required to be registered under the 1940 Act and to enable the Commission to administer the provisions of the 1940 Act with respect to those companies. After an investment company has filed its notification of registration under section 8(a), the company is then subject to the provisions of the 1940 Act which govern certain aspects of its organization and activities, such as the composition of its board of directors and the issuance of senior securities. Form N–8A requires an investment company to provide its name, state of organization, form of organization, classification, the name and address of each investment adviser of the investment company, the current value of its total assets and certain other information readily available to the investment company. If the investment company is filing a registration statement as required by Section 8(b) of the 1940 Act concurrently with its notification of registration, Form N–8A requires only that the registrant file the cover page (giving its name, address and

agent for service of process) and sign the form in order to effect registration.

Each year approximately 105 investment companies file a notification on Form N–8A, which is required to be filed only once by an investment company. The Commission estimates that preparing Form N–8A requires an investment company to spend approximately 1 hour so that the total burden of preparing Form N–8A for all affected investment companies is 105 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The collection of information on Form N–8A is mandatory. The information provided on Form N–8A is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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 send an e-mail to 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.

December 16, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30338 Filed 12–21–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61171; File No. SR–FINRA–2009–086]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 5160 (Disclosure of Price and Concessions in Selling Agreements) in the Consolidated FINRA Rulebook

December 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2770 (Disclosure of Price in Selling Agreements) as FINRA Rule 5160 in the consolidated FINRA rulebook without material change.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD Rule 2770 (Disclosure of Price in Selling Agreements), without material change, as FINRA Rule 5160.

NASD Rule 2770 requires certain disclosures in selling agreements.[4] Specifically, the rule requires that selling syndicate agreements or selling group agreements[5] (1) set forth the price at which securities are to be sold to the public or the formula by which such price can be ascertained and (2) state clearly to whom and under what circumstances concessions, if any, may be allowed.[6]

It is customary industry practice that both of these items are contained in selling agreements. FINRA believes that these disclosures are important in ensuring the integrity of the public offering process. Specifically, the requirement to set forth the price at which the securities are to be sold to the public creates a contractual obligation among the selling group participants to offer the security to investors at the same price. The second requirement to set forth to whom and under what circumstances concessions, if any, are allowed gives the selling syndicate or selling group control over who may be compensated for participating in the offering.

NASD Rule 2770 has not been substantively amended since it was adopted in 1939. FINRA believes that Rule 2770's application and scope are clear and that the rule is achieving its intended purpose as part of FINRA's regulatory scheme governing member activity in securities offerings. FINRA proposes to transfer NASD Rule 2770 into the Consolidated FINRA Rulebook without material change as new FINRA Rule 5160. However, FINRA proposes one minor change to the title of the rule to clarify that in addition to disclosing the price of a security in an offering, selling agreements must also disclose

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] Rule 2770, formerly designated as Section 7 in Article III of the Rules of Fair Practice, was adopted in 1939 as part of FINRA's original rulebook. *See* Certificate of Incorporation and Bylaws, Rules of Fair Practice and Code of Procedure for Handling Trade Practice Complaints of National Association of Securities Dealers, Inc. (August 8, 1939). The precursor to NASD Rule 2770 was originally drafted by the Investment Bankers Code Committee in 1934. *See Code of Fair Competition for Investment Bankers With a Descriptive Analysis of Its Fair Practice Provisions and a History of Its Preparation* (1934).

[5] The terms ''selling group'' and ''selling syndicate'' are defined in NASD Rules 0120(p) and (q), respectively. (Other than to reflect the new conventions of the Consolidated FINRA Rulebook, FINRA does not propose to alter these two definitions, which will be addressed later in the rulebook consolidation process.)

[6] Pursuant to FINRA Rule 0150, NASD Rule 2770 is applicable to transactions in, and business activities relating to, exempted securities, except municipal securities, conducted by members and associated persons.

concessions. The proposed title of FINRA Rule 5160 would be ''Disclosure of Price and Concessions in Selling Agreements.''

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the disclosures required by the proposed rule are important in ensuring the integrity of the public offering process. In addition, the rule being adopted as part of the Consolidated FINRA Rulebook previously has been found to meet the statutory requirements, and FINRA believes this rule has since proven effective in achieving the statutory mandates.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–086 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–086. 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[8], 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 .C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that that may be withheld from the public in accordance with the provisions of 5 U.S you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–086 and should be submitted on or before January 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30335 Filed 12–21–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/.*

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61169; File No. SR–BX–2009–078]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BOX Trading Rules Chapters III and XIV

December 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add BOX Trading Rules Chapter III, Section 8(e) and Chapter XIV (Index Rules), Section 7(c) (Exemptions from Position Limits) to allow Options Participants to rely upon exemptions granted by other exchanges; amend Chapter III, Section 9 (Exercise Limits) to clarify that exercise limit exemption [sic] will apply to all Options Participants; and add Chapter III, Section 10 (Reports Related to Position Limits) to clarify how an Options Participant may aggregate its long or short positions for purposes of filing its reports of these limits with the Exchange. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exercise Limit Exemptions

The Exchange proposes to modify Chapter III, Section 9 (Exercise Limits) to change ''Market Maker'' to ''Options Participant'', in order to provide that all Options Participants may utilize applicable exemptions granted under Section 8 regarding an Exercise Limit. Other exchanges, such as the International Securities Exchange (''ISE''), allow all members to utilize approved exempted position limit [sic] in calculating an option's exercise limits.[5]

Exemptions Granted by Other Exchanges

As proposed, Chapter III, Section 8 and Chapter XIV, Section 7, will allow Options Participants to rely upon exemptions granted by other exchanges. Specifically, proposed Chapter III, Section 8(e) and proposed Chapter XIV, Section 7(c) would provide that an Options Participant may rely upon any available exemptions from applicable position limits that are granted by another options exchange for any options contract traded on the Exchange, provided that the Options Participant provides the Exchange either with a copy of any written exemption issued by another options exchange or with a written description of any exemption issued by another options exchange that is not in writing, where such description contains sufficient detail for BOXR staff to verify the validity of that exemption with the issuing options exchange. In addition, the Options Participant must fulfill all conditions precedent for such exemption and comply at all times with the requirements of such exemption with respect to the Options Participant's trading on BOX. This proposed change is based on Chapter III, Section 8 and Chapter XIV Section 8 of Options Rules of the NASDAQ Stock Market, LLC (''NOM'') and recently filed proposals by NYSE ARCA, Inc. (''ARCA'') and NYSEAmex which were effective upon filing.[6]

The Exchange notes that position limits are similar across options exchanges. Because Options Participants frequently have membership and/or trading privileges on other exchanges, it is important that ad hoc position limit exemptions granted by other options exchanges (''exemption grants'') are available to Options Participants to the extent that such exemption grants are reduced to writing and verifiable by BOXR staff pursuant to the proposed changes to Chapter III Section 8(e) and Chapter XIV, Section 7(c). The proposed rule change does not give the Exchange the ability to expand the exemption grants but only to recognize the exemption so that the position limit process would be the same across the exchanges.

The Exchange believes that by adding uniformity and predictability to the position limit process, the proposed rule change should be beneficial to the Exchange, its Options Participants, and their customers. Moreover, the proposed rule change should promote competition by allowing trades across options exchanges that are similar with respect to position limits.[7]

Reports Related to Position Limits

As proposed, Supplementary Material .01 to Chapter III, Section 10, will specify that when calculating an aggregate long or short position in options, Options Participants need to combine (i) long positions in put options with short positions in call options, and (ii) short positions in put options with long positions in call options.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change will promote consistency between the BOX Rules and those of other options exchanges with respect to position limit and exercise limit procedures.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. As such, the Exchange requests that the Commission waive the 30-day operative delay period for ''non-controversial'' proposals and make the proposed rule change effective and operative upon filing.[10] The proposed rule change is based upon the rules of other options exchanges, and as such is not in any way novel or controversial. The Commission believes that waiving the

[5] *See* Securities Exchange Act Release No. 34–60500 (August 13, 2009), 74 FR 42345 (August 21, 2009) (SR–ISE–2009–62); *See also* Chicago Board Options Exchange (''CBOE'') Rule 4.12, NYSEAmex, LLC (''AMEX'') Rule 905(a).

[6] *See* Securities Exchange Act Release No. 34–61033 (November 19, 2009), 74 FR 62614 (November 30, 2009) (SR–NYSEArca–2009–100); Securities Exchange Act Release No. 34–61034 (November 19, 2009), 74 FR 62625 (November 30, 2009) (SR–NYSEAmex–2009–80).

[7] The Exchange notes that all reporting requirements pursuant to Chapter III, Section 10 (Reports Related to Position Limits) remain in force.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days before doing so.

30-day operative delay is consistent with the protection of investors and the public interest because such waiver will bring uniformity and predictability to the position limit process. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2009–078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–078. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[12] 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 business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–078 and should be submitted on or before January 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30337 Filed 12–21–09; 8:45 am]

BILLING CODE 8011–01–P

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

[12] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61168; File No. SR–FINRA–2009–090]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating To Adopt FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) in the Consolidated FINRA Rulebook

December 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Interpretive Material (IM) 2110–2 (Trading Ahead of Customer Limit Order) and NASD Rule 2111 (Trading Ahead of Customer Market Orders) with significant changes in the Consolidated FINRA Rulebook as new FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of FINRA, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt NASD IM–2110–2 (Trading Ahead of Customer Limit Order) and NASD Rule 2111 (Trading Ahead of Customer Market Orders) with significant changes in the Consolidated FINRA Rulebook as new FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders).

Background

IM–2110–2 generally prohibits a member from trading for its own account in an NMS stock, as defined in Rule 600(b)(47) of SEC Regulation NMS, or an OTC equity security (*e.g.,* OTCBB and pink sheets securities) at a price

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately, in the event it trades ahead, executes the customer limit order at the price at which it traded for its own account or better.[4]

Similarly, Rule 2111 generally prohibits a member that accepts and holds a customer market order in a Nasdaq or exchange-listed security from trading for its own account at prices that would satisfy a customer market order, unless the firm immediately thereafter executes the customer market order up to the size and at the same price at which it traded for its own account or better. At present, Rule 2111 does not apply to OTC equity securities.

While there is no Incorporated NYSE Rule counterpart to IM–2110–2 and Rule 2111 (collectively referred to herein as ''customer order protection'' rules), New York Stock Exchange LLC (''NYSE'') Rule 92 imposes similar requirements on NYSE members in NYSE-listed securities. NYSE Rule 92 generally prohibits members or member organizations from knowingly entering proprietary orders ahead of, or along with, customer orders that are executable at the same price as the proprietary order.

As discussed below, FINRA is proposing several changes to the standards set forth in IM–2110–2 and Rule 2111 to simplify and clarify these rules, as well as create an industry standard that incorporates elements from existing FINRA and NYSE rules.

Integration of IM–2110–2 and Rule 2111

FINRA is proposing to integrate IM–2110–2 and Rule 2111 into a single rule (proposed Rule 5320) governing members' treatment of customer orders and to apply the new rule to all equity securities uniformly, other than the no-knowledge interpretation as detailed below. In addition to streamlining and simplifying the rules, the principal change resulting from the proposed combination of these rules is to extend the application of Rule 2111 to OTC equity securities. As noted above, Rule 2111 currently applies only to Nasdaq or exchange-listed securities, while IM–2110–2 applies to both NMS stocks and OTC equity securities. FINRA believes that the same concerns that arise with respect to trading ahead of limit orders in OTC equity securities also exist with respect to market orders and, therefore, an expansion of the Rule 2111 protections to those securities is appropriate.

Large Orders and Institutional Accounts

There are several exceptions to the customer order protection rules. Most notably, members are permitted to negotiate terms and conditions on the acceptance of certain large-sized orders (orders of 10,000 shares or more and greater than $100,000 in value) and orders from institutional accounts as defined in NASD Rule 3110(c) (collectively referred to as ''Institutional/Large-Sized Orders''). Such terms and conditions would permit the member to continue to trade along side or ahead of such customer orders if the customer agrees.

FINRA is proposing to modify the steps necessary for a member to avail itself of this exception for Institutional/Large-Sized Orders. Specifically, under the proposed rule, a member would be permitted to trade a security on the same side of the market for its own account at a price that would satisfy a customer order provided that the member provides clear and comprehensive written disclosure to each customer at account opening and annually thereafter that: (a) Discloses that the member may trade proprietarily at prices that would satisfy the customer order, and (b) provides the customer with a meaningful opportunity to opt in to the Rule 5320 protections with respect to all or any portion of its order(s).[5]

If a customer does not opt in to the Rule 5320 protections with respect to all or any portion of its order(s), the member may reasonably conclude that such customer has consented to the member trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.[6]

In lieu of providing written disclosure to customers at account opening and annually thereafter, the proposed rule would permit members to provide clear and comprehensive oral disclosure to, and obtain consent from, a customer on an order-by-order basis, provided that the member documents who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order. In addition, where a customer has opted in to the Rule 5320 protections, a member may still obtain consent on an order-by-order basis to trade ahead of or along with an order from that customer, provided that the member documents who provided such consent and that such consent evidences the customer's understanding of the terms and conditions of the order.[7]

No-Knowledge Exception

Both the FINRA customer order protection requirements and NYSE Rule 92 have similar, but not identical, ''no-knowledge'' exceptions. Specifically, NYSE Rule 92, by its terms, is limited to those circumstances where the firm knowingly trades ahead of its customer. Accordingly, under NYSE Rule 92, a firm may trade ahead of a customer order as long as the person entering the proprietary order has no knowledge of the unexecuted customer order.[8] Similarly, FINRA previously established a ''no-knowledge'' interpretation to its customer order protection requirements. Under this interpretation, if a firm implements and utilizes an effective system of internal controls, such as appropriate information barriers that operate to prevent a non-market-making proprietary desk from obtaining knowledge of customer orders held at the firm's market-making desk, those ''walled off'' non-market-making proprietary desks are permitted to trade at prices that would satisfy the customer orders held by the market-making desk without any requirement that such proprietary executions trigger an

[4] For example, if a member buys 100 shares of a security at $10 per share while holding customer limit orders in the same security to buy at $10 per share equaling, in aggregate, 1,000 shares, the member is required to fill 100 shares of the customer limit orders at $10 per share or better.

[5] FINRA reminds members that, even where a customer has not opted in to the protections under proposed Rule 5320, member conduct must continue to be consistent with the guidance provided in the *Notice to Members* 05–51 (August 2005). In *Notice to Members* 05–51, FINRA, among other things, reminded members that adherence to just and equitable principles of trade as mandated by Rule 2010 ''requires that members handle and execute any order received from a customer in a manner that does not disadvantage the customer or place the member's financial interests ahead of those of its customer.'' *See also* NASD Rule 2320 (Best Execution and Interpositioning).

[6] As is always the case, customers retain the right to withdraw consent at any time. Therefore, a member's reasonable conclusion that a customer has consented to the member trading along with such customer's order is subject to further instruction and modification from the customer.

[7] While a firm relying on this or any exception must be able to proffer evidence of its eligibility for and compliance with the exception, FINRA believes that when obtaining consent on an order-by-order basis, members must, at a minimum, document not only the terms and conditions of the order (*e.g.,* the relative price and size of the allocated order/percentage split with the customer), but also the identity of the person at the customer who approved the trade-along request. For example, the identity of the person must be noted in a manner that will enable subsequent contact with that person if a question as to the consent arises (*i.e.,* first names only, initials, and nicknames will not suffice).

[8] Under NYSE Rule 92.10, a member or employee of a member or member organization is ''presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering proprietary orders.''

obligation to fill pending customer orders at the same price.[9]

FINRA's no-knowledge interpretation was established at a time when the majority of retail order flow was handled by the firm's market-making desk and viewed as a critical source of liquidity for customer orders. As a result, permitting firms to wall off the market-making desk at that time was viewed as untenable fragmentation of liquidity to the detriment of retail customers. However, as a result of changes in market structure and general order routing protocols discussed below, FINRA is proposing to expand and codify the current no-knowledge interpretation, consistent with NYSE Rule 92, to include the market-making desk with respect to NMS stocks.

Today, many firms handle retail-sized customer orders in NMS stocks on an automated basis, separate and apart from the firm's proprietary trading desks, including the market-making desk, in which such orders are routed through automated systems that search out the market centers offering pools of liquidity that offer immediate execution at the probable best available prices. Accordingly, some firms have determined to structure their order handling practices to ''wall off'' customer order flow from their market-making and other proprietary desks.[10] FINRA does not believe that requiring walled-off trading desks to integrate orders for compliance with proposed Rule 5320 will necessarily enhance the execution quality for these orders in today's environment. Thus, with respect to NMS stocks, FINRA believes that expanding the current no-knowledge interpretation to include market-making desks is appropriate and better reflects the realities of the current trading environment.

However, FINRA is not proposing to similarly expand the no-knowledge interpretation with respect to OTC equity securities because the same types of changes in market structure and order handling practices have not occurred in that market; OTC equity securities are generally not traded at market centers with the same depth of liquidity and are not as susceptible to automated routing for best execution. Accordingly, the current no-knowledge standard, as set forth in prior *Notices to Members,* would continue to apply to OTC equity securities.

To the extent a firm structures its order handling practices in NMS stocks to ''wall off'' customer order flow from its market-making desks, FINRA is proposing to require the firm to disclose that fact in writing to its customers. This disclosure would include a description of the manner in which customer orders are handled and the circumstances under which the firm may trade proprietarily at its market-making desk at prices that would satisfy a customer order. The proposed disclosure would be required at account opening and on an annual basis thereafter and may be combined with the disclosure and negative consent statement permitted in connection with the proposed Institutional/Large-Sized Order exception.

In addition, firms that choose to structure their order handling practices in NMS stocks to ''wall off'' customer order flow from their market-making desks must obtain and use a unique market participant identifier (MPID) for the market-making desk. For example, if customer order flow is sent directly to an agency desk and is ''walled-off'' from the firm's market-making desk, those two desks must use different MPIDs.

Odd Lot and Bona Fide Error Exception

FINRA proposes applying the customer order protection requirements to all customer orders (currently there is a blanket exclusion for odd lots), but would provide an exception for a firm's proprietary trade that (1) offsets a customer odd lot order (*i.e.,* an order less than one round lot, which is typically 100 shares); or (2) corrects a bona fide error. With respect to bona fide errors, member firms would be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception. For purposes of this rule, the definition of a ''bona fide error'' is as defined in SEC Regulation NMS's exemption for error correction transactions.[11]

Trading Outside Normal Market Hours

FINRA proposes expanding the customer order protection requirements to apply at all times that a customer order is executable by the member, even outside the period of normal market hours (9:30 a.m. to 4 p.m.). Currently, the customer order protection requirements apply only during normal market hours and after hours (4 p.m. to 6:30 p.m.). Thus, customers would have the benefit of the customer order protection rules at all times where such order is executable by the member firm, subject to any applicable exceptions.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. FINRA believes that adopting the proposed rules as part of the Consolidated FINRA Rulebook will continue to protect investors by defining important parameters by which member firms must abide when trading proprietarily while holding customer limit and market orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was published for comment in *Regulatory Notice* 09–15 (March 2009). A copy of the *Regulatory Notice* is attached as Exhibit 2a. FINRA received five comment letters in response to the *Regulatory Notice* and commenters generally supported the proposed provisions.[13] A list of the comment

[9] *See Notices to Members* 95–43 (June 1995), 03–74 (November 2003) and 06–03 (January 2006).

[10] FINRA notes that such a determination must be made in conformance with FINRA's best execution requirements. FINRA's best execution requirements under NASD Rule 2320(a) generally require that, when executing a customer transaction, members use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the price to the customer is as favorable as possible under prevailing market conditions. FINRA requested comment on proposed changes to NASD Rule 2320 in *Regulatory Notice* 08–80 (December 2008). These changes would not impact the fundamental operation of NASD Rule 2320(a).

[11] Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007) (Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] Letter from Daniel C. Rome, Esq., General Counsel, Taurus Compliance Consulting, LLC, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated April 22, 2009; letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated April 24, 2009 (''FIF''); letter from Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated April 30, 2009 (''SIFMA''); letter from R. Cromwell Coulson, Chief Executive Officer, Pink

letters received is attached as Exhibit 2b, and copies of each comment letter received are attached as Exhibit 2c.

Commenters generally supported FINRA's effort to integrate the limit order protection rule and the market order protection rule into a single rule; update and simplify the rules' provisions in light of changes in market practices; and work toward a uniform industry standard with respect to the customer order protection rule.

(a) Integration of Limit Order Protection and Market Order Protection Into a Single Rule

Commenters supported a uniform industry standard and the proposal to apply market order protection to trading in OTC equity securities. While some firms asked that FINRA consider the costs and time needed for implementation (*e.g.,* FIF requested a nine month implementation period), others recommended that FINRA move forward without delay with the rule proposal (*e.g.,* SIFMA).

(b) Exception To Permit Trading Ahead of Certain Large Orders/Institutional Accounts

Commenters supported FINRA's approach because it provides members with a measure of flexibility as to what method of disclosure and consent is appropriate, thereby simplifying compliance, while also providing adequate customer protection. For example, SIFMA believes that negative consent plus disclosure adequately protects customers, while affirmative consent is unduly resource-intensive and burdensome.

(c) Expansion of the No-Knowledge Exception To Include Market-Making Desks

Commenters supported the expansion of the ''no-knowledge'' exception to trading in NMS stocks at market-making desks. SIFMA and FIF recommended allowing (but not requiring) firms to use separate MPIDs. SIFMA argued that introducing numerous MPIDs may result in complex and expensive reporting and may increase the likelihood of operational and technical glitches in such reporting. Thus, SIFMA prefers a policies and procedures approach to provide individual firms with the flexibility to address surveillance in the best way for each particular firm.

Regarding the expansion of the ''no-knowledge'' exception to include market-making desks for NMS stocks, SIFMA and Pink OTC support the proposal but also argue that the proposal should also include trading in OTC equity securities. SIFMA and Pink OTC also argue that the differences in these two markets do not justify applying the rule differently and further argues that, where there are differences, the OTC market is evolving to the structure of NMS stocks.

SIFMA and Pink OTC believe that extending the no-knowledge exception to cover OTC equity securities would provide firms with the flexibility to adapt their order routing practices as changes occur without sacrificing customer protection and further argue that the adoption of two different standards is inconsistent with the stated intentions of harmonization between FINRA and NYSE, which is to bring consistency. Pink OTC additionally believes that adoption of a harmonious standard for NMS stocks and OTC equity securities would facilitate compliance and programming efficiencies.

(d) Extension of the Application of the Rule to Trading During Extended Hours

SIFMA is concerned about the potential impact on systems and procedures if proposed Rule 5320 applied to extended-hours trading. SIFMA argues that customers who trade in extended hours are generally sophisticated and should be treated like institutional and large orders, even if smaller or submitted by an individual.

(e) Other Comments

In response to the *Regulatory Notice,* Pink OTC also commented on aspects of the current Manning rules that were not proposed to be amended; particularly, the quantity of the minimum price improvement increments (MPI), as well as several trading scenarios with respect to which they believed that the timing for the triggering of the MPI should be altered.

Pink OTC argued that the proposed rules should be modified to provide market makers with incentives to maintain priced quotations in order to foster pricing competition among all market participants and promote the institution and maintenance of liquid markets in OTC equity securities. Specifically, Pink OTC recommended that (i) customer orders qualify for price improvement generally only where defined quotation sizes are used; (ii) market makers should be required to provide price improvement only where the customer order is received before the firm has began the process of executing a trade for its own account; and (iii) publicly displayed proprietary quotes should be afforded time priority over customer orders that are received after a market-maker's proprietary quote is published.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission notes that, under the proposal, if a member provides disclosure to the customer at account opening and annually thereafter, Institutional/Large-Sized Orders would not be subject to Manning protection, unless the customer affirmatively opted in to the proposed Rule 5320. The Commission specifically requests comment on whether such negative consent requirement is appropriate and sufficiently protects institutional accounts and customers with large orders. Should affirmative, written consent be required instead? Further, is disclosure at account opening and annually thereafter sufficient to protect customer orders? Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–090 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.

OTC Markets Inc., to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated June 12, 2009 (''Pink OTC''), and letter from Jack Rubens to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated September 14, 2009.

All submissions should refer to File Number SR–FINRA–2009–090. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–090 and should be submitted on or before January 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30336 Filed 12–21–09; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0344]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA requests approval to revise and extend an information collection request (ICR) entitled, *''Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property.''* The information collected will be used to help ensure that motor carriers of passengers and motor carriers of property maintain appropriate levels of financial responsibility to operate on public highways. On October 19, 2009, FMCSA published a **Federal Register** notice (74 FR 53543) allowing for a 60-day comment period on the revision of this ICR. No comments were received in response to the notice.

DATES: Please send your comments by January 21, 2010. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2009–0344. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Office of the Secretary, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothea Grymes, Commercial Enforcement Division, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–385–2405; e-mail: *dorothea.grymes@dot.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property.

OMB Control Number: 2126–0008.

Type of Request: Revision of a currently-approved information collection.

Respondents: Insurance and surety companies of motor carriers of property (Forms MCS–90 and MCS–82) and motor carriers of passengers (Forms MCS–90B and MCS–82B).

Estimated Number of Respondents: 175,338.

Estimated Time per Response: The FMCSA estimates it takes two minutes to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability or three minutes for the Motor Carrier Public Liability Surety Bond; and one minute to place either document on board the vehicle (foreign-domiciled motor carriers only) [49 CFR 387.7(f)]. These endorsements, and any written decision or order authorizing a motor carrier to self-insure are maintained at the motor carrier's principal place of business [49 CFR 387.7(d)].

Expiration Date: March 31, 2010.

Frequency of Response: Upon creation, change or replacement of an insurance policy or surety bond.

Estimated Total Annual Burden: 4,056 burden hours [182 hours (5,469 responses × 2 minutes/60 minutes) for Passenger Carriers insurance endorsements + 3,401 hours (102,027 responses × 2 minutes/60 minutes) for Property Carriers insurance endorsements + 33 hours (652 responses × 3 minutes/60 minutes) for Property Carriers Surety Bonds) + 440 hours (25,896 responses by Canada-domiciled carriers + 494 responses by Mexico- and Non-North America-domiciled carriers × 1 minute/60 minutes) for placing financial responsibility documents in all vehicles operated within the U.S. by motor carriers domiciled in Canada, Mexico, and Non-North America (NNA)].

Background: The Secretary is responsible for implementing regulations which establish minimal levels of financial responsibility for: (1) For-hire motor carriers of property to cover public liability, property damage and environment restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Forms MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier of property or passengers has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—49 CFR 387.9; and motor carrier of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information enclosed within these documents.

Public Comments Invited: You are asked to comment on any aspect of this

[14] 17 CFR 200.30–3(a)(12).

information collection, including: (1) Whether the proposed collection is necessary for the FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: December 15, 2009.

David Anewalt,

Acting Associate Administrator for Research and Information Technology.

[FR Doc. E9–30341 Filed 12–21–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 16, 2009, vol. 74, no. 199, page 53311. The information collected is needed for the applicant's noise certification compliance report in order to demonstrate compliance with 14 CFR part 36.

DATES: Please submit comments by January 21, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0659.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 10 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 135 hours per response.

Estimated Annual Burden Hours: An estimated 1,350 hours annually.

Abstract: Sections A36.5.2 and A36.5.2.5 of the Federal Aviation Administration (FAA) noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes (14 CFR part 36) contain information collection requirements. The information collected is needed for the applicant's noise certification compliance report in order to demonstrate compliance with part 36.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 14, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–30308 Filed 12–21–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 16, 2009, vol. 74, no. 199, page 53311. This rule may require applicants to comply with the latest regulations in effect on the date of application for amended Type Certificates (TC) or a Supplemental TCs for aeronautical products.

DATES: Please submit comments by January 21, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Type Certification Procedures for Changed Products.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0657.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 2,558 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 7.35 hours per response.

Estimated Annual Burden Hours: An estimated 18,815 hours annually.

Abstract: This rule may require applicants to comply with the latest regulations in effect on the date of application for amended Type Certificates (TC) or a Supplemental TCs for aeronautical products. They now may incur an additional incremental administrative cost to determine the level of significance of the product change.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality,

utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 14 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–30307 Filed 12–21–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (*e.g.*, to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before January 6, 2010.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC on December 15, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
Modification Special Permits				
6293–M		ATK Space Systems, Inc. (Former Grantee: ATK Thiokol, Inc.) Corine, UT.	49 CFR 173.248; 173.51(f)	To modify the special permit to authorize an additional Class 8 hazardous material and authorize a new mixed spent acid.
7951–M		ConAgra Foods, Omaha, NE.	49 CFR 173.306(b)(1); 178.33; 175.3.	To modify the special permit for clarification and to add Consumer Commodity and ORM–D to paragraph 6.
11761–M		Chemtrade Logistics, Inc., North York.	49 CFR 173.31(d)(1)(vi); 172.302(c).	To modify the special permit to add an additional Class 8 hazardous material.
11827–M		Kanto Corporation, Portland, OR.	49 CFR 180.605(c)(1); 180.352(b)(3).	To modify the special permit by making miscellaneous edits for clarification purposes.
12599–M		Air Liquide, America Specialty Gases, Inc., Plumsteadville, PA.	49 CFR 173.301(d)(2); 173.302.	To modify the special permit to authorize DOT 3AA cylinders with a lower service pressure of 2,000 psig, change regulatory site for the liquefied compressed gases in cylinders applicable to silicon tetrafluoride to §173.304a(a)(1) to provide relief from §173.40(e) and to delete §173.301a(a)(4) from paragraph 4.
14283–M		U.S. Department of Energy (DOE), Washington, DC.	49 CFR Part 172, Subparts E, F; 171.15; 171.16; 172.202; 172.203(c)(1)(i); 172.203(d)(1); 172.310; 172.316(a)(7); 172.331(b)(2); 172.332; 173.403(c); 173.425(c)(1)(iii); 173.425(c)(5); 173.443(a); 174.24; 174.25; 174.45; 174.59; 174.700; 174.715; 177.807; 177.843(a).	To modify the special permit to provide an exception to 49 CFR 172.203(g).
14574–M		KMG Electronic Chemicals, Houston, TX.	49 CFR 180.407(c), (e) and (f).	To modify the special permit to authorize the addition of a 49% hydrofluoric acid tank wagon to the special permit.
14796–M		Chammas Cutters Inc., Houston, TX.	49 CFR 173.228	To modify the special permit to authorize the addition of a larger cylinder and a volume up to 1940 cc.

[FR Doc. E9–30304 Filed 12–21–09; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 21, 2010.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 14, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials Special Permits and Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		New Special Permits		
14945–N	.....	Vulcan Construction Materials LP SE d/b/a Vulcan Materials Company, Atlanta, GA.	49 CFR 172.200, 173.300, 172.400, 172.500.	To authorize the transportation in commerce of certain Class 3 PG III and Class 9 hazardous materials across a public road within the Macon Quarry without shipping papers, marking, labeling, or placarding. (mode 1).
14946–N	.....	FAR Research, Inc. (dba FAR Chemicals, Inc.), Palm Bay, FL.	49 CFR 173.206	To authorize the transportation in commerce of Trimethylchloro-silane, UN1298 in a DOT Specification 4BW cylinder for all modes of transportation except air. (modes 1, 2, 3).
14947–N	.....	Hennepin County Department of Environmental Services, Minneapolis, MN.	49 CFR 172.102(c) Special provision 130.	To authorize the transportation in commerce of certain used batteries for recycling without protection against short circuits. (mode 1).
14948–N	.....	The Boeing Company, St. Louis, MO.	49 CFR 171.8 and 178.5 14(b)(2).	To authorize the transportation in commerce of missile sustainer sections containing a flammable liquid in non-DOT specification packaging by motor vehicle and cargo vessel. (modes 1, 3).
14949–N	.....	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301(f) 171.23(a)(5).	To authorize the transportation in and commerce of 40 Multiple-element gas containers (MEGCs) in DOT specification cylinders that are not equipped with pressure relief devices by motor vehicle. (mode 1).
14950–N	.....	Certified Cylinder, Division of American Welding & Tank, LLC, Crossville, TN.	49 CFR 180.211	To authorize the rebuilding or modification and sale of certain DOT Specification 4B, 4BA, and 4BW cylinders for use in the transportation in commerce of certain hazardous materials. (mode 1).

[FR Doc. E9–30305 Filed 12–21–09; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, San Diego County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Withdrawal.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed San Ysidro port of Entry located in the city of San Diego in San Diego County (**Federal Register** Vol. 68, No 127; FR Doc 03–16784), California will be rescinded.

FOR FURTHER INFORMATION CONTACT: Cesar E. Perez, Senior Transportation Engineer, Federal Highway Administration, California Division, 650 Capitol Street, Suite 4–100, Sacramento, CA 95814, 916–498–5065, *cesar.perez@dot.gov*.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), is advising the general public that the notice of Intent published on Wednesday July 2, 2003 is being withdrawn. Since then, the project was re-designed, the General Services Administration (GSA) assumed the lead, while FHWA became a cooperating Agency. GSA issued a Final Environmental Impact Statement Record on August 2009, and a Record of

Decision (ROD) for their project on September, 9 2009.

Issued on: December 16, 2009.

Shawn E. Oliver,

State Programs Team Leader, South, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–30353 Filed 12–21–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–58]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before January 11, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0382 using any of the following methods:

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anna Bruse, 202–267–9655, or Tyneka L. Thomas, 202–267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC on December 16, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–0382.

Petitioner: Historical Flight Foundation, Inc.

Section of 14 CFR Affected: §§ 91.146, 91.147, 119.5(g), 119.23(a), and 125.1.

Description of Relief Sought: Historical Flight Foundation, Inc. seeks an exemption from 14 CFR 91.146, 91.147, 119.5(g), 119.23(a), and 125.1 to operate the Douglas Aircraft Co. DC–7B for the purpose of carrying passengers on local educational flights for compensation or hire.

[FR Doc. E9–30332 Filed 12–21–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2009–0294]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 24 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before January 21, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0294 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical

Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 24 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMV in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Daniel W. Boldra

Mr. Boldra, age 53, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boldra meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Montana.

Simon P. Bollin

Mr. Bollin, 32, has had ITDM since 1984. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bollin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Indiana.

Patrick J. Bukolt

Mr. Bukolt, 57, has had ITDM since 1990. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bukolt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Leonel L. Cantu, Jr.

Mr. Cantu, 44, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cantu meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Texas.

William J. Cobb, Jr.

Mr. Cobb, 32, has had ITDM since 1994. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cobb meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from New York.

Wallace E. Conover

Mr. Conover, 58, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Conover meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Daniel C. Druffel

Mr. Druffel, 46, has had ITDM since 1968. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Druffel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable proliferative and nonproliferative diabetic retinopathy. He holds an operator's license from Washington.

Gregory J. Godley

Mr. Godley, 54, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Godley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a CDL from Washington.

Troy A. Gortmaker

Mr. Gortmaker, 45, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions

resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gortmaker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Charles M. Griswold

Mr. Griswold, 60, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Griswold meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Kenneth M. Ham

Mr. Ham, 36, has had ITDM since 1994. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

Justin R. Henneinke

Mr. Henneinke, 30, has had ITDM since 1986. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Henneinke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from California.

William R. Huntley

Mr. Huntley, 51, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Huntley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

Ricky G. Kile

Mr. Kile, 50, has had ITDM since 2003. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kile meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

Joseph I. Kulp, Sr.

Mr. Kulp, 73, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kulp meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Eric D. Larson

Mr. Larson, 26, has had ITDM since 2000. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Larson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Kevin R. Mooney

Mr. Mooney, 43, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mooney meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Daniel D. Neale

Mr. Neale, 33, has had ITDM since 1978. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Neale meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from California.

Richard D. Preisser

Mr. Preisser, 52, has had ITDM since 1975. His endocrinologist examined him

in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Preisser meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Brian A. Schlieckau

Mr. Schlieckau, 45, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schlieckau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Richard L. Sulzberger

Mr. Sulzberger, 59, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sulzberger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Clayton F. Tapscott

Mr. Tapscott, 40, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tapscott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A C operator's license from Texas.

Dirk VanStralen

Mr. VanStralen, 64, has had ITDM since 2002. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. VanStralen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Henry L. Waskow

Mr. Waskow, 64, has had ITDM since 2001. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Waskow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Texas.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: December 15, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–30342 Filed 12–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

SUMMARY: FMCSA announces its denial of 92 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director Medical Programs, 202–366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds ''such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.'' The procedures for requesting an exemption are set out in 49 CFR part 381.

Accordingly, FMCSA evaluated 92 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denials.

The following 15 applicants lacked sufficient driving experience during the 3-year period prior to the date of their application:

Jeffrey L. Allen
Malcom Celestine
Dennis R. Davidson
Michael S. Dawson
Craig D. Delph
William J. Gibson
Dennis H. Heller
Cierra L. Jones
Roberto Lozano
Stephen V. May
Bernard Sippin
Mark L. St. Clair
Vince A. Thompson
Gregory J. Tipton
Floyd L. Williams

The following 10 applicants did not have any experience operating a CMV:

Earl Bellfield, Jr.
Terisa Billings
Jeffrey T. Christman
Diane E. Cuttler
William Goodman, II
Randy Hoffman
Caroline W. Ngere
Jose M. Orosco
Wendell D. Risser
Gerald Simms

The following 21 applicants did not have 3 years of experience driving a CMV on public highways with the vision deficiency:

Don R. Alexander
Kenneth Bilby
Quinton L. Bobo, Sr.
Steven Bruehling
Alberto Cano
Christopher W. Craine
Mark W. Crocker
Tracy Y. Davis
Robin L. Dothager
Carl Fenner
Kent Gilkerson
Shawn M. Gregory
Perry J. Harris
Johnny L. Johnson
Kevin J. Keegan
Ernest K. Kerezi
Edward F. Lindey, Jr.
Shawna M. Morris
Wesley C. Randall
Talmadge O. Rutherford
Gary Zoffada

The following 8 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency:

Barry Barker
Jack Evans
Michael R. Garcia
Ivan M. Hanna
Keith D. Kleen
Tom E. Slavens
Carol P. Terry
Douglas W. Turner

The following 13 applicants did not have sufficient driving experience over the past 3 years under normal highway operating conditions:

Charles L. Alsager, Jr.
Roger J. Boggs
Terry Y. Braxton
Nathan C. Clements
Rogelio Garcia
Brian E. Goodwin
Jimmy L. Herron
Darold D. Johnston
Frederick A. Kolmorgen
David J. Overweg
Rick L. Robins
Robert A. Rose
Jesus R. Torres

One applicant, Thomas L. Matheny, had more than 2 commercial motor vehicle violations during the 3-year review period and/or application process. Each applicant is only allowed 2 moving citations.

One applicant, Michael A. Terry, has other medical conditions making him unqualified under Federal Motor Carrier Safety Regulations. All applicants must meet all other physical qualifications standards in 49 CFR 391.41(b)(1–13).

The following 4 applicants had commercial driver's license suspensions during the 3-year review period in relation to a moving violation. Applicants do not qualify for an exemption with a suspension during the 3-year period:

John P. Crawford
Randy Fielder
Brandon L. McBride, Sr.
Jason L. Meeks

Two applicants, Leland P. Armstrong and Bobbie Evans, did not hold a license which allowed operation of vehicles over 10,000 pounds for all or part of the 3-year period.

One applicant, Jerry W. Thompkins, did not have an Optometrist/Ophthalmologist willing to state that he is able to operate a commercial vehicle from a vision standpoint.

The following 10 applicants were denied for miscellaneous/multiple reasons:

Macario Escarcega
Steven M. Guy
Jim Kaiser
Richard G. Lyon
Teresa L. Miller
Floyd D. Prater
Jaime Roman
Joseph M. Taylor
Michael J. Whitesell
Richard L. Wilson

Two applicants, Roger B. Doolin and Mark P. Huemann, were disqualified because their vision was not stable for the entire three-year review period.

Finally, the following 4 applicants met the current federal vision standards. Exemptions are not required for applicants that meet the current regulations for vision:

Patricia Duncan
Michael A. Sherbourne
Robert J. Snowden, Jr.
Michael T. Thompson

Issued on: December 15, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–30343 Filed 12–21–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2010–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2010 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2010 RCAF (Unadjusted) is 1.038. The first quarter 2010 RCAF (Adjusted) is 0.467. The first quarter 2010 RCAF–5 is 0.443.

DATES: *Effective Date:* January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202)-245–0235. Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 16, 2009.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–30361 Filed 12–21–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 684]

Solid Waste Rail Transfer Facilities

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: This decision provides the factual basis for the Board's certification under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that the interim rules governing the submission and review of applications for land-use-exemption permits and related filings under 49 CFR 1155 will not have a significant economic impact on a substantial number of small entities.

DATES: Comments on the factual basis for the Board's Regulatory Flexibility Act certification are due by January 6, 2010, and reply comments are due by January 19, 2010.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 684, 395 E Street, SW., Washington, DC 20423–0001. Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Clean Railroads Act of 2008, Public Law No. 110–432, 122 Stat. 4848 (Clean Railroads Act or CRA), enacted October 16, 2008, removed from the jurisdiction of the Surface Transportation Board the regulation of solid waste rail transfer facilities,[1] except as provided for in that act. The CRA limited the Board's authority with regard to solid waste rail transfer facilities to the issuance of land-use-exemption permits, a license that preempts a facility from compliance with state laws, regulations, orders, and other requirements affecting the siting of the facility.[2] On January 14, 2009, the Board served a notice of proposed rulemaking that set forth proposed procedures governing the submission and review of applications for land-use-exemption permits and related filings. *See Solid Waste Rail Transfer Facilities,* STB Ex Parte No. 684 (STB served Jan. 14, 2009) (*January 14 Notice*). Pursuant to 49 U.S.C. 10909(b), those proposed rules serve as the current interim rules.

In accordance with 5 U.S.C. 605(b) of the Regulatory Flexibility Act, we certified in the *January 14 Notice* that the proposed action would not have a significant economic impact on a substantial number of small entities. The Board also sought comment on the interim rules and the Board's interpretation of the CRA. During the time period allotted for comments, we received a request that we publish the factual basis for our certification and allow comments on it. *See* Salem Rail Logistics Comments at 3.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, generally requires a description and analysis of new rules that will have a significant economic impact on a substantial number of small entities. In drafting a rule an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601–604. When proposing new rules, the agency must either include an initial regulatory flexibility analysis, 5 U.S.C. 603(a), or certify that the proposed rule will not have a ''significant impact on a substantial number of small entities,'' 5 U.S.C. 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

In the *January 14 Notice,* the Board certified that the interim rules would not have a significant economic impact on a substantial number of small entities. The basis for that determination is as follows. While applicants for land-use-exemption permits could be small entities, as defined in 13 CFR Part 121, nothing in the interim rules gives the

[1] The CRA defines a solid waste transfer facility as including the portion of a facility: (1) That is owned or operated by or on behalf of a rail carrier; (2) where solid waste is treated as a commodity transported for a charge; (3) where the solid waste is collected, stored, separated, processed, treated, managed, disposed of, or transferred; and (4) to the extent that solid-waste activity is conducted outside of the original shipping container. 49 U.S.C. 10908(e)(1)(H)(i).

[2] The Board, however, has the authority to require as a condition of the permit compliance with State laws, regulations, orders, and other requirements that affect the siting of a facility. 49 U.S.C. 10909(f).

Board the authority, on its own volition, to require a party to apply for a Board permit. *See* 49 U.S.C. 10908(b)(2)(B), 10909(a); *January 14 Notice,* slip op. at 8–9. In general, that decision is solely within the control of the entity. The one exception is that a governor of the State in which an existing facility is located could petition the Board under 49 CFR 1155 Subpart B to require that facility to obtain a land-use-exemption permit in order for it to continue to operate. 49 U.S.C. 10908(b)(2)(B). But even in that circumstance, the authority lies with the State governors—not the Board—to initiate the Board's processes. *Id.* In all other scenarios, a party can avoid being subject to the Board's rules regarding land-use-exemption permits by complying with State requirements. Therefore, the interim rules will not circumscribe or mandate the conduct of a substantial number of small entities.

Moreover, there are no alternatives to the interim rules that would adequately achieve the objectives of the Clean Railroads Act. The only scenario in which a small entity might be compelled to avail itself of the new Board processes (when a State governor has properly petitioned the Board under 49 CFR 1155 Subpart B) must be included in the new rules because it is specifically required under the CRA. 49 U.S.C. 10908(b)(2)(B). Finally, we have provided a waiver provision that could mitigate any significant negative impact on small entities—an applicant may request a waiver of any particular part of the application procedures. *See* 49 CFR 1155.24(d)(2).

Pursuant to 5 U.S.C. 605(b), the factual basis for the certification that the regulations proposed in the *January 14 Notice* will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act has hereby been provided. Comments regarding this certification and its factual basis as described in this decision will be due by January 6, 2010, and replies to those comments will be due by January 19, 2010. A copy of the Board's decision will be served upon the Chief Counsel for Advocacy, Offices of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–30358 Filed 12–21–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

Agency Information Collection (Student Verification of Enrollment) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 21, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0465'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0465.''

SUPPLEMENTARY INFORMATION:

Title: Student Verification of Enrollment, VA Form 22–8979.

OMB Control Number: 2900–0465.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8979 contains a student's certification of actual attendance and verification of the student's continued enrollment in courses leading to a standard college degree or in non-college degree programs. VA uses the data collected to determine the student's continued entitlement to benefits. Students are required to submit verification on a monthly basis to allow for a frequent, periodic release of payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 14, 2009, at page 52843.

Affected Public: Individuals or households.

Estimated Annual Burden: 17,024 hours.

Estimated Average Burden Per Respondent: 1 minute.

Frequency of Response: 4 times per year.

Estimated Number of Respondents: 255,354.

Estimated Number of Responses: 1,021,416.

Dated: December 17, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–30363 Filed 12–21–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0518]

Agency Information Collection (Income Verification) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 21, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316.

Please refer to ''OMB Control No. 2900–0518'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0518.''

SUPPLEMENTARY INFORMATION:

Title: Income Verification, VA Form 21–0161a.

OMB Control Number: 2900–0518.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0161a is completed by employers of beneficiaries who have been identified has having inaccurately reported their income to VA. The data collected is used to determine the beneficiary's entitlement to income dependent benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 14, 2009, at page 52840.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 15,000 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30 minutes.

Estimated Annual Responses: 30,000.

Dated: December 17, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–30364 Filed 12–21–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0572]

Agency Information Collection (Application for Benefits for Certain Children With Disabilities Born of Vietnam and Certain Korea Service Veterans) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before December 22, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0572'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0572.''

SUPPLEMENTARY INFORMATION: *Title:* Application for Benefits for Certain Children With Disabilities Born of Vietnam and Certain Korea Service Veterans, VA Form 21–0304.

OMB Control Number: 2900–0572.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0304 is used to gather the necessary information to determine a claimant's eligibility for a monetary allowance and appropriate level of payment. Under title 38 U.S.C. 1815, Children of Women Vietnam Veterans Born with Certain Birth Defects, authorizes payment of monetary benefits to, or on behalf of, certain children of female veterans who served in Republic of Vietnam. To be eligible, the child must be the biological child; conceived after the date the veteran first served in Vietnam during the period February 28, 1961 to May 7, 1975; and have certain birth defects resulting in permanent physical or mental disability.

Under title 38 U.S.C. 1805, Spina Bifida Benefits Eligibility, authorizes payment to a spina bifida child-claimant of parent(s) who performed active military, naval, or air service during the Vietnam era during the period January 9, 1962 to May 7, 1975 or after the date the veteran first served in or near the demilitarized zone in Korea during the period September 1, 1967 to August 31, 1971. The child must be the natural child of a Vietnam veteran, regardless of age or marital status, who was conceived after the date on which the veteran first entered the Republic of Vietnam during the Vietnam era. Spina bifida benefits are payable for all types of spina bifida except spina bifida occulta. The law does not allow payment of both benefits at the same time. If entitlement exists under both laws, benefits will be paid under 38 U.S.C. 1815.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 14, 2009, at pages 52840–52841.

Affected Public: Individuals or households.

Estimated Annual Burden: 72 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 430.

Dated: December 17, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–30365 Filed 12–21–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0577]

Agency Information Collection (Award Attachment for Certain Children With Disabilities Born of Vietnam and Certain Korea Service Veterans) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 21, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human

Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0577'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0577.''

SUPPLEMENTARY INFORMATION:

Title: Award Attachment for Certain Children with Disabilities Born of Vietnam and Certain Korea Service Veterans, VA Form 21–0307.

OMB Control Number: 2900–0577.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0307 is used to provide children of veterans who have spina bifida with information about VA health care and vocational training and the steps they must take to apply for such benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 14, 2009, at page 52841.

Affected Public: Individuals or households.

Estimated Annual Burden: 19 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 75.

Dated: December 17, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–30366 Filed 12–21–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0736]

Agency Information Collection (Authorization To Disclose Personal Beneficiary/Claimant Information to a Third Party) Activity under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 21, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0736'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0736.''

SUPPLEMENTARY INFORMATION:

Title: Authorization to Disclose Personal Beneficiary/Claimant Information to a Third Party, VA Form 21–0845.

OMB Control Number: 2900–0736.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–0845 is completed by severely injured service members or beneficiary who are unable to communicate with VA due to their injuries, to authorize release of certain claims information to an agent or person(s) whom they designate. The form will aid family member(s) in making well-informed decisions regarding a seriously ill or injured claimant or beneficiary and also allow the designee to receive updated information on certain decisions made regarding claims and payments.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 14, 2009, at pages 52842–52843.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,667 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

Dated: December 17, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–30367 Filed 12–21–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,

December 22, 2009

Part II

Department of Labor

Employee Benefits Security Administration

Notice of Proposed Exemptions; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[D–11509; D–11532; D–11555; D–11556; L–11558; et al.]

Notice of Proposed Exemptions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

Application Nos. and Proposed Exemptions: D–11509, Goldman, Sachs & Co. and its Affiliates (Goldman or the Applicant); D–11532, Louis B. Chaykin, M.D., P.A.; D–11555, The Coca-Cola Company (TCCC, or the Applicant); D–11556, Columbia Management Advisors, LLC (Columtia, or the Applicant) and its Current and Future Affiliates (collectively, the Applicants); and L–11558, Boston Carpenters Apprenticeship and Training Fund (the Fund); *et al.*

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Goldman, Sachs & Co. and Its Affiliates (Goldman or the Applicant), Located in New York, New York.

[Application No. D–11509.]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Sales of Auction Rate Securities From Plans to Goldman: Unrelated to a Settlement Agreement

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to Goldman, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.

Section II. Conditions Applicable to Transactions Described in Section I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Goldman to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Goldman for its own employees (a Goldman Plan), the Unrelated Sale is made pursuant to a written offer by Goldman (the Offer) containing all of the material terms of the Unrelated Sale. Either the Offer or other materials available to the Plan provide: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due and unpaid with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction Rate Security (if reliable information is available). Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Goldman, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Goldman Plan) receives written notice regarding the Unrelated Sale, where such notice contains the material terms of the Unrelated Sale;

[1] For purposes of this proposed exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in Section V(d)) of Goldman. Notwithstanding the foregoing: (1) In the case of an IRA (as defined in Section V(e)) which is beneficially owned by an employee, officer, director or partner of Goldman, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Goldman Plan or a pooled fund maintained or advised by Goldman, the decision to accept the Offer may be made by Goldman after Goldman has determined that such purchase is in the best interest of the Goldman Plan or pooled fund; [2]

(h) Except in the case of a Goldman Plan or a pooled fund maintained or advised by Goldman, neither Goldman nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) Goldman and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that:

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Goldman and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Goldman or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(l)(1) Except as provided below in paragraph (l)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission;

(B) Any fiduciary of any Plan, including any IRA owner, that engages in a Sale, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraphs (l)(1)(B)–(C) shall be authorized to examine trade secrets of Goldman, or commercial or financial information which is privileged or confidential; and

(3) Should Goldman refuse to disclose information on the basis that such information is exempt from disclosure, Goldman shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III. Sales of Auction Rate Securities From Plans to Goldman: Related to a Settlement Agreement

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan of an Auction Rate Security to Goldman, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

Section IV. Conditions Applicable to Transactions Described in Section III

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement and acceptance of the offer does not constitute a waiver of any claim of the tendering Plan;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) The securities available for purchase under the Offer;

(2) The background of the Offer;

(3) The methods and timing by which Plans may accept the Offer;

(4) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer, if the Offer had any limitation on such dates;

(5) The timing for acceptance by Goldman of tendered Auction Rate Securities, if there were any limitations on such timing;

(6) The timing of payment for Auction Rate Securities accepted by Goldman for payment, if payment was materially delayed beyond the acceptance of the Offer;

(7) The expiration date of the Offer; and

(8) How to obtain additional information concerning the Offer;

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met.

Section V. Definitions

For purposes of this proposed exemption:

(a) The term ''affiliate'' means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term ''Auction Rate Security'' means a security: (1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and (2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

[2] The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Goldman for the par value of the Auction Rate Security, plus unpaid interest and dividends. The Department further emphasizes that it expects Plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by Goldman of all relevant information.

(d) A person is ''independent'' of Goldman if the person is: (1) Not Goldman or an affiliate; and (2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(e) The term ''Plan'' means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of the Act; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by section 3(42) of the Act; and

(f) The term ''Settlement Agreement'' means a legal settlement involving Goldman and a U.S. State or Federal authority that provides for the purchase of an ARS by Goldman from a Plan.

Effective Date: If granted, this proposed exemption will be effective as of February 1, 2008.

Summary of Facts and Representations

1. The Applicant, Goldman, is a global financial services firm headquartered in New York, New York. As of August 29, 2008, Goldman had approximately $1 trillion in assets. Among other things, Goldman is both a registered investment adviser subject to the Investment Advisers Act of 1940 and a broker-dealer registered with the U.S. Securities and Exchange Commission. In this last regard, Goldman acts as a broker and dealer with respect to the purchase and sale of securities, including Auction Rate Securities.

2. The Applicant describes Auction Rate Securities and the arrangement by which ARS are bought and sold as follows. Auction Rate Securities are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro rata basis.

3. The Applicant states that, under a typical Dutch Auction process, Goldman is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and routinely does so in the auction rate securities market in its sole discretion. Goldman may place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (a) A failed auction (*i.e.,* an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate, resulting in no ARS being sold through the auction process); or (b) an auction from clearing at a rate that Goldman believes does not reflect the market for the particular ARS being auctioned.

4. The Applicant states that for many ARS, Goldman has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. Goldman is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and Goldman. That agreement provides that Goldman will receive from the issuer auction dealer fees based on the principal amount of the securities placed through Goldman.

5. The Applicant states further that Goldman may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through Goldman, for those orders that Goldman successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than Goldman act as dealer, such other broker-dealers may share auction dealer fees with Goldman for orders submitted by Goldman.

6. According to the Applicant, since February 2008, only a minority of auctions have cleared, particularly involving municipalities. As a result, Plans holding ARS may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.[3]

7. The Applicant represents that, in certain instances, Goldman may have previously advised or otherwise caused a Plan to acquire and hold an Auction Rate Security.[4] In connection with Goldman's role in the acquisition and holding of ARS by various Goldman clients, including the Plans, Goldman entered into Settlement Agreements with certain U.S. states and Federal authorities. Pursuant to these Settlement Agreements, among other things, Goldman was required to send a written offer to certain Plans that held ARS in connection with the advice and/or brokerage services provided by Goldman. As described in further detail below, eligible Plans that accepted the Offer were permitted to sell the ARS to Goldman for cash equal to the par value of such securities, plus any accrued but unpaid interest and/or dividends. The Applicant is requesting retroactive and prospective relief for the Settlement Sales. With respect to Unrelated Sales, the Applicant states that to the best of its knowledge, no Unrelated Sale has occurred. However, the Applicant is requesting retroactive relief (and prospective relief) for Unrelated Sales in the event that a sale of Auction Rate Securities by a Plan to Goldman has occurred outside the Settlement process. If granted, the proposed exemption will be effective February 1, 2008.

8. Specifically, the Applicant is requesting exemptive relief for the sale of Auction Rate Securities under two different circumstances: (a) Where Goldman initiates the sale by sending to a Plan a written Offer to acquire the ARS (*i.e.,* an Unrelated Sale), notwithstanding that such Offer is not required under a Settlement Agreement; and (b) where Goldman is required under a Settlement Agreement to send to Plans a written Offer to acquire the ARS (*i.e.,* a Settlement Sale). The Applicant states that the Unrelated Sales and Settlement Sales (hereinafter, either, a Covered Sale) are in the interests of Plans. In this regard, the Applicant states that the Covered Sales would permit Plans to normalize Plan investments. The Applicant represents that each Covered Sale will be for no consideration other than cash payment against prompt delivery of the ARS, and

[3] The Department notes that Prohibited Transaction Exemption 80–26 (45 FR 28545 (April 29, 1980), as amended at 71 FR 17917 (April 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a plan if, among other things, the proceeds of the loan or extension of credit are used only: (1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the plan.

[4] The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

such cash will equal the par value of the ARS, plus any accrued but unpaid interest or dividends. The Applicant represents further that Plans will not pay any commissions or transaction costs with respect to any Covered Sale.

9. The Applicant represents that the proposed exemption is protective of the Plans. The Applicant states that: each Covered Sale will be made pursuant to a written Offer; and the decision to accept the Offer or retain the ARS will be made by a Plan fiduciary or Plan participant or IRA owner who is independent of Goldman. Additionally, each Offer will be delivered in a manner designed to alert a Plan fiduciary that Goldman intends to purchase ARS from the Plan. Offers made in connection with an Unrelated Sale will include the material terms of the Unrelated Sale and either the Offer or other materials available to the Plan describe: The identity and par value of the Auction Rate Security; the interest or dividend amounts that are due with respect to the Auction Rate Security; and the most recent rate information for the Auction Rate Security (if reliable information is available). Offers made in connection with a Settlement Agreement will specifically include, among other things: The background of the Offer; the method and timing by which a Plan may accept the Offer; the expiration date of the Offer; and how to obtain additional information concerning the Offer. The Applicant states that neither Goldman nor any affiliate will exercise investment discretion or render investment advice with respect to a Plan's decision to accept the Offer or retain the ARS.[5] In the case of a Goldman Plan or a pooled fund maintained or advised by Goldman, the decision to engage in a Covered Sale may be made by Goldman after Goldman has determined that such purchase is in the best interest of the Goldman Plan or pooled fund. The Applicant represents further that Plans will not waive any rights or claims in connection with any Covered Sale.

10. The Applicant represents that the proposed exemption, if granted, would be administratively feasible. In this regard, the Applicant notes that each Covered Sale will occur at the par value of the affected ARS (plus accrued but unpaid interest and dividends, to the extent applicable), and such value is readily ascertainable. The Applicant represents further that Goldman will maintain the records necessary to enable the Department and Plan fiduciaries, among others, to determine whether the conditions of this exemption, if granted, have been met.

11. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act because, among other things:

(a) Each Covered Sale shall be made pursuant to a written Offer;

(b) Each Covered Sale shall be for no consideration other than cash payment against prompt delivery of the ARS;

(c) The amount of each Covered Sale shall equal the par value of the ARS, plus any accrued but unpaid interest or dividends;

(d) Plans will not waive any rights or claims in connection with any Covered Sale;

(e)(1) the decision to accept an Offer or retain the ARS shall be made by a Plan fiduciary or Plan participant or IRA owner who is independent of Goldman; and (2) neither Goldman nor any affiliate shall exercise investment discretion or render investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the ARS;

(f) Plans shall not pay any commissions or transaction costs with respect to any Covered Sale;

(g) A Covered Sale shall not be part of an arrangement, agreement or understanding designed to benefit a party in interest to the affected Plan;

(h) With respect to any Settlement Sale, the terms and delivery of the Offer, and the terms of Settlement Sale, shall be consistent with the requirements set forth in the Settlement Agreement;

(i) Goldman shall make available in connection with an Unrelated Sale the material terms of the Unrelated Sale, including: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due but unpaid with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction Rate Security (if reliable information is available);

(j) Each Offer made in connection with a Settlement Agreement shall describe the material terms of the Settlement Sale, including the following (and shall not constitute a waiver of any claim of the tendering Plan): (1) The background of the Offer; (2) the methods and timing by which the Plan may accept the Offer; (3) the purchase dates, or the manner of determining the purchase dates, for ARS pursuant to the Offer; (4) the expiration date of the Offer; and (5) how to obtain additional information concerning the Offer.

[5] The Applicant states that while there may be communication between a Plan and Goldman subsequent to an Offer, such communication will not involve advice regarding whether the Plan should accept the Offer.

Notice to Interested Persons

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified, and, therefore, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

Louis B. Chaykin, M.D., P.A., Cross-Tested Profit Sharing Plan (the Plan), Located in Lakewood Ranch, Florida.

[*Exemption Application Number:* D–11532.]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), through (E) of the Code, shall not apply to the proposed sale (the Sale) at fair market value by the Plan of certain coins (the Collectibles), to Louis B. Chaykin, M.D. (the Applicant), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The Sale is a one-time transaction for cash;

(b) The Plan pays no commissions, fees or other expenses in connection with the Sale;

(c) The terms and conditions of the Sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party;

(d) The fair market value of the Collectibles was determined by a qualified, independent appraiser;

(e) The Plan receives no less than the fair market value of the Collectibles at the time of the Sale; and

(f) All of the participants of the Plan, with the exception of the Applicant, have been paid their benefits in full.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan sponsored by Louis B. Chaykin, M.D., P.A., a private professional corporation

engaged in the practice of medicine in Lakewood Ranch, Florida. The Applicant represents that, as of January 1, 2007, there were seven (7) participants in the Plan, including five employees, the Applicant, and the Applicant's spouse. The Applicant is also the discretionary trustee of the Plan. The Plan, which was formally terminated on March 1, 2006, received a favorable determination letter from the Internal Revenue Service on May 11, 2007. The determination letter stated that the termination of the Plan did not adversely affect its qualification for Federal tax purposes.

The Applicant represents that, pursuant to the termination of the Plan, all participants (with the exception of the Applicant) have been paid their benefits in full. In this regard, the Applicant represents that, of the five employees who were participants in the Plan, two rolled over cash into their respective individual retirement accounts (IRAs), while the other three took lump sum distributions of cash. The Applicant's spouse also rolled over cash to her IRA. The Applicant himself has received prior distributions of cash to satisfy his minimum distribution requirements because he is over age 70 and a half. The Applicant has also rolled over some publicly-traded securities in kind to his IRA. Apart from the Collectibles, the Plan holds residual assets consisting of a limited partnership interest and other coins. The Applicant represents that the total value of the non-Collectibles held by the Plan as of December 31, 2008 is $63,720.17.

2. The Applicant represents that the IRA custodial trustee which the Applicant has designated to receive his rollover contributions from the Plan will not accept the Collectibles as IRA assets. Accordingly, the Applicant requests an exemption to permit the Sale of the Collectibles and the distribution of the resulting cash proceeds to himself, which he would then roll over into his IRA account. The Plan had originally purchased the Collectibles from unrelated parties at various times between 2005 and 2008. The Applicant also represents that the Plan purchased the Collectibles as an investment and held the Collectibles for appreciation. The Applicant states that the Collectibles have never used by himself, or by any other party in interest with respect to the Plan, for personal purposes. The Applicant represents that the proposed Sale will maximize the preservation of the Plan assets by avoiding the payment of sales commissions, advertising costs and other selling expenses which would generally be incurred in open market sales.[6] In addition, the Applicant states that the Plan will receive an amount in cash reflecting the fair market value of the Collectibles, as established by a qualified, independent appraiser.

3. The Collectibles were appraised in June of 2009 by Mr. John Albanese of Blanchard and Company, an independent qualified appraiser located in New Orleans, Louisiana. Mr. Albanese represents that he has over 28 years experience in the appraisal of coins. Mr. Albanese further states that he has not previously sold or been promised future sales of coins to the Applicant. Additionally, Mr. Albanese represents that less than 1% of the gross receipts of his business for the past year are derived from the Applicant. Mr. Albanese states that he examined the Collectibles submitted to him by the Applicant and, after evaluating the condition of the Collectibles, he reviewed the Coin Deal Newsletter as well as major auction results to arrive at their current value. Based on the foregoing methodology, Mr. Albanese determined that, as of June 3, 2009, the Collectibles had a fair market value of $284,895.

4. In summary, the applicant represents that the transaction will satisfy the statutory requirements for an exemption under section 408(a) of the Act because: (a) The Sale is a one-time transaction for cash; (b) The Plan pays no commissions, fees or other expenses in connection with the Sale; (c) The terms and conditions of the Sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party; (d) The fair market value of the Collectibles was determined by Mr. Albanese, a qualified, independent appraiser; and (e) The Plan receives no less than the fair market value of the Collectibles at the time of the Sale.

Notice to Interested Persons: The Applicant represents that the Plan has been terminated and that all participants of the Plan (with the exception of the Applicant) have been paid their benefits in full. Accordingly, the only practical means of notifying terminated plan participants is by publication of the proposed exemption in the **Federal Register**. Therefore, the Department must receive all written comments and requests for a hearing no later than forty-five (45) days after publication of the Notice in the **Federal Register**.

[6] Section 408(m) of the Code stipulates that the acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of the Code of any collectible shall be treated (for purposes of sections 402 and 408 of the Code) as a distribution from such account in an amount equal to the cost to such account of such collectible. The Applicant represents, however, that this provision of the Code is not applicable to the proposed transaction because the Plan is trusteed by a discretionary trustee (*e.g.,* the Applicant), and does not allow for participant direction of Plan investments. The Department is providing no determination with respect to the Applicant's representation detailed above.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department, telephone (202) 693–8550. (This is not a toll-free number).

The Coca-Cola Company (TCCC, or the Applicant), Located in Atlanta, Georgia. [Application No. D–11555.]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Red Re Inc. (Red Re), in connection with a medical stop-loss insurance policy sold by the Prudential Insurance Company of America (Prudential), or any successor insurance company to Prudential which is unrelated to TCCC, which would pay for certain benefits under the TCCC Retiree Health Plan (the Plan), provided the following conditions are met:

(a) Red Re—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with TCCC that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state that has not been revoked or suspended;

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, by the Insurance Commissioner of the State within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an

independent firm of actuaries and reported to the appropriate regulatory authority; and

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving Red Re, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, should the relationship with Prudential be terminated, the formula used to calculate premiums by any successor insurer will be similar to formulae used by other insurers providing comparable stop-loss coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) To the extent Red Re earns any profit due to favorable claims experience, such profit will be promptly returned to the Plan.

(g) The Plan only contracts with insurers with a rating of A or better from A.M. Best Company. The reinsurance arrangement between the insurer and Red Re will be indemnity insurance only, *i.e.,* the insurer will not be relieved of liability to the Plan should Red Re be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(h) The Plan retains an independent fiduciary (the Independent Fiduciary), at TCCC's expense, to analyze the transactions and render an opinion that the requirements of sections (a) thorough (g) have been complied with. For purposes of this exemption, the Independent Fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with TCCC or Red Re (this relationship hereinafter referred to as an ''Affiliate'');

(2) Is not an officer, director, employee of, or partner in TCCC or Red Re (or any Affiliate of either);

(3) Is not a corporation or partnership in which TCCC or Red Re has an ownership interest or is a partner;

(4) Does not have an ownership interest in TCCC or Red Re, or any of either's Affiliates;

(5) Is not a fiduciary with respect to the Plan prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the Independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an ''Independent Fiduciary,'' no organization or individual may serve as an Independent Fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from TCCC, Red Re, or their Affiliates (including amounts received for services as Independent Fiduciary under any prohibited transaction exemption granted by the Department) for that fiscal year exceeds 3 percent of that organization or individual's annual gross income from all sources for the prior fiscal year.

In addition, no organization or individual who is an Independent Fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from TCCC, Red Re, or their Affiliates during the period that such organization or individual serves as Independent Fiduciary, and continuing for a period of six months after such organization or individual ceases to be an Independent Fiduciary, or negotiates any such transaction during the period that such organization or individual serves as Independent Fiduciary.

Summary of Facts and Representations

1. TCCC, which is headquartered in Atlanta, Georgia, is the world's largest beverage company and markets four of the world's top five non-alcoholic sparkling brands. In 2008, TCCC employed 92,400 associates worldwide with approximately 13,000 associates in the United States. TCCC reported revenue of approximately $31.2 billion in 2008.

2. Red Re is a captive insurance company owned by Coca-Cola Oasis, Inc., a consolidated entity of TCCC. Red Re was established on March 14, 2006 in Charleston, South Carolina. Red Re was issued a Certificate of Authority permitting it to transact the business of a captive insurance company by the State of South Carolina on April 25, 2006. Red Re is a sound, viable insurance company that has been in business since 2006. Management and administrative services for Red Re are performed by Marsh Management Services, Inc. of Charleston, South Carolina. Red Re currently provides deductible reimbursement policies to TCCC for selected automobile liability, product liability, general liability, workers' compensation and terrorism risks. In addition, TCCC's international employee benefits for selected countries are reinsured with Red Re. As of December 31, 2008, Red Re had total capital and surplus of $18.1 million and gross written premium of $46 million.

3. TCCC provides medical benefits to eligible retired employees in the United States under the TCCC Retiree Health Plan (the Plan). The Plan provides coverage or reimbursement for major medical expenses, treatment of illness, sickness or injury, prescriptions and, in most cases, preventative care and vision exams to eligible retired employees (and their beneficiaries) of TCCC or its affiliates. Depending on the geographic area in which a Plan participant lives, there are a number of different coverage options, including an HMO option in some areas. As of January 1, 2009, the Plan provided retiree health benefits to approximately 5,000 retirees and dependents. TCCC has established a Voluntary Employees' Beneficiary Association (VEBA) as a funding vehicle for the Plan. However, TCCC retains the option of making benefit payments out of its general assets and may then seek reimbursement from the VEBA.[7] Participants make contributions to the Plan which vary from year-to-year, but which generally are set at levels intended to cover 15–20% of the Plan's costs. However, the Applicant represents that no participant contributions will be used to pay any premium for the stop-loss policy which is the subject of this proposed exemption.

4. TCCC has proposed that the VEBA purchase a non-cancellable accident and health medical stop-loss policy from the Prudential Insurance Company of America (Prudential) to insure benefits under the Plan as follows. This policy would pay the sum of all individual participant claims that are greater than a certain amount (the Attachment Point) in any year, but no more than an upper limit (the Upper Corridor Limit) for certain retirees (other than those who have either selected an HMO coverage option or are younger than age 55 on January 1, 2008) and their dependents as of the purchase date of the policy (the Covered Group). The Covered Group consists of approximately 4,000 individuals (each of whom will be

[7] *See* representation 16.

specifically identified in an attachment to the stop-loss policy). At the time the exemption application for the subject transaction was filed, it was anticipated that for those members of the Covered Group who are under age 65, the Attachment Point would be $100 and the Upper Corridor Limit would be $5,800. For those members of the Covered Group aged 65 or higher, the Attachment Point would be $100 and the Upper Corridor Limit would be $3,500. (The range of covered benefits between the Attachment Point and the Upper Corridor Limit is referred to as ''the Corridor.'') These coverage limits would apply per participant, per year. Claims below the Attachment Point would continue to be paid out of TCCC's general assets. It was also anticipated that TCCC through the VEBA, would pay a premium to Prudential of approximately $185.3 million to cover or insure benefits within the Corridor for the lifetime of the members of the Covered Group.[8]

5. The Applicant anticipates that Prudential will enter into a reinsurance agreement with Red Re for 100 percent of the risks under the stop-loss policy. Specifically, Prudential would provide the medical stop-loss insurance policy for the Plan's benefit risks in connection with the Covered Group, but Red Re would provide reinsurance coverage for 100 percent of those risks pursuant to Red Re's agreement with Prudential. Prudential's reinsurance agreement will be ''indemnity only''—that is, Prudential will not be relieved of its liability for benefits under the Plan if Red Re is unable or unwilling to satisfy the liabilities arising from the reinsurance agreements. The overall financial strength of Prudential is rated A+ by A.M. Best.

6. The Applicant represents that in connection with the proposed transaction, the Plan will pay no more than adequate consideration for the stop-loss insurance contracts with Prudential or any successor insurer. The formula that Prudential and any successor insurer will use to calculate its premiums will be similar to the formulae used by other insurers providing similar insurance coverages under similar insurance programs. Moreover, the premium charge resulting from application of the formula will be reasonable and comparable to the premium charged by the insurer and its competitors with the same rating or better, providing the same coverage under comparable programs of insurance. Finally, the Plan will not pay any commissions in connection with either the direct sale of insurance or the reinsurance transactions described herein.

7. The Applicant represents that the subject transactions have a number of advantages for the Plan. Specifically, TCCC will substantially improve benefits for members of the Covered Group by converting the currently revocable commitment to provide benefits into a fully paid-for insured arrangement that will provide them with benefits under the Plan for the rest of their lives. Currently, TCCC has reserved the right to reduce benefits or terminate the Plan at any time. Thus, for any claims not yet accrued, Plan participants do not have a guarantee or expectation that benefits will be paid. However, the VEBA's purchase of the non-cancellable medical stop-loss policy from Prudential will fully fund a contract insuring that members of the Covered Group will receive all benefits within the Corridor for the rest of their lives. If TCCC were to exercise its right to reduce benefits or terminate the Plan as to other participants who are not members of the Covered Group sometime in the future, members of the Covered Group would continue to receive all benefit payments within the Corridor. TCCC represents that this benefit enhancement is not required of TCCC as part of a legal proceeding, court order or judgment, or by State law.

8. In connection with this exemption request, Red Re engaged the services of U.S. Trust Company, N.A. (U.S. Trust), as the Independent Fiduciary for the Plan.[9] U.S. Trust is a national banking association formed under the laws of the United States and authorized to exercise all fiduciary powers that may be exercised by State banks and trust companies under the laws of the State of Connecticut. In May, 2009, BOA's Special Fiduciary Services business was acquired by Evercore Trust Company, N.A. (Evercore). All of the BOA personnel who were part of the Special Fiduciary Services business joined Evercore. TCCC gave its written consent to the transfer of its account from BOA to Evercore. Thus, for purposes of the exemption proposed herein, the Independent Fiduciary is Evercore.

9. Evercore has represented that it meets the following requirements to be an independent fiduciary:

(a) Evercore is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with TCCC or Red Re;

(b) Evercore is not an officer, director, employee of, or partner in TCCC or Red Re (or any Affiliate of either);

(c) Evercore is not a corporation or partnership in which TCCC or Red Re has an ownership interest or is a partner;

(d) Evercore does not own any shares of TCCC or Red Re, or any of their Affiliates, for its own account;

(e) Evercore was not a fiduciary to the Plan prior to its appointment in connection with the transactions described herein;

(f) Evercore has acknowledged, in writing, its acceptance of fiduciary obligations, and has agreed not to participate in any decision with respect to any transaction in which it would have an interest that might affect its judgment as a fiduciary;

(g) The gross income received by Evercore from TCCC or Red Re and their Affiliates (including amounts received for services as the Independent Fiduciary for the Plans under any prohibited transaction exemption granted by the Department), does not exceed 3 percent of Evercore's annual gross income from all sources for its prior fiscal year; and

(h) Evercore, and any partnership or corporation of which Evercore is an officer, director, or ten (10) percent or more partner or shareholder, will not acquire any property from, sell any property to, or borrow funds from TCCC or Red Re while it is the Independent Fiduciary for the Plan and for a period of six months thereafter.

10. Evercore represents that: (i) Red Re is licensed to do business in the State of South Carolina; and (ii) Red Re obtained a Certificate of Authority from the State of South Carolina on April 25, 2006 which has neither been revoked nor suspended. Red Re has undergone an audit examination by Ernst & Young LLP, certified CPAs, for the year ended

[8] The Upper Corridor Limits were based on an expected premium of $185.3 million for the stop-loss policy. However, since the 2006 TCCC contribution of $216 million to the VEBA, approximately $50 million in Plan benefits have been paid from the VEBA. Further, the VEBA has suffered approximately $23 million in investment losses. Thus, it is anticipated that the VEBA will pay a premium lower than $185.3 million. As a result, the Upper Corridor Limits for members of the Covered Group will be reduced. Because there may be additional changes to the value of the VEBA's assets (including potential increases due to investment earnings), TCCC is unable to predict with certainty the exact dollar amount that the Upper Corridor Limits will be until the time the policy is issued. If the exemption proposed herein is granted, the premium will be paid at that time, the Upper Corridor Limits will be fixed, and the Corridor will be guaranteed for the lifetime of the members of the Covered Group irrespective of the performance of the investment markets or claims experience. The Department expects that TCCC will provide an estimate as to the expected Upper Corridor Limits by the end of the comment period.

[9] The Independent Fiduciary was, in fact, Bank of America, N.A. (BOA), which had acquired U.S. Trust effective July 1, 2007. BOA continued to do business under the U.S. Trust name.

December 31, 2008. Evercore and its legal advisor have reviewed a copy of the audit report, and are satisfied there are no issues outstanding. Evercore has determined that Red Re is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries, and reported to the appropriate regulatory authority.

11. The Independent Fiduciary has represented that the Plan will pay no more than adequate consideration for the insurance contract. In addition, the Plan will pay no commissions with respect to the direct sale of the insurance contract or the reinsurance thereof.

12. The Independent Fiduciary has reviewed the proposed transactions and determined that they will provide an important financial benefit to the Plan's participants and beneficiaries. TCCC has reserved the right to modify or eliminate its retiree health benefit. By virtue of the proposed transactions, TCCC will effectively vest the Covered Group with medical benefits in an amount equal to the Corridor.[10] The terms of the arrangement provide that Prudential cannot cancel or terminate the coverage, and this will help assure benefit payments, within the coverage parameters, to participants and beneficiaries. Thus, the Independent Fiduciary has concluded that this protection of the retirees' health benefits provides an immediately and objectively determined benefit to the Plan's participants and beneficiaries as of the initial year of the contract.

13. In designing and implementing the proposed transactions, TCCC worked with Towers Perrin (TP), one of the largest benefits, insurance and reinsurance consulting firms in the world, with extensive experience in captive reinsurance transactions. TP has advised TCCC that non-cancellable medical stop-loss insurance is not a new product, but that it is offered in the market by only one insurer, John Hancock, as a method to finance post-retirement medical liabilities. Prudential is the only insurer that has developed an insurance product for such liabilities that couples a stop-loss policy with captive reinsurance. TP introduced the same concept to three other ''A''-rated insurers, but none were interested in offering the coverage. TP compared the standard cost parameters of the John Hancock stop-loss policy to the Prudential/Captive product and determined that the latter has lower costs for the Plan, as measured by discounted cash flows over 50 years. TP also evaluated the costs and risks of other financing options including: paying benefits from the general assets of TCCC, trust-owned life insurance, and VEBA trusts with no insurance investments, and found that the Prudential/Captive product offered the lowest cost solution for the Plan.

14. TP represents that this type of guaranteed, long-term health insurance is not available in the market for individuals; it is only because Red Re is willing to assume these risks for TCCC retirees that the retirees can hope to obtain this valuable coverage. Thus, it is difficult to assign an absolute dollar amount to the value of the benefit enhancement. However, TP compared the value of the lifetime guarantee of coverage within the Corridor to the cost of an annuity with annual payments equal to the size of the Corridor. The Applicant states that from the perspective of the participant, having an annuity that provides cash that is equal to the amount of claims that he or she can expect to have paid by the proposed stop-loss insurance is the same as having an insurer who is obligated to pay those same claims pursuant to a contract for health insurance. TP represents that the average expected claims would be approximately $10,000 per year for retirees under age 65, and approximately $5,000 per year for retirees over age 65. Since the proposed coverage Corridors are $5,700 for retirees younger than 65 years of age and $3,400 for retirees 65 years of age and older,[11] TP assumes that the participants, on average, will use the full Corridor to cover their claims. TP then estimated the value of an annuity that would provide payments equal to the amounts the average participant will receive in health insurance coverage under the proposed transactions. TP used the present value of the expected payment each year until death is expected. TP estimates that for an individual who retires at age 55 with a life expectancy of age 85, the present value of those payments (discounted at 4%) would be approximately $77,000. TP estimates that for an individual who retires at age 65 with a life expectancy of age 85, the present value of those payments (discounted at 4%) would be approximately $46,000.

15. The Applicant represents that the policy premium charged to the Plan by Prudential does not include a profit or risk charge for Red Re. There is an assumption in Red Re's business model which anticipates an expected return on investments greater than the rate of 4% used to price the stop-loss policy. Notably, that investment ''profit'' may turn out to be an investment ''loss'' to Red Re if investment returns are less than 4%. Moreover, Red Re is taking the risk that there will not be mortality improvements that would cause benefits to be paid for longer periods than expected. Both scenarios present substantial risks, which are not accounted for in the pricing by risk charges. Nonetheless, TCCC and Red Re both represent that to the extent Red Re earns any profit due to favorable claims experience, such profit will be returned to the Plan.

16. The Applicant represents that the premiums paid to Red Re by Prudential pursuant to the proposed reinsurance arrangement, plus any investment earnings thereon, will be held in a New York Regulation 114 Trust (114 Trust). The 114 Trust is a three-way investment trust agreement involving the ceding insurance company (*i.e.,* Prudential), a financial institution (the trustee), and the reinsurer (*i.e.,* Red Re).[12] The 114 Trust is a method for securing the obligations of an insurance company that cedes reserves to reinsurers not admitted in the State of the ceding company. It is named after Regulation 114 of the Official Compilation of Codes, Rules and Regulations of the New York State Insurance Department (11 NYCRR 4). Under Regulation 114, the reinsurer (Red Re) establishes a trust of which the ceding company (Prudential) is the beneficiary; the beneficiary is entitled to demand assets from the trust at any time to satisfy the reinsurer's obligations under the reinsurance agreement. Regulation 114 prohibits the assets in a 114 Trust from being loaned to any affiliate of the reinsurer. Thus, the Applicant represents that no loans will be made by Red Re to TCCC using assets held by Red Re as a result of the proposed transaction.

17. TCCC has represented that it will retain the option of making benefit payments out of its general assets and may then seek reimbursement from the VEBA. TCCC represents that many claims paid under the Plan will be paid

[10] The Applicant states that since the right of members of the Covered Group to have claims within the Corridor paid for the rest of their lives will be guaranteed under the proposed transaction, it may be said that members of the Covered Group have a vested right to receive benefits in that amount. However, the guarantee is to dollar amounts, not particular types of medical procedures and treatments that may be covered under the Plan.

[11] The exact coverage limits will be set closer to the time the transaction is executed.

[12] In this proposed exemption, the Department is expressing no opinion on whether the assets of the 114 Trust constitute Plan assets.

directly by TCCC without expectation of any reimbursement from the VEBA. For example, where a claim is paid that falls outside the Corridor, TCCC will likely pay the claim out of its general assets without seeking any reimbursement from the VEBA. However, because the VEBA, and not TCCC, will be the policyholder of the Stop-Loss Policy, claims within the Corridor must be submitted by the VEBA to Prudential, which will in turn submit them to Red Re. In order to avoid the need for a separate administrative mechanism (under which some claims would be paid directly by TCCC while others are paid directly by the VEBA), TCCC will pay such claims and then submit them to the VEBA for reimbursement (with the VEBA submitting them to Prudential in turn).

The Applicant represents that to the extent that this arrangement might be considered an extension of credit between a party in interest and a Plan, TCCC will fully comply with the provisions of Prohibited Transaction Exemption (PTE) 80–26, as amended (71 FR 17917, April 7, 2006). In particular, no interest or fee will be charged to the Plan when TCCC pays a claim and later seeks reimbursement. Further, the proceeds of such extension of credit will be used only to pay operating expenses of the Plan, including benefits paid in accordance with the terms of the Plan. Such loan or extension of credit would be unsecured, will not be made by an employee benefit plan, and will not be the type of loan described in section 408(b)(3) of the Act. It is not anticipated that more than 60 days will pass between the date TCCC pays a claim and the date the VEBA reimburses TCCC for such claim; to ensure compliance with the provisions of PTE 80–26 in the event unforeseen delay results in more than 60 days passing before reimbursement, a written loan agreement will be entered into setting forth the material terms of such extension of credit between TCCC and the Plan.[13]

18. TCCC represents that an audit procedure will be in place to ensure that reimbursements received by TCCC do not exceed the amount due to TCCC. TCCC represents that the Plan will undergo an annual audit by an independent qualified public accountant that will contain the following: (a) A description of the process, methodology and criteria used to select the Plan's transactions which comprise the sample collected for review and an explanation of how the sample was objectively determined to be representative of the reimbursements made during the Plan year; (b) an explanation of why the number of transactions comprising the sample selected for review was appropriate, taking into account, among other things, each instance in which there was a specific finding that there was a reimbursement that exceeded the amount due to TCCC; and (c) specific findings made (without condition, qualification, caveat or limitation) by the independent qualified public accountant for each instance in which a reimbursement exceeded the amount due to TCCC. The audit will be completed within the time frame required for the timely filing of the Plan's Form 5500. A copy of the audit will be provided to the Independent Fiduciary within 30 days after the audit is received by TCCC.

19. In summary, the Applicant represents that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act because: (a) The Plan's participants and beneficiaries are afforded insurance protection by Prudential, a carrier rated A or better by A.M. Best; (b) Red Re, which will enter into the reinsurance agreements with Prudential, is a sound and viable insurance company; (c) the protections provided to the Plan and its participants and beneficiaries under the proposed reinsurance transactions are based, in part, on those required for direct insurance by a ''captive'' insurer, under the conditions of Prohibited Transaction Exemption 79–41 (PTE 79–41), 44 FR 46365 (notwithstanding certain other requirements related to, among other things, the amount of gross premiums or annuity considerations received from customers who are not related to, or affiliated with, the insurer);[14] (d) the Plan's Independent Fiduciary, has reviewed the proposed reinsurance transaction and has determined that the transaction is appropriate for, and in the best interests of, the Plan and that there will be an immediate benefit to the Plan's participants as a result thereof by reason of the guaranteed payment of benefits in the Corridor by Prudential; and (e) the Independent Fiduciary will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Columbia Management Advisors, LLC (Columbia, or the Applicant) and its Current and Future Affiliates (collectively, the Applicants), Located in Boston, Massachusetts.

[Application No. D–11556.]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

If the proposed exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the purchase of certain securities (the Securities), as defined, below in Section III(i), by an Asset Manager, as defined, below, in Section III(d), from any person other than such Asset Manager, during the existence of an underwriting or selling syndicate with respect to such Securities, where a broker-dealer affiliated with Columbia (the Affiliated Broker-Dealer), as defined, below, in Section III(b), is a manager or member of such syndicate and the Asset

[13] The Department expresses no opinion as to whether such proposed arrangement would be exempt under PTE 80–26.

[14] The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act apply to the fiduciary's decision to engage in the reinsurance arrangement.

Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular insurance or investment product, strategy or arrangement would be considered prudent or in the interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular product or arrangement must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular product or arrangement involved, including the plan's potential exposure to losses and the role a particular insurance or investment product plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (*see* 29 CFR 250.404a–1).

Manager purchases such Securities, as a fiduciary:

(a) On behalf of an employee benefit plan or employee benefit plans (Client Plan(s)), as defined, below, in Section III(f); or

(b) On behalf of Client Plans, and/or In-House Plans, as defined, below, in Section III(m), which are invested in a pooled fund or in pooled funds (Pooled Fund(s)), as defined, below, in Section III(g); provided that the conditions as set forth, below, in Section II, are satisfied (An affiliated underwriter transaction (AUT)).[15]

Section II—Conditions

The proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a)(1) The Securities to be purchased are either—

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a *et seq.*). If the Securities to be purchased are part of an issue that is exempt from such registration requirement, such Securities:

(A) Are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States,

(B) Are issued by a bank,

(C) Are exempt from such registration requirement pursuant to a Federal statute other than the 1933 Act, or

(D) Are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such Securities and that has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding twelve (12) months; or

(ii) Part of an issue that is an Eligible Rule 144A Offering, as defined in SEC Rule 10f–3 (17 CFR 270.10f–3(a)(4)).[16] Where the Eligible Rule 144A Offering of the Securities is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) The Securities to be purchased are purchased prior to the end of the first day on which any sales are made, pursuant to that offering, at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities, except that—

(i) If such Securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such Securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of the Securities in that offering or in any concurrent offering of the Securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, pursuant to that offering, provided that the interest rates, as of the date of such purchase, on comparable debt securities offered to the public subsequent to the end of the first day on which any sales are made and prior to the purchase date are less than the interest rate of the debt Securities being purchased; and

(3) The Securities to be purchased are offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the Securities being offered, except if—

(i) Such Securities are purchased by others pursuant to a rights offering; or

(ii) Such Securities are offered pursuant to an over-allotment option.

(b) The issuer of the Securities to be purchased pursuant to this proposed exemption must have been in continuous operation for not less than three years, including the operation of any predecessors, unless the Securities to be purchased are—

(1) Non-convertible debt securities rated in one of the four highest rating categories by Standard & Poor's Rating Services, Moody's Investors Service, Inc., FitchRatings, Inc., Dominion Bond Rating Service Limited, Dominion Bond Rating Service, Inc., or any successors thereto (collectively, the Rating Organizations), provided that none of the Rating Organizations rates such Securities in a category lower than the fourth highest rating category; or

(2) Debt securities issued or fully guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Debt securities which are fully guaranteed by a person (the Guarantor) that has been in continuous operation for not less than three years, including the operation of any predecessors, provided that such Guarantor has issued other securities registered under the 1933 Act; or if such Guarantor has issued other securities which are exempt from such registration requirement, such Guarantor has been in continuous operation for not less than three years, including the operation of any predecessors, and such Guarantor is:

(a) A bank; or

(b) An issuer of securities which are exempt from such registration requirement, pursuant to a Federal statute other than the 1933 Act; or

(c) An issuer of securities that are the subject of a distribution and are of a class which is required to be registered under section 12 of the 1934 Act (15 U.S.C. 781), and are issued by an issuer that has been subject to the reporting requirements of section 13 of the 1934 Act (15 U.S.C. 78m) for a period of at least ninety (90) days immediately preceding the sale of such securities and that has filed all reports required to be filed thereunder with the SEC during the preceding twelve (12) months.

(c) The aggregate amount of Securities of an issue purchased, pursuant to this proposed exemption, by the Asset Manager with: (i) The assets of all Client Plans; and (ii) The assets, calculated on a *pro-rata* basis, of all Client Plans and In-House Plans investing in Pooled Funds managed by the Asset Manager; and (iii) The assets of plans to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c) does not exceed:

(1) Ten percent (10%) of the total amount of the Securities being offered in an issue, if such Securities are equity securities;

(2) Thirty-five percent (35%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in one of the four highest rating categories by at least one of the Rating Organizations, provided that none of the Rating Organizations rates such Securities in a category lower

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[15] For purposes of this proposed exemption an In-House Plan may engage in AUTs only through investment in a Pooled Fund.

[16] SEC Rule 10f–3(a)(4), 17 CFR 270.10f–3(a)(4), states that the term ''Eligible Rule 144A Offering'' means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(d)], rule 144A thereunder [§ 230.144A of this chapter], or rules 501–508 thereunder [§§ 230.501–230–508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to § 230.144A of this chapter.

than the fourth highest rating category; or

(3) Twenty-five percent (25%) of the total amount of the Securities being offered in an issue, if such Securities are debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; provided that none of the Rating Organizations rates such Securities in a category lower than the sixth highest rating category; and

(4) The assets of any single Client Plan (and the assets of any Client Plans and any In-House Plans investing in Pooled Funds) may not be used to purchase any Securities being offered, if such Securities are debt securities rated lower than the sixth highest rating category by any of the Rating Organizations;

(5) Notwithstanding the percentage of Securities of an issue permitted to be acquired, as set forth in Section II(c)(1), (2), and (3), above, of this proposed exemption, the amount of Securities in any issue (whether equity or debt securities) purchased, pursuant to this proposed exemption, by the Asset Manager on behalf of any single Client Plan, either individually or through investment, calculated on a *pro-rata* basis, in a Pooled Fund may not exceed three percent (3%) of the total amount of such Securities being offered in such issue, and;

(6) If purchased in an Eligible Rule 144A Offering, the total amount of the Securities being offered for purposes of determining the percentages, described, above, in Section II(c)(1)–(3) and (5), is the total of:

(i) The principal amount of the offering of such class of Securities sold by underwriters or members of the selling syndicate to ''qualified institutional buyers'' (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class of Securities in any concurrent public offering.

(d) The aggregate amount to be paid by any single Client Plan in purchasing any Securities which are the subject of this proposed exemption, including any amounts paid by any Client Plan or In-House Plan in purchasing such Securities through a Pooled Fund, calculated on a *pro-rata* basis, does not exceed three percent (3%) of the fair market value of the net assets of such Client Plan or In-House Plan, as of the last day of the most recent fiscal quarter of such Client Plan or In-House Plan prior to such transaction.

(e) The covered transactions are not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or its affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession, or other compensation or consideration that is based upon the amount of Securities purchased by any single Client Plan, or that is based on the amount of Securities purchased by Client Plans or In-House Plans through Pooled Funds, pursuant to this proposed exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designations generated by purchases of the Securities by the Asset Manager on behalf of any single Client Plan or any Client Plan or In-House Plan in Pooled Funds.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting, or other compensation or consideration is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those Securities sold pursuant to this proposed exemption. Except as described above, nothing in this Section II(g)(1) shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other compensation or consideration that is not based upon the amount of Securities purchased by the Asset Manager on behalf of any single Client Plan, or on behalf of any Client Plan or In-House Plan participating in Pooled Funds, pursuant to this proposed exemption; and

(2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, dated and signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation or consideration during the past quarter, in connection with any offerings covered by this proposed exemption, was not adjusted in a manner inconsistent with Section II(e), (f), or (g) of this proposed exemption.

(h) The covered transactions are performed under a written authorization executed in advance by an independent fiduciary of each single Client Plan (the Independent Fiduciary), as defined, below, in Section III(h).

(i) Prior to the execution by an Independent Fiduciary of a single Client Plan of the written authorization described, above, in Section II(h), the following information and materials (which may be provided electronically) must be provided by the Asset Manager to such Independent Fiduciary.

(1) A copy of the Notice of Proposed Exemption (the Notice) and a copy of the final exemption (the Grant) as published in the **Federal Register**, provided that the Notice and the Grant are supplied simultaneously; and

(2) Any other reasonably available information regarding the covered transactions that such Independent Fiduciary requests the Asset Manager to provide.

(j) Subsequent to the initial authorization by an Independent Fiduciary of a single Client Plan permitting the Asset Manager to engage in the covered transactions on behalf of such single Client Plan, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary requests the Asset Manager to provide.

(k)(1) In the case of an existing employee benefit plan investor (or existing In-House Plan investor, as the case may be) in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this proposed exemption, unless the Asset Manager provides the written information, as described, below, and within the time period described, below, in this Section II(k)(2), to the Independent Fiduciary of each such plan participating in such Pooled Fund (and to the fiduciary of each such In-House Plan participating in such Pooled Fund).

(2) The following information and materials (which may be provided electronically) shall be provided by the Asset Manager not less than 45 days prior to such Asset Manager engaging in the covered transactions on behalf of a Pooled Fund, pursuant to this proposed exemption, and provided further that the information described below, in this Section II(k)(2)(i) and (iii) is supplied simultaneously:

(i) A notice of the intent of such Pooled Fund to purchase Securities pursuant to this proposed exemption, a copy of this Notice, and a copy of the Grant, as published in the **Federal Register**;

(ii) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund requests the Asset Manager to provide; and

(iii) A termination form expressly providing an election for the Independent Fiduciary of a plan (or fiduciary of an In-House Plan) participating in a Pooled Fund to terminate such plan's (or In-House Plan's) investment in such Pooled Fund without penalty to such plan (or In-House Plan). Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that such plan (or such In-House Plan) has an opportunity to withdraw its assets from a Pooled Fund for a period of no more than 30 days after such plan's (or such In-House Plan's) receipt of the initial notice of intent, described, above, in Section II(k)(2)(i), and that the failure of the Independent Fiduciary of such plan (or fiduciary of such In-House Plan) to return the termination form to the Asset Manager in the case of a plan (or In-House Plan) participating in a Pooled Fund by the specified date shall be deemed to be an approval by such plan (or such In-House Plan) of its participation in the covered transactions as an investor in such Pooled Fund.

Further, the instructions will identify the Asset Manager and the Affiliated Broker-Dealer and will provide the address of the Asset Manager. The instructions will state that this proposed exemption may be unavailable, unless the fiduciary of each plan participating in the covered transactions as an investor in a Pooled Fund is, in fact, independent of the Asset Manager and the Affiliated Broker-Dealer. The instructions will also state that the fiduciary of each such plan must advise the Asset Manager, in writing, if it is not an ''Independent Fiduciary,'' as that term is defined, below, in Section III(h).

For purposes of this Section II(k), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this proposed exemption for each plan be independent of the Asset Manager shall not apply in the case of an In-House Plan.

(l)(1) In the case of each plan (and in the case of each In-House Plan) whose assets are proposed to be invested in a Pooled Fund after such Pooled Fund has satisfied the conditions set forth in this proposed exemption to engage in the covered transactions, the investment by such plan (or by such In-House Plan) in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary representing such plan (or the prior written authorization by the fiduciary of such In-House Plan, as the case may be), following the receipt by such Independent Fiduciary of such plan (or by the fiduciary of such In-House Plan, as the case may be) of the written information described, above, in Section II(k)(2)(i) and (ii), provided that the Notice and the Grant, described above in Section II(k)(2)(i), are provided simultaneously.

(2) For purposes of this Section II(l), the requirement that the fiduciary responsible for the decision to authorize the transactions described, above, in Section I of this proposed exemption for each plan proposing to invest in a Pooled Fund be independent of the Asset Manager and its affiliates shall not apply in the case of an In-House Plan.

(m) Subsequent to the initial authorization by an Independent Fiduciary of a plan (or by a fiduciary of an In-House Plan) to invest in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide within a reasonable period of time any reasonably available information regarding the covered transactions that the Independent Fiduciary of such plan (or the fiduciary of such In-House Plan, as the case may be) requests the Asset Manager to provide.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall furnish:

(1) In the case of each single Client Plan that engages in the covered transactions, the information described, below, in this Section II(n)(3)–(7), to the Independent Fiduciary of each such single Client Plan.

(2) In the case of each Pooled Fund in which a Client Plan (or in which an In-House Plan) invests, the information described, below, in this Section II(n)(3)–(6) and (8), to the Independent Fiduciary of each such Client Plan (and to the fiduciary of each such In-House Plan) invested in such Pooled Fund.

(3) A quarterly report (the Quarterly Report) (which may be provided electronically) which discloses all the Securities purchased pursuant to this proposed exemption during the period to which such report relates on behalf of the Client Plan, In-House Plan, or Pooled Fund to which such report relates, and which discloses the terms of each of the transactions described in such report, including:

(i) The type of Securities (including the rating of any Securities which are debt securities) involved in each transaction;

(ii) The price at which the Securities were purchased in each transaction;

(iii) The first day on which any sale was made during the offering of the Securities;

(iv) The size of the issue of the Securities involved in each transaction;

(v) The number of Securities purchased by the Asset Manager for the Client Plan, In-House Plan, or Pooled Fund to which the transaction relates;

(vi) The identity of the underwriter from whom the Securities were purchased for each transaction;

(vii) The underwriting spread in each transaction (*i.e.,* the difference, between the price at which the underwriter purchases the Securities from the issuer and the price at which the Securities are sold to the public);

(viii) The price at which any of the Securities purchased during the period to which such report relates were sold; and

(ix) The market value at the end of the period to which such report relates of the Securities purchased during such period and not sold;

(4) The Quarterly Report contains:

(i) A representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described, above, in Section II(g)(2), affirming that, as to each AUT covered by this proposed exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section II(e), (f), and (g) of this proposed exemption, and

(ii) A representation that copies of such certifications will be provided upon request;

(5) A disclosure in the Quarterly Report that states that any other reasonably available information regarding a covered transaction that an Independent Fiduciary (or fiduciary of an In-House Plan) requests will be provided, including, but not limited to:

(i) The date on which the Securities were purchased on behalf of the Client Plan (or the In-House Plan) to which the disclosure relates (including Securities purchased by Pooled Funds in which such Client Plan (or such In-House Plan) invests);

(ii) The percentage of the offering purchased on behalf of all Client Plans (and the *pro-rata* percentage purchased on behalf of Client Plans and In-House Plans investing in Pooled Funds); and

(iii) The identity of all members of the underwriting syndicate;

(6) The Quarterly Report discloses any instance during the past quarter where the Asset Manager was precluded for any period of time from selling Securities purchased under this proposed exemption in that quarter because of its status as an affiliate of an Affiliated Broker-Dealer and the reason for this restriction;

(7) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each single Client Plan that engages in the covered transactions that the authorization to engage in such covered transactions may be terminated, without penalty to such single Client Plan, within five (5) days after the date that the Independent Fiduciary of such single Client Plan informs the person identified in such notification that the authorization to engage in the covered transactions is terminated; and

(8) Explicit notification, prominently displayed in each Quarterly Report sent to the Independent Fiduciary of each Client Plan (and to the fiduciary of each In-House Plan) that engages in the covered transactions through a Pooled Fund that the investment in such Pooled Fund may be terminated, without penalty to such Client Plan (or such In-House Plan), within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the non-withdrawing plans, after the date that the Independent Fiduciary of such Client Plan (or the fiduciary of such In-House Plan, as the case may be) informs the person identified in such notification that the investment in such Pooled Fund is terminated.

(o) For purposes of engaging in covered transactions, each Client Plan (and each In-House Plan) shall have total net assets with a value of at least $50 million (the $50 Million Net Asset Requirement). For purposes of engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be) (the $100 Million Net Asset Requirement).

For purposes of a Pooled Fund engaging in covered transactions, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets with a value of at least $50 million. Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets with a value of at least $50 million, the $50 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which has total net assets with a value of at least $50 million. For purposes of a Pooled Fund engaging in covered transactions involving an Eligible Rule 144A Offering, each Client Plan (and each In-House Plan) in such Pooled Fund shall have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be). Notwithstanding the foregoing, if each such Client Plan (and each such In-House Plan) in such Pooled Fund does not have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or In-House Plan, as the case may be), the $100 Million Net Asset Requirement will be met if 50 percent (50%) or more of the units of beneficial interest in such Pooled Fund are held by Client Plans (or by In-House Plans) each of which have total net assets of at least $100 million in securities of issuers that are not affiliated with such Client Plan (or such In-House Plan, as the case may be), and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset requirements described above, in this Section II(o), where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 Million Net Asset Requirement (or in the case of an Eligible Rule 144A Offering, the $100 Million Net Asset Requirement) may be met by aggregating the assets of such Client Plans, if the assets of such Client Plans are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a ''qualified professional asset manager'' (QPAM), as that term is defined under Part V(a) of PTE 84–14. Further, the Asset Manager, which qualifies as a QPAM, must also have total client assets under its management and control in excess of $5 billion, as of the last day of its most recent fiscal year and shareholders' or partners' equity in excess of $1 million.

(q) No more than 20 percent of the assets of a Pooled Fund at the time of a covered transaction are comprised of assets of In-House Plans for which the Asset Manager or the Affiliated Broker-Dealer exercises investment discretion.

(r) The Asset Manager and the Affiliated Broker-Dealer, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons, described, below, in Section II(s), to determine whether the conditions of this proposed exemption have been met, except that—

(1) No party in interest with respect to a plan which engages in the covered transactions, other than the Asset Manager and the Affiliated Broker-Dealer, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by Section II(s); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of the Asset Manager, or the Affiliated Broker-Dealer, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided, below, in Section II(s)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above, in Section II(r), are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described above, in Section II(s)(1)(ii)–(iv), shall be authorized to examine trade secrets of the Asset Manager, or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to Section II(s)(2) above, the Asset Manager shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III—Definitions

(a) The term, ''the Applicant,'' means Columbia Management Advisors, LLC.

(b) The term, ''Affiliated Broker-Dealer,'' means any broker-dealer affiliate, as ''affiliate'' is defined, below, in Section III(c), of the Applicant, as

''Applicant'' is defined, above, in Section III(a), that meets the requirements of this proposed exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term, ''manager,'' with respect to a syndicate, means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the Securities, as defined below, in Section III(i), being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative, as defined in section 3(15) of the Act, of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

For purposes of this proposed exemption, the definition of ''affiliate'' shall include any entity that satisfies such definition in the future.

(d) The term ''Asset Manager'' means Columbia or an affiliate of Columbia as defined above in Section III(c), which entity acts as the fiduciary with respect to Client Plan(s), as defined in Section III(f), below, or Pooled Fund(s), as defined in Section III(g), below.

(e) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term, ''Client Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and for which plan(s) an Asset Manager exercises discretionary authority or discretionary control respecting management or disposition of some or all of the assets of such plan(s), but excludes In-House Plans, as defined, below, in Section III(m).

(g) The term, ''Pooled Fund(s),'' means a common or collective trust fund(s) or a pooled investment fund(s):

(1) In which employee benefit plan(s) subject to the Act and/or Code invest,

(2) Which is maintained by an Asset Manager, and

(3) For which such Asset Manager exercises discretionary authority or discretionary control respecting the management or disposition of the assets of such fund(s).

(h)(1) The term, ''Independent Fiduciary,'' means a fiduciary of a plan who is unrelated to, and independent of the Asset Manager and the Affiliated Broker-Dealer. For purposes of this proposed exemption, a fiduciary of a plan will be deemed to be unrelated to, and independent of the Asset Manager and the Affiliated Broker-Dealer, if such fiduciary represents in writing that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described above, in Section I of this proposed exemption, is an officer, director, or highly compensated employee (within the meaning of Code section 4975(e)(2)(H)) of the Asset Manager and the Affiliated Broker-Dealer, and represents that such fiduciary shall advise the Asset Manager within a reasonable period of time after any change in such facts occur.

(2) Notwithstanding anything to the contrary in this Section III(h), a fiduciary of a plan is not independent:

(i) If such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager or the Affiliated Broker Dealer;

(ii) If such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager, or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this proposed exemption;

(iii) If any officer, director, or highly compensated employee (within the meaning of Code section 4975(e)(2)(H)) of the Asset Manager responsible for the transactions described above, in Section I of this proposed exemption, is an officer, director, or highly compensated employee (within the meaning of Code section 4975(e)(2)(H)) of the sponsor of the plan or of the fiduciary responsible for the decision to authorize or terminate authorization for the transactions described above, in Section I. However, if such individual is a director of the sponsor of the plan or of the responsible fiduciary, and if he or she abstains from participation in: (A) The choice of the plan's investment manager/adviser; and (B) the decision to authorize or terminate authorization for transactions described above, in Section I, then this Section III(h)(2)(iii) shall not apply.

(3) The term, ''officer,'' means a president, any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), or any other officer who performs a policy-making function for Columbia or any affiliate thereof.

(i) The term, ''Securities,'' shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(2001)). For purposes of this proposed exemption, mortgage-backed or other asset-backed securities rated by one of the Rating Organizations, as defined, below, in Section III(l), will be treated as debt securities.

(j) The term, ''Eligible Rule 144A Offering,'' shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act).

(k) The term, ''qualified institutional buyer,'' or the term, ''QIB,'' shall have the same meaning as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)) under the 1933 Act.

(l) The term, ''Rating Organizations,'' means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings, Inc., Dominion Bond Rating Service Limited, and Dominion Bond Rating Service, Inc., or any successors thereto.

(m) The term, ''In-House Plan(s),'' means an employee benefit plan(s) that is subject to the Act and/or the Code, and that is sponsored by the Applicant as defined, above, in Section III(a), or its affiliate, as defined in Section III(c), for its own employees.

Summary of Facts and Representations

The Applicants

1. The Applicants consist of Columbia and its current and future affiliates. Columbia and Columbia Wanger Asset Management, LP (CWA), both of which are SEC-registered investment advisers, are wholly-owned subsidiaries of Columbia Management Group, LLC (CMG), and collectively had assets under management of approximately $405 billion as of September 30, 2008. Of these assets, Columbia managed approximately $380 billion. CMG, including Columbia and CWA, is the investment management division of Bank of America Corporation (with its subsidiaries, BOA). The Applicants manage institutional portfolios for mutual funds, corporations, pension plans endowments, foundations, healthcare organizations, educational organizations, public agencies, insurance companies and Taft-Hartley plans. They also act as fiduciary to numerous employee benefit plans and individual retirement accounts, providing trustee, custodial recordkeeping, consulting and investment management services.

CMG is wholly-owned by BOA, which is one of the world's largest financial

institutions, serving individual consumers, small and middle market businesses and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. It serves more than 59 million consumer and small-business relationships. As of October 2008, BOA served clients in more than 150 countries and had relationships with 99 percent of the U.S. Fortune 500 companies and 80 percent of the Fortune Global 500. BOA had approximately $564 billion in assets under management as of September 30, 2008.

On September 15, 2008, BOA announced an agreement to acquire Merrill Lynch & Co., Inc. (ML) in an all-stock transaction (the Merger). The Merger became effective on January 1, 2009. Per the agreement, a wholly-owned merger subsidiary of BOA merged with and into ML, with ML continuing as the surviving company that is a subsidiary of BOA. ML had total client assets of approximately $1.5 trillion and more than 16,000 financial advisors as of September 26, 2008. Upon consummation of the Merger, ML and its affiliates became affiliates of the Applicants.

2. The Applicants' activities are subject to oversight and are regulated by Federal government agencies, such as the SEC, the Federal Reserve Board and the Office of the Comptroller of the Currency, as well as by State government agencies, and industry self-regulatory organizations (*e.g.,* the New York Stock Exchange and the Financial Industry Regulatory Authority).

Requested Exemption

3. The Applicants request a prohibited transaction exemption that would permit the purchase of certain Securities by an Asset Manager (the Asset Manager), acting on behalf of Client Plans subject to the Act or Code, and acting on behalf of Client Plans and In-House Plans which are invested in certain Pooled Funds for which an Asset Manager acts as a fiduciary, from any person other than such Asset Manager or any affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such Securities, where an Affiliated Broker-Dealer is a manager or member of such syndicate. Further, the Affiliated Broker-Dealer will receive no selling concessions in connection with the Securities sold to such plans.

4. The Applicants represent that if the Affiliated Broker-Dealer is a member of an underwriting or selling syndicate, the Asset Manager may purchase underwritten securities for Client Plans in accordance with Part III of Prohibited Transaction Exemption (PTE) 75–1, (40 FR 50845, October 31, 1975). Part III provides limited relief from the Act's prohibited transaction provisions for plan fiduciaries that purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member. However, such relief is not available if the Affiliated Broker-Dealer manages the underwriting or selling syndicate.

5. In addition, regardless of whether a fiduciary or its affiliate is a manager or merely a member of an underwriting or selling syndicate, PTE 75–1 does not provide relief for the purchase of unregistered securities. This includes securities purchased by an underwriter for resale to a ''qualified institutional buyer'' (QIB) pursuant to the SEC's Rule 144A under the 1933 Act. Rule 144A is commonly utilized in connection with sales of securities issued by foreign corporations to U.S. investors that are QIBs. Notwithstanding the unregistered nature of such shares, it is represented that syndicates selling securities under Rule 144A (Rule 144A Securities) are the functional equivalent of those selling registered securities.

6. The Applicants represent that the Affiliated Broker-Dealer regularly serves as manager of underwriting or selling syndicates for registered securities, and as a manager or a member of underwriting or selling syndicates for Rule 144A Securities. Accordingly, the Asset Manager is currently unable to purchase on behalf of the Client Plans both registered securities and Rule 144A Securities sold in such offerings, resulting in such Client Plans being unable to participate in significant investment opportunities.

7. It is represented that since 1975, there has been a significant amount of consolidation in the financial services industry in the United States. As a result, there are more situations in which a plan fiduciary may be affiliated with the manager of an underwriting syndicate. Further, many plans have expanded investment portfolios in recent years to include securities issued by foreign corporations. As a result, the exemption provided in PTE 75–1, Part III, is often unavailable for purchase of domestic and foreign securities that may otherwise constitute appropriate plan investments.

Client Plan Investments in Offered Securities

8. The Applicants represent that the Asset Manager makes its investment decisions on behalf of, or renders investment advice to, Client Plans pursuant to the governing document of the particular Client Plan or Pooled Fund and the investment guidelines and objectives set forth in the management or advisory agreement. Because the Client Plans are covered by Title I of the Act and/or are subject to section 4975 of the Code, such investment decisions are subject to, among other requirements, the fiduciary responsibility provisions of the Act and the prohibited transaction rules set forth in the Act and the Code.

9. The Applicants state, therefore, that the decision to invest in a particular offering is made on the basis of price, value and a Client Plan's investment criteria, not on whether the securities are currently being sold through an underwriting or selling syndicate. The Applicants further state that, because the Asset Manager's compensation for its services is generally based upon assets under management, the Asset Manager has little incentive to purchase securities in an offering in which the Affiliated Broker Dealer is an underwriter unless such a purchase is in the interests of Client Plans. If the assets under management do not perform well, the Asset Manager will receive less compensation and could lose clients, costs which far outweigh any gains from the purchase of underwritten securities.[17]

10. The Applicants state that the Asset Manager generally purchases securities in large blocks because the same investments will be made across several accounts. If there is a new offering of an equity or fixed income security that the Asset Manager wishes to purchase, it may be able to purchase the security through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with reduced market impact if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the cost of the securities. Purchasing from an offering syndicate can thus reduce the costs to the Client Plans.

11. However, absent this proposed exemption, if the Affiliated Broker-Dealer is a manager of a syndicate that is underwriting a securities offering, the Asset Manager will be foreclosed from purchasing any securities on behalf of its Client Plans from that underwriting syndicate. This will force the Asset Manager to purchase the same securities

[17] In fact, under the terms of the proposed exemption set forth herein, the Affiliated Broker-Dealer may receive no compensation or other consideration, direct or indirect, in connection with any transaction that would be permitted under the proposed exemption.

in the secondary market. In such a circumstance, the Client Plans may incur greater costs both because the market price is often higher than the offering price, and because of transaction and market impact costs. In turn, this may cause the Asset Manager to forego other investment opportunities because the purchase price of the underwritten security in the secondary market exceeds the price that the Asset Manager would have paid to the selling syndicate.

Underwriting of Securities Offerings

12. The Applicants represent that the Affiliated Broker-Dealer currently manages and participates in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate acquires the securities from the issuer and then sells the securities to investors.

13. The Applicants represent that while, as a legal matter, a selling syndicate assumes the risk that the underwritten securities might not be fully sold, as a practical matter, this risk is reduced, in marketed deals, through ''building a book'' (*i.e.,* taking indications of interest from potential purchasers) prior to pricing the securities. Accordingly, there is no incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting liabilities.

14. Each selling syndicate has one or more lead managers, who are the principal contact between the syndicate and the issuer and who are responsible for organizing and coordinating the syndicate. The syndicate may also have co-managers, who generally assist the lead manager in working with the issuer to prepare the registration statement to be filed with the SEC and in distributing the underwritten securities. While equity syndicates typically include additional members that are not managers, more recently, membership in many debt underwriting syndicates has been limited to lead and co-managers.

15. If more than one underwriter is involved in a selling syndicate, the lead manager, who has been selected by the issuer of the underwritten securities, contacts other underwriters, and the underwriters enter into an ''Agreement Among Underwriters.'' Most lead managers have a standing form of agreement. This document is then supplemented for the particular deal by sending an ''invitation telex'' or ''terms telex'' that sets forth particular terms to the other underwriters.

16. The arrangement between the syndicate and the issuer of the underwritten securities is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. In a firm commitment underwriting, the underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase the underwritten securities from the issuer in accordance with their respective commitments. This obligation is met by using the proceeds received from the buyers of the securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities in the event that not all of the securities are sold.

17. The Applicants represent that, generally, the risk that the securities will not be sold is small because the underwriting agreement is not executed until after the underwriters have obtained sufficient indications of interest to purchase the securities from a sufficient number of investors to assure that all the securities being offered will be acquired by investors. Once the underwriting agreement is executed, the underwriters immediately begin contacting the investors to confirm the sales, at first by oral communication and then by written confirmation. Sales are finalized within hours and sometimes minutes. In registered transactions, the underwriters are particularly anxious to complete the sales as soon as possible because until they ''break syndicate,'' they cannot enter the market. In many cases, the underwriters will act as market-makers for the security. A market-maker holds itself out as willing to buy or sell the security for its own account on a regular basis.

18. The Applicants represent that the process of ''building a book'' or soliciting indications of interest occurs as follows: In a registered equity offering, after a registration statement is filed with the SEC and, while it is under review by the SEC staff, representatives of the issuer of the securities and the selling syndicate managers conduct meetings with potential investors, who learn about the company and the underwritten securities. Potential investors also receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors cannot become legally obligated to make a purchase, they indicate whether they have an interest in buying, and the managers compile a ''book'' of investors who are willing to ''circle'' a particular portion of the issue. These indications of interest are sometimes referred to as a ''soft circle'' because investors cannot be legally bound to buy the securities until the registration statement is effective. However, the Applicants represent that investors generally follow through on their indications of interest, and would be expected to do so, barring any sudden adverse developments (in which case it is likely that the offering would be withdrawn or the price range modified and the process restarted), because, if the investors that gave an indication of interest do not follow through, the underwriters may be reluctant to include them in future offerings.

19. Assuming that the marketing efforts have produced sufficient indications of interest, the Applicants represent that the issuer of the securities and the selling syndicate managers together will set the price of the securities and ask the SEC to declare the registration effective. After the registration statement becomes effective and the underwriting agreement is executed, the underwriters contact those investors that have indicated an interest in purchasing securities in the offering to execute the sales. The Applicants represent that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, if an issue is a ''hot issue,'' (*i.e.,* it is selling in the market at a premium above its offering price) the underwriters may not hold this hot issue in their own accounts, nor sell it to their employees, officers and directors. Subject to certain exceptions, a hot issue may also not be sold to the personal accounts of those responsible for investing for others, such as officers of banks, insurance companies, mutual funds and investment advisers.

20. The Applicants represent that debt offerings may be ''negotiated'' offerings, ''competitive bid'' offerings, or ''bought deals.'' ''Negotiated'' offerings, which often involve non-investment grade securities, are conducted in the same manner as an equity offering with regard to when the underwriting agreement is executed and how the securities are offered. ''Competitive bid'' offerings, in which the issuer determines the price

for the securities through competitive bidding rather than negotiating the price with the underwriting syndicate, are performed under ''shelf'' registration statements pursuant to the SEC's Rule 415 under the 1933 Act (17 CFR 230.415).[18]

21. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

22. The Applicants represent that, because of market forces and the requirements of Rule 415, the competitive bid process is generally available only to issuers of investment-grade securities who have been subject to the reporting requirements of the 1934 Act for at least one (1) year.

23. Occasionally, in highly-rated debt issues, underwriters ''buy'' the entire deal off of a ''shelf registration'' before obtaining indications of interest. These ''bought'' deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the bonds.

Structure of Diversified Financial Services Firms

24. The Applicants represent that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel in the same or affiliated financial service firms. These policies are designed to protect against ''insider trading,'' *i.e.,* trading on information not available to the general public that may affect the market price of the securities. Diversified financial services firms must be concerned about insider trading problems because one part of the firm—*e.g.,* the mergers and acquisitions group—could come into possession of non-public information regarding an upcoming transaction involving a particular issuer, while another part of the firm—*e.g.,* the investment management group—could be trading in the securities of that issuer for its clients.

25. The Applicants represent that the business separation policies and procedures of Columbia and its affiliates are also structured to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that could be used by other parts of the organization, to the detriment of the Asset Manager's clients.

26. The Applicants represent that major clients of the Affiliated Broker-Dealer include investment management firms that are competitors of the Asset Manager. Similarly, the Asset Manager deals on a regular basis with broker-dealers that compete with the Affiliated Broker-Dealer. If special consideration were shown to an affiliate, such conduct would likely have an adverse effect on the relationships of the Affiliated Broker-Dealer and of the Asset Manager with firms that compete with such affiliate. Therefore, a goal of the Applicants' business separation policies is to avoid any possible perception of improper flows of information between the Affiliated Broker-Dealer and the Asset Manager, in order to prevent any adverse impact on client and business relationships.

Underwriting Compensation

27. The Applicants represent that the underwriters are compensated through the ''spread,'' or difference, between the price at which the underwriters purchase the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

28. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon between the managers and the issuer prior to soliciting indications of interest. Thus, the allocation of the management fee is not reflective of the amount of securities that a particular manager sells in an offering.

29. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer of the securities.

30. The first and second components of the ''spread'' are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters generally follows the allocation of the securities for sales purposes. However, a buyer of the underwritten securities may designate other broker-dealers (who may be other underwriters, as well as broker-dealers outside the syndicate) to receive the selling concessions arising from the securities they purchase.

31. Securities are allocated for sales purposes into two categories. The first and larger category is the ''institutional pot,'' which is the pot of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or other broker-dealers. If securities are sold from the institutional pot, the selling syndicate managers sometimes receive a portion of the selling concessions, referred to as a ''fixed designation,'' [19] attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. For securities covered by this proposed exemption, however, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation or consideration that is attributable to the fixed designation generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

32. The second category of allocated securities is ''retail,'' which are the securities retained by the underwriters for sale to their retail customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

33. The Applicants represent that the Affiliated Broker-Dealer's inability to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by the Asset Manager's Client

[18] Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

[19] A fixed designation is sometimes referred to as an ''auto pot split.''

Plans, removes the primary economic incentive for the Asset Manager to make purchases that are not in the interests of its Client Plans from offerings for which the Affiliated Broker-Dealer is an underwriter. The reason is that the Affiliated Broker-Dealer will not receive any additional fees as a result of such purchases by the Asset Manager.

Rule 144A Securities

34. The Applicants represent that a number of the offerings of Rule 144A Securities in which the Affiliated Broker-Dealer participates represent good investment opportunities for the Asset Manager's Client Plans. Particularly with respect to foreign securities, a Rule l44A offering may provide the least expensive and most accessible means for obtaining these securities. However, as discussed above, PTE 75–1, Part III, does not cover Rule 144A Securities. Therefore, absent an exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans in offerings in which the Affiliated Broker-Dealer participates.

35. The Applicants state that Rule 144A acts as a ''safe harbor'' exemption from the registration provisions of the 1933 Act for sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.

36. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities and is the reason that Rule 144A transactions are generally limited to debt securities.

37. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a ''foreign private issuer'' for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

38. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of Federal and State securities laws. These rules include Section 10(b) of the 1934 Act and Rule 10b–5 thereunder (17 CFR 240.10b–5) and Section 17(a) of the 1933 Act (15 U.S.C. 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices or fraud.

39. The Applicants represent that this regulatory structure provides a considerable incentive to the issuer of the securities and the members of the selling syndicate to insure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a ''10b–5'' opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make sure the statements made, in light of the circumstances under which they were made, are not misleading.

40. The Applicants represent that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. The major difference is that a Rule l44A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is the same in most respects, except that the selling efforts are limited to contacting QIBs and there are no general solicitations for buyers (*e.g.,* no general advertising). In addition, the Affiliated Broker-Dealer's role in these offerings is typically that of a lead or co-manager. Generally, there are no non-manager members in a Rule 144A selling syndicate. Nonetheless, the Applicants request that the proposed exemption extend to authorization for situations where the Affiliated Broker-Dealer acts as a manager or as a syndicate member.

Summary

41. The proposed exemption is administratively feasible. In this regard, compliance with the terms and conditions of the proposed exemption will be verifiable and subject to audit.

42. The proposed exemption is in the interest of participants and beneficiaries of Client Plans that engage in the covered transactions. In this regard, it is represented that the proposed exemption will increase investment opportunities and will reduce administrative costs for Client Plans.

43. In summary, the Applicants represent that the proposed transactions will satisfy the statutory criteria for an exemption set forth in section 408(a) of the Act because:

(a) The Client Plans and In-House Plans will gain access to desirable investment opportunities;

(b) In each offering, the Asset Manager will purchase the securities for its Client Plans and In-House Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer;

(c) Conditions similar to those of PTE 75–1, Part III, will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of securities that the Asset Manager may purchase on behalf of Client Plans and In-House Plans will be subject to percentage limitations;

(e) The Affiliated Broker-Dealer will not be permitted to receive, either directly, indirectly or through designation, any selling concessions with respect to the securities sold to the Asset Manager for the account of a Client Plan or an In-House Plan;

(f) Prior to any purchase of securities, the Applicant will make the required disclosures to an Independent Fiduciary of each Client Plan (or the fiduciary of each In-House Plan) and obtain the required written authorization to engage in the covered transactions;

(g) The Applicant will provide regular reporting to an Independent Fiduciary of each Client Plan (or the fiduciary of each In-House Plan) with respect to all securities purchased pursuant to the exemption, if granted;

(h) Each Client Plan and each In-House Plan will be subject to net asset requirements, with certain exceptions for Pooled Funds; and

(i) The Asset Manager must have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million, in addition to qualifying as a QPAM, pursuant to Part V(a) of PTE 84–14.

Notice to Intersted Persons: The Applicants represent that because those potentially interested Plans proposing to engage in the covered transactions cannot all be identified, the only practical means of notifying Independent Plan Fiduciaries or Plan participants of such affected Plans is by publication of the proposed exemption in the **Federal Register.** Therefore, any comments from interested persons must

be received by the Department no later than 30 days from the publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Boston Carpenters Apprenticeship and Training Fund (the Fund), Located in Boston, Massachusetts.

[*Exemption Application No.:* L–11558.]

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the purchase by the Fund from the NERCC, LLC (the Building Corporation), a party in interest with respect to the Fund, of a condominium unit (the Condo) in a building (the Building) owned by the New England Regional Council of Carpenters (the Union), also a party in interest with respect to the Fund, where the Union will own the only other condominium unit in the Building; provided that, at the time the transaction is entered into, the following conditions are satisfied:

(1) An independent, qualified fiduciary (the I/F), acting on behalf of the Fund, is responsible for analyzing the relevant terms of the transaction and deciding whether the Board of Trustees (the Trustees) should proceed with the transaction;

(2) The Fund may not purchase the Condo, unless and until the I/F approves such purchase;

(3) Acting as the independent fiduciary on behalf of the Fund, the I/F is responsible for: (a) Establishing the purchase price of the Condo, (b) reviewing the financing terms, (c) determining that such financing terms are the product of arm's length negotiations, and (d) ensuring that the Fund will not close on the Condo until the I/F has determined that proceeding with the proposed transaction is feasible, in the interest of, and protective of the participants and beneficiaries of the Fund;

(4) The purchase price paid by the Fund for the Condo, as documented in writing and approved by the I/F, acting on behalf of the Fund, is the *lesser of:*

(a) The fair market value of the Condo, as of the date of the closing on the transaction, as determined by an independent, qualified appraiser selected by the I/F; or

(b) 58.3 percent (58.3%) of the amount actually expended by the Building Corporation in the construction of the Condo under the guaranteed maximum price contract (the GMP), plus the following amounts:

(i) 58.3 percent (58.3%) of the additional construction soft costs incurred outside the GMP contract (*i.e.,* the amount expended on furniture, fixtures, and equipment, and the amount expended for materials for minor work);

(ii) 54.4 percent (54.4%) of the amount expended on construction soft costs (*i.e.* architect, legal, zoning, permits, and other fees); and

(iii) 54.4 percent (54.4%) of the cost of the land underlying the Building;

(5) Acting as the independent fiduciary on behalf of the Fund, the I/F is responsible, prior to entering into the proposed transaction, for: (a) Reviewing an appraisal of the fully completed Condo, which has been prepared by an independent, qualified appraiser, and updated, as of the date of the closing on the transaction, (b) evaluating the sufficiency of the methodology of such appraisal, and (c) determining the reasonableness of the conclusions reached in such appraisal;

(6) The terms of the transaction are no less favorable to the Fund than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(7) The Fund does not purchase the Condo or take possession of the Condo until such Condo is completed;

(8) The Fund has not been, is not, and will not be a party to the construction financing loan or the permanent financing loan obtained by the Building Corporation and/or by the Union;

(9) The Fund does not pay any commissions, sales fees, or other similar payments to any party as a result of the transaction, and the costs incurred in connection with the purchase of the Condo by the Fund at closing do not include, directly or indirectly, any developer's profit, any premium receive by the developer, nor any interest charges incurred on the construction financing loan or the permanent financing loan obtained by the Building Corporation and/or by the Union;

(10) Under the terms of the current collective bargaining agreement(s) and any future collective bargaining agreement(s), the Union has the ability, unilaterally, to increase the contribution rate to the Fund at any time by diverting money from wages and contributions to other benefit funds within the total wage and benefit package, and the Union is obligated to do so in order to prevent a default by the Fund under the terms of the financing obtained by the Fund to purchase the Condo;

(11) In the event the Building Corporation and/or the Union defaults on the construction financing loan or the permanent financing loan obtained by the Building Corporation and/or the Union, the creditors under the terms of such construction financing loan or such permanent financing loan shall have no recourse against the Condo or any of the assets of the Fund;

(12) Acting as the independent fiduciary with respect to the Fund, the I/F is responsible for reviewing and approving the allocation between funding the purchase of the Condo from the Fund's existing assets or financing; and

(13) Acting as the independent fiduciary with respect to the Fund, the I/F is responsible for determining whether the proposed transaction satisfies the criteria, as set forth in section 404 and section 408(a) of the Act.

Summary of Facts and Representations

1. The Union is a labor organization made up of thirty (30) local carpenter unions in six (6) New England states. The local unions that are affiliated with the Union include local union nos. 33, 40, 67, 218, and 723 (the Locals). Members of the Union are covered by the Fund. The Union is a party in interest with respect to the Fund, pursuant to section 3(14)(D) of the Act, as an employee organization any of whose members are covered by such Fund.

2. The Fund is an employee welfare benefit plan, as that term is defined in the Act. Further, the Fund is a multiemployer apprenticeship and training fund. The Fund is a Massachusetts nonprofit organization, and is exempt from income taxes under the provisions of Section 501(c)(3) of the Internal Revenue Code.

3. In the fiscal year ending September 30, 2008, the Fund received employer contributions of $2,584,069, based on approximately 6.7 million hours of work. In addition, the Fund received other income of approximately $189,000. As of September 30, 2008, the Fund had expenses of $2,254,078 and total assets of $5,910,043. Included in the Fund's total assets is a parcel of improved real property (the Existing Facility) located at 385 Market Street in the Brighton section of Boston, Massachusetts.

4. The Trustees of the Fund have authority to invest the assets of the Fund. The Trustees consist of six (6)

labor representatives and six (6) management representatives. Among the labor representatives serving as Trustees are Joseph Power, John Estano, Steve Tewksbury, Charles MacFarlane, Richard Pedi, and Neal O'Brien. Mr. Power, one of the labor Trustees, also serves on the Executive Board of the Union. It is represented that Mr. Power will recuse himself from all votes and matters before the Trustees relating to the purchase by the Fund of the Condo from the Building Corporation.

The representatives of management serving as Trustees are Donald MacKinnon, Steven Affanato, George Allen, William Fitzgerald, Christopher Pennie, and Mark DeNapoli. Mr. DeNapoli, one of the management Trustees, also is the Executive Vice President and General Manager of Suffolk Construction (Suffolk) which is responsible for the construction of the Condo that is the subject of this proposed exemption. It is represented that Mr. DeNapoli will recuse himself from all votes and matters before the Trustees relating to the construction of the Condo.

5. The Fund provides training and education to carpenter apprentices in the greater Boston area. From 1993 to 2009 there was an increase in the number of apprentices from 267 to 539.

The Fund also provides training and education to journeymen carpenters in the greater Boston area. During 2008, the Fund provided journeyman upgrade training to approximately 2,671 journeymen carpenters. From 1995–2008 there was an increase in the number of journeymen carpenters taking classes from the Fund from 292 to 2,671.

In 2008, the Fund offered 265 courses in numerous aspects of the carpentry trade. These courses represented an increase from the 100 courses offered by the Fund in 2004.

6. The Fund provides all of its classes and training in the Existing Facility. Purchased in 1975, from an unrelated third party, the Fund owns the Existing Facility free and clear of any mortgages. In the opinion of Gary R. Schwandt, a principal of Great Point Investors, LLC the value of the Existing Facility after brokerage fees and closing costs is $1,750,000.

The Existing Facility is an approximately 14,600 square foot building situated on a 33,500 square foot parcel of land. Due to space limitations at the Existing Facility, it is represented that the Fund has been unable to offer certain courses.

The Existing Facility has forty-eight (48) regular parking spaces and two (2) spaces for disabled persons. It is represented that these parking spaces service approximately 100 to 150 apprentices and journeymen attending classes nightly at the Existing Facility. In addition, it is represented that there is not adequate public transportation for servicing the Existing Facility.

7. The Fund is maintained under collective bargaining agreements negotiated between the Union of the United Brotherhood of Carpenters and Joiners of America and the following multiemployer bargaining organizations: (a) The Labor Relations Division of the Associated General Contractors of Massachusetts, Inc.; (b) The Building Trades Employers' Association of Boston and Eastern Massachusetts, Inc.; and (c) The Labor Relations Division of the Construction Industry of Massachusetts (collectively, the Employer Associations).

It is represented that when the Union negotiates a multi-year collective bargaining agreement, it negotiates a single increase in the wage and benefit package for each year of the contract. Then, on an annual basis, the Union allocates that increase between wages and various benefit funds.

It is represented that the wage and benefit package for local union nos. 33, 40, 67, 218, the commercial construction local unions affiliated with the Fund, has historically accounted for approximately 93 percent (93%) of the Fund's revenue. It is represented that the collective bargaining agreement for these commercial construction local unions was renegotiated for a period of three (3) years, effective September 1, 2009, through August 31, 2012. The contribution rate to the Fund for work performed under this collective bargaining agreement is $.50 per hour. The current total wage and benefit package is $60.23, and as of March 1, 2012, the total package will be $65.10.

It is represented that the wage and benefit package for local union no. 723, the wood frame residential union affiliated with the Fund, has historically accounted for approximately 7 percent (7%) of the Fund's revenue. The collective bargaining agreement for local union no. 723 expires on March 31, 2010. Under the terms of the collective bargaining agreement for local union no. 723, as of March 1, 2009, each employer signatory is required to contribute to the Fund $.25 per hour for each hour of work performed by its carpenter employees. The current wage and benefit package for local union no. 723 is $39.68 per hour.

In the fiscal year ending September 30, 2008, there were 6,719,058 hours of work for which contributions in the amount of $2,584,069 were made to the Fund. It is represented that, at the per hour rates, effective as of March 1, 2009, under the collective bargaining agreements, the same number of hours of work, would yield $2,939,516 in annual contributions to the Fund.

It is represented that under the terms of the collective bargaining agreements, the Union has the right, at its discretion, to divert money from wages to benefit funds or to transfer future contributions from one benefit fund to another benefit fund, provided that the Union gives sixty (60) days written notice to the employers. It is further represented that, where the employers and the Union negotiate fixed contribution rates to the various employee benefit funds, such collective bargaining agreements at the same time provide that the Union with advanced notice can divert future contributions from one fund to another. In doing so, the Union maintains that it is acting as a settlor and not as a fiduciary. Further, the applicant maintains that a collective bargaining agreement contribution rate for future hours does not constitute a plan asset under the Act.[20]

8. The Union currently rents office space at 803 Summer Street, Boston, Massachusetts, from an unrelated third party. It is represented that the Union for the past several years has been seeking either to buy a building or to buy unimproved land and construct a building to house the Union offices.

To this end, on February 1, 2008, the Union purchased for cash in the amount of $5.8 million, a parcel of improved real property (the Original Property). The Union established the Building Corporation as a limited liability company for the purpose of developing the Original Property. In this regard, the Union contributed the Original Property to the Building Corporation in exchange for sole interest in the Building Corporation. The Building Corporation is a party in interest with respect to the Fund, pursuant to section 3(14)(G) of the Act, as 50 percent (50%) or more of the interests in the Building Corporation are owned by the Union.

9. It is represented that the Union purchased the Original Property from the Tyott Co. Neither the Tyott Co., nor its owners, nor its principals are parties in interest with respect to the Fund.

The Original Property is described as a 48,000 square foot two-story building on a 64,000 square foot lot located at 750 Dorchester Avenue, in Boston, Massachusetts. It is represented that the

[20] The Department, herein, is not opining, as to whether the Union in diverting money from wages to benefit funds or in transferring future contributions from one benefit fund to another benefit fund is acting as a settlor and not as a fiduciary.

location of the Original Property is within ⅛ of a mile of the exit and entrance ramps to a major interstate highway and within ¼ of a mile from two (2) different train stations that offer access to public transportation.

10. The Union is currently in the process of renovating and expanding the Original Property into two (2) condominium units. One of the condominium units is intended for the Union, and the other condominium unit is intended for the Fund. In order to finance the renovation and expansion of the Original Property, the Executive Board of the Union decided, on January 30, 2009, to obtain a construction loan in the amount of $10 million to finance the renovation and expansion of the Original Property and to pay the remaining construction costs from existing assets. It is the Union's intention for the loan to cover the last $10 million dollars of payment at the end of the construction project.

Because the Original Property is located in a low-income neighborhood, the renovation and expansion of the Original Property is potentially eligible for New Market Tax Credit (NMTC) financing. The Union is currently pursuing NMTC financing from two (2) Community Development Entities (CDEs) only for the Union's condominium unit. These CDEs are, respectively, the Massachusetts Housing Investment Corporation and the Bank of America. The NMTC financing will be in the form of long-term, non-recourse loans that must remain in place for at least seven (7) years during which time the loans will be non-amortizing. It is represented that the Fund's Condo will not serve as collateral for these loans, nor will any of the other assets of the Fund serve as collateral for these loans. These loans will bear a very low annual interest charge, estimated at one percent (1%) or below, to cover annual accounting expenses. After seven (7) years and a day, these loans will be repurchased by the Union at their fair market value.[21]

11. The plans for renovation and expansion of the Original Property call for taking the walls and columns of the existing building on the Original Property down to the second floor slab, rebuilding the second floor, and then adding a new third floor. It is represented that the full design and construction documents and the city approvals were completed at the end of 2008. It is expected that renovation and expansion of the Original Property will take approximately one (1) year. Construction on the renovation and expansion of the Original Property began in January 2009. It is anticipated that the renovated and expanded Building will be ready for occupancy by early 2010.

12. Upon completion of the renovated and expanded Building, it is represented that there will be approximately 71,539 square feet of training and office space, and 6,826 square feet of common space. The first floor of the Building intended for the Fund will have approximately 21,406 square feet of training space with fifteen (15) foot ceilings which are necessary for erecting and working off scaffolding, a major component of apprentice training. The first floor of the Building will also have 2,354 square feet of common space for the entrance and lobby. The second floor will have approximately 13,820 square feet of office and classroom space intended for the Fund, 4,233 square feet of office space intended for the Union, and 4,472 square feet of common space. The third floor will have approximately 25,254 square feet of office space intended for the Union. The Building will have a parking deck with 40 spaces built above a ground level parking area with 53 spaces, for a total of approximately 93 parking spaces on the site that will serve as the parking area for both the Union and the Fund.

13. The Union retained ADD Inc. to serve as the architect for the renovation and expansion of the Building. It is represented that ADD Inc. selected Suffolk to serve as the construction manager for the project. It is represented that Suffolk is a Union signatory contractor. As such, Suffolk is a party in interest with respect to the Fund, pursuant to section 3(14)(C), an employer any of whose employees are covered by the Fund.

Suffolk and the Union negotiated the GMP contract, including change orders through May 11, 2009, in the amount of $19.1 million for the renovation and expansion of the Building. Any savings on that price will be shared 75 percent (75%) to the Union and 25 percent (25%) to Suffolk.[22]

In addition to the $19.1 million construction costs under the GMP contract, the Union anticipates that there will be $600,000 in materials and construction costs not included within the scope of the GMP contract. This $600,000 represents $400,000 in what is known as furniture, fixtures, and equipment which is frequently contracted out directly by owners, and $200,000 for materials for minor work. Further, the Union has incurred ''soft costs'' of $1 million, including architect's fees, due diligence expenses, legal fees related to the purchase of the Original Property, and fees related to zoning and permits. It is estimated that the total cost of acquisition, development, and construction of the renovated and expanded Building, including the parking garage, will be approximately $27 million.

14. As mentioned above, the Union will retain one of the condominium units in the renovated and expanded Building for its own use. Specifically, the Union's condominium will consist of approximately 32,597 square feet of floor space, including a portion of the common space in the Building, and will constitute approximately 45.6 percent (45.6%) of the total square footage (71,539 square feet) in the Building.

The Union intends to lease out at market rate any space in its condominium unit that it does not utilize. It is represented that if the Union leases office space to an employee benefit fund to which it is a party in interest, the Union will do so pursuant to section 408(b)(2) of the Act.[23] The Union will also own and intends to lease the retail portions on the second floor of the Building. It is represented that the intended retail lessees include an eye care center, a banking area, and an ATM.

15. It is represented that in numerous meetings over the past several years, the Trustees of the Fund have discussed and acknowledged the need for additional parking, better access to public transportation, and additional space for offices, classrooms, and training. In this regard, the Trustees

[21] It is represented that the Fund will attempt to obtain from NMTC partial financing on its own in 2010 at the time it purchases the Condo, but is proceeding with the proposed transaction on the assumption that NMTC financing will not be available for its unit. It is represented that the Fund will only utilize the NMTC financing, if obtained, if such financing results in more favorable financing terms for the purchase of the Condo. It is further represented that any NMTC financing obtained by the Fund will not involve any transaction with the Union. For a discussion of additional methods of financing the purchase of the Condo that are being considered by the Fund, *see* the discussion in paragraph 19, below.

[22] It is represented that as a condition to the purchase, the Fund will share in the constructions savings with the Union at a rate equal to the Fund's proportional share of the square footage of the Building and this share of the savings will be reflected in the cost allocation method, as discussed, below, in paragraph 32, in determining the purchase price of the Condo.

[23] The Department is offering no view, herein, as to whether the leasing of office space to any employee benefit fund to which the Union is a party in interest is covered by the statutory exemption provided in sections 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408b–2. Further, the Department is not providing, herein, any relief with respect to the leasing of office space to any such employee benefit fund by the Union.

reviewed utilization reports proved by the Fund Administrator, Benjamin Tilton.

In 2003, the Trustees retained Sam Park & Co., a Boston real estate firm, to research the availability of buildings to purchase or to lease that would meet the present and future needs of the Fund. After review, the Trustees found that none of the options resulting from the 2003 search met the needs of the Fund. At that time, the Trustees suspended the search for a new training space.

16. Because the Union was aware of the Fund's need for additional training and classroom space, parking, and access to public transportation, the Union approached the Trustees with a proposal that the Union develop a portion of the Original Property to the specifications of the Fund for the purpose of providing apprenticeship training (*i.e.,* ''build to suit'') and then sell it to the Fund as a condominium unit.

17. On July 11, 2008, Gary Schwandt of Great Point Investors, LLC provided the Trustees of the Fund with an update to the 2003 search for a training facility that would meet the Fund's requirements. After reviewing the results of the 2003 and 2008 real estate search, the Trustees determined that the Original Property was the best available site. In a meeting on May 20, 2008, the Trustees voted to proceed with the purchase of the Condo from the Building Corporation where the Fund's space would be ''built to suit,'' provided that: (i) The transaction is reviewed and approved by an I/F; (ii) the Fund receives a prohibited transaction exemption from the Department, and (iii) there is not a better building option available that meets the Fund's space, parking, access, and financial requirements. Accordingly, the Trustees, acting on behalf of the Fund, have requested an administrative exemption from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act which would permit the Fund to purchase the Condo for cash from the Building Corporation.

18. In order to purchase the Condo, the Trustees of the Fund intend to sell the Existing Facility and expect to realize net proceeds of approximately $1.75 million. In the event that the sale of the Existing Facility is not completed by the closing date on the Fund's purchase of the Condo, the Trustees intend to obtain a bridge loan. The Trustees intend to contribute an amount yet to be determined from the Fund's existing assets toward the purchase of the Condo, and then to finance the remaining costs. Acting as the independent fiduciary with respect to the Fund, the I/F is responsible for reviewing and approving the allocation between funding the purchase of the Condo from the Fund's existing assets or financing such purchase. It is represented that in addition to the purchase price, in order to complete the proposed transaction the Fund will incur certain ''soft costs,'' in the amount of $650,000, including the cost of engaging the I/F, legal costs related to the prohibited transaction exemption process, real estate legal costs, and underwriters fees. Once the Fund purchases the Condo, the Fund will also be responsible for paying for electrical, gas, telephone, and water service to the Condo, and for sharing the cost of the common areas in the Building with the Union.

The Condo will be established in accordance with Massachusetts law M.G.L. chapter 183A. The Fund's interest in the Condo will be recorded as a deed for real property with the Suffolk County Registry of Deeds. Further, the Massachusetts Condominium Act, Massachusetts General Law Chapter 183A, provides that the default method for allocating common expenses is that such expenses be ''assessed against all units in accordance with their respective percentages of undivided interest in the common areas and facilities.'' Specifically, Section 5(a) of the Chapter 183A provides:

> Each owner shall be entitled to an undivided interest in the common areas and facilities in the percentage set forth in the master deed. Such percentage shall be in the approximate relation that the fair value of the of the unit on the date of the master deed bears to the aggregate fair value of all the units.

The I/F's projection of the split of common expenses is approximately 58% for the Fund and 42% for the Union, which percentages are based on the May 19, 2009 fair market value appraisal of the Building, as if completed, prepared by CB Richard Ellis/New England, and is consistent with the methodology set forth in Section 5(a) of the Chapter 183A of the Massachusetts Condominium Act, Massachusetts General Law.

19. As discussed above, in footnote 1, the Trustees, on behalf of the Fund, are considering various means of financing the purchase price of the Condo and associated costs. It is represented that financing the purchase of commercial property is the normal method of acquiring such an asset. It is represented that financing the purchase of the Condo is in the interest of the Fund, because the Fund does not have sufficient equity to acquire the Condo on an all equity basis, even if it were advantageous to do so.

In this regard, the Fund is considering a commercial real estate loan which may take the form of a private bank loan or private taxable bond financing. Such a commercial loan would be secured by a first mortgage on the Condo and by a general pledge of assets. It is represented that in the current real estate market, non-recourse loans to commercial entities are not available. Interest rates required on commercial loans are based on interest rates for highly-rated long term government bonds, and are priced at a spread above the current market level of government interest rates. The spread varies with credit quality.

In the alternative to a commercial loan, the Trustees represent that certain lenders and underwriters are willing to lend or to finance projects through the Massachusetts Health and Education Facilities Agency (HEFA), or similar agency, such as the Massachusetts Development/Boston Industrial Development Finance Agency (Mass Development/BIFA). In this regard, HEFA and Mass Development/BIFA offer availability to capital markets for apprenticeship and training funds. The interest rate on an HEFA or Mass Development/BIFA loan or public debt is not subject to Federal or State income tax. Therefore, the interest rate on such tax-exempt bond financing would be lower than market interest rates on similar commercial debt. Like a commercial loan, the tax-exempt bond financing through these agencies would entail recourse debt to the Fund. In this regard, the debt would be secured by a first mortgage lien on the Condo, as well as a pledge of revenues of the Fund, as the borrower. Holders of tax-exempt bonds generated by these agencies have no recourse or guaranty from HEFA or Mass Development/BIFA as to the payment of interest or principal.

The Fund is in the process of working with HEFA and Mass Development/BIFA and anticipates formally applying for tax-exempt bond financing from one of those agencies. The tax-exempt bond financing will be either through a fixed rate private placement with a local bank or through variable-rate debt. The I/F has based its projections assuming a 5.50 percent (5.50%) fixed tax-exempt rate. It is further represented that, if the Fund is able to procure a variable rate financing secured with a letter of credit, as described in the next paragraph, below, the interest rate on the debt, would be lower than the 5.50 percent (5.50%) projections. The amount of the

proposed tax-exempt bond financing is not yet determined.

In May 2009, the Fund obtained an offer of an irrevocable direct pay letter of credit from First Trade Union Bank (FTUB) [24] in support of the tax-exempt bond financing [25] for the purchase of the Condo by the Fund. The amount of the letter of credit would not exceed the *lesser of:* (i) 80 percent (80%) of the appraised value of the underlying real estate collateral, or (ii) 80 percent (80%) of the purchase price, and in no event would exceed the legal lending limit ($8 million) of FTUB. The letter of credit would be secured with a valid first mortgage and security interest on the Condo and would include an assignment of all leases, rents, plans, specifications, contracts, licenses, permits, warranties, and approvals pertaining to the Condo. The letter of credit would also be secured by a first position lien on all business assets of the Fund and a negative pledge of the Fund's deposit and investment accounts held at FTUB with a minimum liquidity provision, to be determined. The term of the letter of credit would be seven (7) years. The Union would be required to provide a letter of support [26] to assure adequate cash flow to the Fund to meet debt service requirements. The offer by FTUB has expired, but it is represented that similar terms are still available to the Fund.

The Fund is interviewing prospective lenders and underwriters, and will obtain a firm commitment letter for the initial purchase of the tax-exempt bonds at the time of the closing on the proposed transaction. The Union anticipates that as a precondition for the Fund to obtain tax-exempt bond financing, the Union will be required to make a commitment to HEFA or to Mass Development/BIFA during the term of existing and future collective bargaining agreements to increase the hourly contribution to the Fund whenever necessary to ensure that the Fund has sufficient income and reserves to meet its debt obligation. It is represented that the Union is willing to make this commitment.

20. CB Richard Ellis/New England, Consulting and Valuation Group, a division of CB Richard Ellis/New England is the appraiser chosen by Mark Haroutunian, VP & Credit Officer of FTUB, for the purposes of mortgage financing. James T. Moore (Mr. Moore), First Vice President/Partner of CB Richard Ellis/New England, and Harris E. Collins (Mr. Collins), Senior Vice President/Partner of CB Richard Ellis/New England prepared an appraisal of the fair market value of Building, as if completed.

Mr. Moore is qualified in that he is an associate member of the Appraisal Institute, a member of the Real Estate Finance Association, Greater Boston Real Estate Board, and a Massachusetts Certified General Appraiser. Mr. Collins is qualified in that he is a member of the Appraisal Institute, a member of the Counselors of Real Estate, and a member of the Real Estate Finance Association-Greater Boston Real Estate Board, and is a Massachusetts Certified General Appraiser.

Both Mr. Moore and Mr. Collins are independent in that neither has a present or prospective interest in or bias with respect to the property that is the subject of the appraisal and neither have a business or personal interest in or bias with respect to the parties involved. It is further represented that the engagement of Mr. Moore and Mr. Collins and the compensation for completing the appraisal assignment was not contingent upon the development or reporting of predetermined results.

The fair market value conclusions and projections reached by Mr. Moore and Mr. Collins are as follows:

Appraisal premise	Interest appraised	Date of value	Value conclusion
As Is (Land & Shell Value)	Fee Simple Estate	May 11, 2009	$5,710,000
As Complete-Total Property	Fee Simple Estate	January 1, 2010	23,000,000
As complete—The Fund's Unit	Fee Simple Estate	January 1, 2010	13,360,000
As complete—The Union's Unit	Fee Simple Estate	January 1, 2010	9,640,000

21. It is represented that in purchasing the Condo, the Fund will acquire a real property interest in the Condo, the land underlying the Building, and any common areas in the Building. Specifically, the Fund's Condo will consist of approximately 38,942 square feet of space, including a portion of the common space in the Building, and will constitute approximately 54.4 percent (54.4%) of the total square footage (71,539 square feet) in the Building.

It is represented that the Fund may share and/or rent at fair market value some of the storage and training space (approximately 3,800 square feet) on the first floor and office space (approximately 600 square feet) on the second floor to other apprenticeship and training funds affiliated with the Union. It is further represented that the leasing of this space in the Condo will provide the Fund with supplemental income in the short-term, and that this space will provide the Fund with room for expansion in the long-term.

The intended lessee is the Pile Drivers Local No. 56 Apprenticeship and Training Fund (the Pile Drivers Fund). It is represented that although the Pile Drivers Fund is affiliated with the Union, the Pile Drivers Fund and the Fund do not share any trustees in common. Accordingly, the applicant has represented that the Pile Drivers Fund is not a party in interest with respect to the Fund. To the extent that any leasing arrangement between the Fund and the Pile Drivers Fund and any leasing arrangement between the Fund any other training fund affiliated with the Union violates section 406 of the Act, the applicant represents that such transaction will either be exempt under section 408(b)(2) of the Act and/or will be exempt pursuant to class exemptions, PTE 76–1, PTE 77–10, or PTE 78–6.[27]

22. It is represented that the proposed transaction is feasible in that the purchase of the Condo by the Fund is

[24] It is represented that ownership interests in FTUB are as follows: New England Carpenters Pension Fund—36.5%, New England Carpenters Guaranteed Annuity Fund—18.2%, Empire State Carpenters Pension Fund—45%, and Bank Senior Management (through rabbi trust)-.3%.

[25] The Department, herein, is not providing any relief for the lending of money or other extension of credit between the Fund and FTUB, any other bank, financial institution, or entity.

[26] The Department, herein, is not providing any relief in connection with the letter of support.

[27] The Department is offering no view, herein, as to whether any sharing or leasing arrangement between the Fund and any training fund affiliated with the Union is covered by the Department's regulations, pursuant to 29 CFR 2550.408b–2; nor, is the Department offering a view that any sharing or leasing arrangement between the Fund and any training fund affiliated with the Union would be exempt under the provisions of the class exemptions, PTE 76–1, PTE 77–10, or PTE 78–6. Further, the Department is not providing, herein, any relief with respect to any sharing or leasing arrangement between the Fund and any training fund affiliated with the Union.

a one-time transaction for cash. The Fund will not pay any commissions, sales fees, or other similar payments to any party as a result of the transaction.

23. The applicant maintains that the proposed transaction is in the interest of the participants and beneficiaries of the Fund, because the Fund would obtain a modern state of the art training and education facility that is ''built to suit'' the Fund's specifications, that is accessible both by automobile and public transportation, and that would alleviate the over-crowding that exists at the Existing Facility.

The Union and the Fund also believe that the proposed transaction would be beneficial, because it would provide ''one-stop shopping'' for the Fund's apprentices and journeymen and the employers of those apprentices to have the Fund's training facility and Union offices at the same location. Such an arrangement would allow the apprentices and the journeymen to conduct Union business before or after attending classes or training. This arrangement would also allow contributing employers of the Fund to conduct business with the Union and address any apprentice issues with the Fund. Further, the arrangement would permit the Union and the Fund to showcase the training programs and facilities to contractors and developers. As the Building directly abuts a major interstate highway, this location would also provide both the Union and the Fund with the use of electronic signage on the roof for low-cost promotional opportunities for their respective programs.

24. The proposed exemption contains conditions which are designed to ensure the presence of adequate safeguards to protect the interests of the Fund regarding the subject transaction. In this regard, on July 16, 2008, the Trustees interviewed the candidates for the position of I/F with respect to the purchase by the Fund of the Condo. The Trustees selected and entered into an agreement (the Agreement), dated October 30, 2008, with Independent Fiduciary Services, Inc. (IFS) to serve as the I/F to act on behalf of the Fund with regard to the subject transaction. IFS has represented that acting as the independent fiduciary with respect to the Fund, it is responsible for determining whether the proposed transaction satisfies the criteria, as set forth in section 404 and section 408(a) of the Act.

25. The Trustees retained IFS to provide a report to the Department which would state IFS' conclusions and would summarize the analysis and considerations used by IFS to determine whether it is prudent to go forward with the proposed transaction.

26. It is represented that IFS is qualified to serve as I/F in that it specializes in acting as an independent fiduciary to plans covered by the Act. It is represented that IFS is experienced as a fiduciary in making and evaluating investment decisions, including decisions involving the acquisition and management and disposition of real estate. IFS is registered as an investment adviser under the Investment Advisers Act of 1940. IFS has acted in a variety of roles, including independent fiduciary, named fiduciary, investment manager, and adviser or special consultant. In this regard, IFS serves as an ongoing investment consultant to plans with assets valued at approximately $17.9 billion. The staff of IFS includes professionals experienced with the management and disposition of portfolio assets, including real estate, as well as lawyers familiar with the Act and sensitive to fiduciary responsibilities involving investment activities. IFS acknowledges that with respect to its duties as I/F acting on behalf of the Fund with regard to the proposed transaction that it is a fiduciary, as defined in section 3(21)(A) of the Act.

27. It is represented that IFS is independent of the parties involved in the proposed transaction in that it has no relationship with either the Fund or the Union, except for its role as the I/F with respect to the proposed transaction. It is represented that IFS' fee for its services as I/F of the Fund will be less than 1 percent (1%) of its annual revenues.

28. Pursuant to the Agreement with the Trustees, IFS has agreed:

(a) To evaluate the proposed transaction to determine whether it is in the interest of the Fund's participants and beneficiaries and, if IFS determines that the transaction is in the interest of the Fund, to submit a report to the Department in support of an application for a prohibited transaction exemption; and

(b) To negotiate and agree on behalf of the Fund to the specific terms of the transaction, to decide whether to consummate the proposed transaction and, if IFS decides to consummate the proposed transaction to direct the appropriate Fund fiduciaries to execute the instruments necessary for such transaction.

Further, IFS has represented that acting as I/F on behalf of the Fund, it is responsible for:

(a) A review of the reasonableness of the purchase price;

(b) A review of architect and contractor documentation to determine the appropriate proportional cost of the purchase and construction of the Condo and the common areas;

(c) A review of the Fund's independently prepared financial statements and projections of future cash flow in order to evaluate the Fund's ability to financially support the purchase of the Condo and the future operating costs associated with it;

(d) A review, with legal counsel, of the proposed sale agreement, the condominium agreement, the financing agreements, and other documents supporting the sale, ownership, and occupancy of the Condo;

(e) A review of the Fund's financial and business analysis supporting the purchase of the Condo compared to leasing that space or buying or leasing other similar space; and

(f) A review of the exemption application and other documentation provided to the Department.

29. In carrying out its duties, IFS requested, received, and has reviewed the following documents concerning the Fund and the proposed transaction: (a) The Prohibited Transaction Exemption application, dated February 24, 2009, including all attachments; (b) the Department's response, dated April 1, 2009; (c) the draft purchase and sale agreement between the Building Corporation, as seller, and the Fund, as buyer, dated June 9, 2009, as negotiated on behalf of the Fund by IFS with the assistance of Kenneth Gould of Lawson & Weitzen, who is acting as independent real estate counsel for the Fund, including the negotiation of the purchase agreement by which the Fund will acquire the Condo and various related instruments governing the condominium; (d) the draft master deed and by-laws of the condominium regime under which the Fund's Condo would be established and managed; (e) audited financial statements of the Fund, as at year end September 30, 2004–2008, prepared by Michael P. Ross, CPA; (f) forecasted income statements prepared by Christine Riley, Accounting Manager for the Fund, and Ben Tilton, Fund Administrator; (g) layout drawings of the existing and new structures; (h) the GMP between the Union and Suffolk, as set forth through change orders dated May 11, 2009, for the renovation and expansion of the Building, including exhibits; (i) the cost allocation report prepared by Casendino & Company (Casendino), an MAI architecture firm located in Boston, Massachusetts; and (j) the appraisal report, dated May 11, 2009, prepared by Mr. Moore and Mr. Collins of CB Richard Ellis/New

England, Consulting and Valuation Group.

In addition, IFS discussed the proposed transaction with: (a) Aaron D. Krakow, Esq., Krakow & Souris, LLC, outside legal counsel representing the Fund in connection with filing the application for exemption for the proposed transaction; (b) Richard Kronish, Advisor to the Fund and to the Union on financial matters; (c) David Cary, Integra Realty Resources Inc., (Integra) the appraiser for the appraisal of the Condo to be completed prior to closing; (d) Christine Riley, Accounting Manager for the Fund; and (e) Benjamin Tilton, the Fund's Training Director.

30. It is represented that IFS has visited both the Fund's Existing Facility and the site of the Condo. In this regard, IFS has observed the following: (i) There is no public transportation station in the vicinity of the Existing Facility, while the site of the Condo is approximately ¼ mile from two (2) public transportation stations; (ii) the Existing Facility has no immediate access to a major highway, while the Condo is adjacent to an interstate highway; (iii) the Condo will give the Fund's journeymen and apprentices access to almost double the number of parking spaces available in the Existing Facility; (iv) the Condo is three (3) times as large as the Existing Facility and appears to IFS to be proportionate and reasonable in light of the growth in the number of apprentices and journeymen taking classes and the increase in the number of courses offered by the Fund; and (v) the design drawings for the Condo shows that the unit will provide substantially more shop and classroom space than is available in the Existing Facility. Based on the foregoing observation, IFS concurs with the judgment of the Fund's Trustees that the Condo which the Fund will acquire, if the proposed transaction is consummated, will be adequate for the Fund's needs and represents a significant improvement over the current facility as a site for conducting the Fund's training and apprenticeship programs.

31. According to IFS, the Fund has considered the following options: (1) Renovate and expand the Existing Facility; (2) purchase and renovate another building; (3) build a new facility; (4) lease space in the Building from the Union or lease space from an unrelated third party; (5) purchase a ''built to suit'' property.

The first option, renovating and expanding the Existing Facility, according to IFS, is not tenable as the underlying lot is too small for expansion, there is no room for more parking spaces, and the facility is not convenient to public transportation. With regard to the second option, it is represented that the Fund has not been able to find a suitable property to purchase and renovate. With regard to the third option, no sites were available to build a new facility that would meet the Fund's requirements.

With regard to a comparison between: (i) Leasing space from a third party or from the Union; and (ii) purchasing a ''built to suit'' property, IFS has determined that ownership of the Condo is less expensive and more secure to the Fund than leasing. First, the Fund's exemption from property taxes renders purchasing a property superior to leasing. Leased property would be subject to property taxes, notwithstanding the Fund's tax exempt status as the tenant. In this regard, the 2009 property taxes estimated in the CB Richard Ellis appraisal, dated May 2009, were $211,000. Further, the Condo is being built according to the Fund's design and meets the Fund's parking, transportation, space, and usage requirements. The Condo offers the added benefit of synergies created by sharing common elements with the Union, permitting the apprentices and journeymen carpenters to do Union related business and obtain training in the same location. With the Condo ownership, the Fund has long-term stability in owning the Condo, control over the space, and the flexibility to modify such space. The long-term appreciation in value of the Condo would benefit the Fund as an owner. Accordingly, IFS has concluded that ownership of the Condo is in the interest and protective of the Fund to a greater extent than leasing space from a third party or from the Union. Further, IFS agrees with the Fund's conclusion that a ''build to suit'' facility is the only feasible solution.

32. It is represented that the terms of the proposed transaction are on terms which are at least as favorable to the Fund as those which would have been negotiated at arm's length with an unrelated party. The purchase contract will be signed not more than thirty (30) days before the closing on the Condo, and the master deed and by-laws will be signed at closing. IFS has reviewed drafts of the purchase contract, master deed, and by-laws for the Condo and concurs, in general, with the structure of the condominium regime.

It is represented that the master deed and property by-laws, as currently drafted, are protective of the Fund's interest. IFS represents that it will continue to negotiate the master deed and by-laws to make sure that the Fund is protected with regard to allocation of common expenses, rights with regard to sale of the Condo (either right of first refusal or right of first offer) [28] and major decisions.

It is represented that the purchase contract between the Fund and the Building Corporation will set the purchase price that the Fund will pay for the Condo. In this regard, the purchase price paid by the Fund for the Condo, as documented in writing and approved by IFS, will be the *lesser of:* (1) The fair market value of the Condo (the Appraisal Method); or (2) the Fund's proportionate share of the cost of acquisition and development of the Building (the Cost Allocation Method).

With regard to the Appraisal Method of calculating the purchase price of the Condo, IFS has engaged Integra, a certified MAI appraiser, to compute the fair market value of the Condo as of the date of the closing. It is represented that Integra is an independent company and will derive less than one percent (1%) of its gross proceeds in the past year in performing the appraisal of the Fund's Condo unit. It is represented that the format of this appraisal will be to value the Condo, according to normal practice, using a combination of income, replacement cost, and sales comparison approaches. In the view of IFS, this methodology is reasonable under the circumstances. It is represented that IFS will use Integra's appraisal to arrive at the fair market value of the Condo, at closing. The fair market value of the Condo will be compared to the actual cost of the Condo allocated to the Fund in order to arrive at the purchase price to be paid by the Fund for the Condo. In this regard, IFS will require that the purchase price for the Condo will be the lower of fair market value of the Condo or the actual cost of the Condo allocated to the Fund.

With regard to the Cost Allocation Method of calculating the purchase price of the Condo, it is represented that under the provisions of Massachusetts Property Law and the master deed, an owner of a condominium unit has an undivided interest in the land equal to its proportional interest in the building. Comparing the size of the Fund's Condo (35,226 square feet) and the Union's condominium unit (29,487 square feet) with the total square footage in the Building (71,539 square feet), results in a ratio of 54.4 percent (54.4%) for the Fund and 45.6 percent (45.6%) for the Union. Using this 54.4% ratio, the

[28] The Department, herein, is not proposing any relief with regard to the entry into a right of first refusal or a right of first offer between the Union and the Fund.

Fund's share of the cost ($5.8 million) of the land underlying the Building would be $3.155 million. Similarly, using the same 54.4% ratio, the Fund's share of the costs ($1 million) incurred by the Union for architect, legal, zoning, permits, and other construction-related fees would be approximately $544,000.

IFS estimates that the Fund will bear a slightly higher percentage 58.3 percent (58.3% or $11.152 million) of the $19.128 million in construction costs, as set forth in the GMP. In addition, IFS estimates that the Fund will bear 58.3 percent (58.3% or $349,800) of the $600,000 charges for construction costs outside the GMP (*i.e.,* the amount expended on furniture, fixtures, and equipment, and the amount expended for materials for minor work).

In order to confirm its understanding of the allocation of the acquisition and development costs between the Fund's Condo and the unit to be retained by the Union, IFS engaged Casendino, an MAI architecture firm located in Boston, Massachusetts, to review and report on the cost allocations delineated in the GMP, and more specifically the cost breakdown between the condominium units. Based on its review, in the opinion of Casendino, the construction costs for the Fund should be allocated at 58.34% of the construction budget (including any savings distribution).

Accordingly, the purchase price paid by the Fund for the Condo, as documented in writing and approved by IFS, will be the *lesser of:*

(1) The fair market value of the Condo, as of the date of the closing on the transaction, as determined by an independent, qualified appraiser selected by IFS; or

(2) 58.3 percent (58.3%) of the amount actually expended by the Building Corporation in the construction of the Condo under the GMP, plus the following amounts:

(i) 58.3 percent (58.3%) of the additional construction soft costs incurred outside the GMP contract (*i.e.,* the amount expended on furniture, fixtures, and equipment, and the amount expended for materials for minor work);

(ii) 54.4 percent (54.4%) of the amount expended on construction soft costs (*i.e.,* architect, legal, zoning, permits, and other fees); and

(iii) 54.4 percent (54.4%) of the cost of the land underlying the Building.

The following chart summarized the purchase price of the Condo under the Cost Allocation Method:

Component	Price or value	Allocation percent	Fund cost
Purchase Land & Building	$5,800,000	54.4	$3,155,200
Construction Soft Costs	1,000,000	54.5	544,000
GMP Construction Contract	19,128,992	58.3	11,152,202
Non-GMP Contract Construction Costs	600,000	58.3	349,800
Total Construction	26,528,992	.....	15,201,202

33. IFS has considered the size of the investment that the Fund proposes to make in purchasing the Condo relative to total Fund assets. In this regard, IFS maintains that as a training fund, the Fund is not limited by investment diversification principles with regard to investing in facilities which fulfill the Fund's training purpose and its ancillary administrative activities. In the opinion of IFS, the primary consideration is the Fund's ability to meet its financial obligations, as they come due without impairing its training mandate.

IFS relies on a number of assumptions in evaluating the Fund's projected financial status, and used these assumptions to develop sensitivity models to project the Fund's financial status under a variety of both positive and negative assumptions. The assumptions break down into four categories: (1) Equity investment as a source of funds; (2) the collective bargaining agreements; (3) projected carpenter hours; and (4) fixed and variable costs.

With regard to the first category concerning sources of funds, in addition to the value of the Existing Facility, the Fund has annual investment income of approximately $200,000, including revenue anticipated to arise from rental of excess space in the Condo.

With regard to the second category, the main source of revenue for the Fund is the hourly contributions to be provided by the current collective bargaining agreements. It is anticipated that increases in the hourly rate and increases in the total wage and benefit package will be included in any future collective bargaining agreements.

With regard to the third category, while the 2009 fiscal year's carpenter hours underlying the revenue projection is 20 percent (20%) below the 2008 carpenter hours, IFS estimates that hours will stay at the 2009 level in 2010, and then increase in each of the years 2011 and 2012, and thereafter stabilizes at 6,720,000 for the next twenty years.

With regard to the fourth category, IFS also reviewed the anticipated annual fixed costs of operating the Condo and the variable costs of operating the Fund. In this regard, IFS assumed an annual two-percent (2%) increase in fixed and variable costs.

IFS evaluated the Fund's ability to service the tax exempt bond financing under stressed scenarios in which the carpenters' hours upon which contributions to the Fund are based decrease over time. In projecting a worse case scenario, IFS assumes annual reductions in carpenters' hours of 16 percent (16%) per year, each year from 2013 to 2022. In 2022, carpenters' hours would total only 1.05 million (down from 5.4 million hours in 2009). Under this scenario, the projected wage and benefit package would be $77.92 per hour, of which the Fund would receive $.598 per hour. In this regard, IFS estimates that the contribution rate to the Fund would have to increase by approximately $1.30 per hour from within the total projected wage and benefit package. Accordingly, as part of IFS' review and possible approval of the proposed transaction, IFS will require that the Union pledge to increase contributions to the Fund by diversion from other aspects of the wage and benefit package to cover the Fund's cash flow needs. In IFS' view, these potential diversions by the Union of up to an additional $1.30 per hour do not appear to be unmanageable given the projected size of the total wage and benefit package of $77.92.

Based on its review of preliminary information and its financial analysis, IFS concludes that the Fund reasonably can be expected to make all payments of interest and principal on its loan to acquire the Condo, maintain the Condo, and meet its expected training obligations. In addition, IFS concludes that under certain stress scenarios, a pledge by the Union to increase contributions to the Fund will be

required to pay operating costs and debt service requirements.

In the event the Fund does not meet its obligations under the financing documents, the consequences of such an event would be spelled out in the loan agreement and the trust indenture of the tax-exempt bonds which provided such financing. Such instruments customarily require that the indenture trustee give the Fund notice of any breach and an opportunity to cure the breach within thirty (30) days. As discussed above, the cure would be effected by invoking the Union's obligation to increase the Fund's allocation from the total wage and benefit package.

34. IFS' analysis of the proposed transaction makes certain assumptions, about the level, security lien, and interest rate of tax-exempt debt, the amount of the Fund's equity participation in the proposed transaction, and the funds available from the sale of the Existing Facility. Each of these assumptions, as well as escalation assumptions in revenue and expense calculations and interest rate assumptions is subject to change and further analysis by IFS. In this regard, IFS has represented that it will continue to monitor the terms of the proposed transaction and will not consent to the closing until IFS is able to confirm that the terms of the purchase contract under which the Fund will acquire the Condo and all of the closing documents are reasonable and in the interest of the Fund and its participants.

35. IFS has examined the potential conflict of interest of two (2) of the Trustees of the Fund. In this regard, one member of the Executive Board of the Union is also a labor Trustee of the Fund, and a management Trustee of the Fund is also an executive with Suffolk, the contractor on the project. Both Trustees have recused themselves from all votes and matters relating to the construction of the Condo. As IFS is engaged to decide whether and on what terms to consummate the proposed transaction and not the Trustees of the Fund, these recusals provide further assurance that there is no conflict of interest arising out of the positions these two Trustees hold with the Union and Suffolk, respectively. It is further represented that any of the Trustees of the Fund who present similar conflicts in the future will recuse themselves as well.

IFS will also require that the by-laws and the master deed of the Building provide the Fund with appropriate authority regarding the on-going management of the Building over time. In this regard, Article II, section 2.1 of the proposed by-laws provides for each condominium unit owner to appoint one ''manager'' to the Condominium Association Board of Managers that has the responsibility for the operations and maintenance of the common area. The Trustees of the Fund represent that the manager appointed by the Fund shall be a management trustee at all times that the other condominium unit is owned by the Union.

36. IFS has also addressed the marketability of the Condo. In this regard, it is represented that depending on the needs of various possible tenants and purchasers the Condo could be sold or leased as a single unit or could be subdivided into separate rental units. IFS further represents that the location relative to highway and mass transit and adequate parking makes the Condo competitively attractive for a number of commercial uses, as there are very few properties that combine a large open space suitable for industrial or warehouse use that also have office space for company staff.

37. In conclusion, subject to certain caveats listed below, and subject to all of the terms of the Agreement and the assumptions developed in IFS's financial model to protect the Funds assets, as of June 11, 2009, IFS finds that the purchase of the Condo by the Fund is in the interest of the Fund. IFS's ultimate approval of the proposed transaction will be subject to the following caveats: (a) Review and agreement on the terms of the NMTC and tax-exempt bond financing; (b) agreement on the final terms of the Condo by-laws, the purchase contract, the master deed, and all closing documents, based on assistance and advice from legal counsel; (c) the final financing available to the Fund is on terms consistent with the assumptions described in the report prepared by IFS, dated June 11, 2009, and the terms thereof have been reviewed and approved by Fund counsel; and (d) satisfaction of all conditions set forth in the purchase agreement and related instruments.

38. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) IFS, acting as the I/F on behalf of the Fund, is responsible for analyzing the relevant terms of the transaction and deciding whether the Trustees should proceed with the transaction;

(b) The Fund may not purchase the Condo, unless and until IFS, acting as the I/F on behalf of the Fund, approves such purchase;

(c) IFS, acting as the I/F on behalf of the Fund, is responsible for: (i) Establishing the purchase price of the Condo, (ii) reviewing the financing terms, (iii) determining that such financing terms are the product of arm's length negotiations, and (iv) ensuring that the Fund will not close on the Condo until IFS has determined that to proceed with the proposed transaction is feasible, in the interest of, and protective of the participants and beneficiaries of the Fund;

(d) The purchase price paid by the Fund for the Condo, as documented in writing and approved by IFS, acting as the I/F on behalf of the Fund, is the *lesser of:*

(1) The fair market value of the Condo, as of the date of the closing on the transaction, as determined by an independent, qualified appraiser selected by the I/F; or

(2) 58.3 percent (58.3%) of the amount actually expended by the Building Corporation in the construction of the Condo under the GMP, plus the following amounts:

(i) 58.3 percent (58.3%) of the additional construction soft costs incurred outside the GMP contract (*i.e.,* the amount expended on furniture, fixtures, and equipment, and the amount expended for materials for minor work);

(ii) 54.4 percent (54.4%) of the amount expended on construction soft costs (*i.e.* architect, legal, zoning, permits, and other fees; and

(iii) 54.4 percent (54.4%) of the cost of the land underlying the Building;

(e) IFS, acting as the independent fiduciary on behalf of the Fund, is responsible, prior to entering into the proposed transaction, for: (i) Reviewing an appraisal of the fully completed Condo, which has been prepared by an independent, qualified appraiser, and updated, as of the date of the closing of the transaction, (ii) evaluating the sufficiency of the methodology of such appraisal, and (iii) determining the reasonableness of the conclusions reached in such appraisal;

(f) The terms of the transaction are no less favorable to the Fund than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(g) The Fund does not purchase the Condo or take possession of the Condo until such Condo is completed;

(h) The Fund has not been, is not, and will not be a party to the construction financing loan or the permanent financing loan obtained by the Building Corporation and/or by the Union;

(i) The Fund does not pay any commissions, sales fees, or other similar

payments to any party as a result of the transaction, and the costs incurred in connection with the purchase of the Condo by the Fund at closing do not include, directly or indirectly, any developer's profit, any premium receive by the developer, nor any interest charges incurred on the construction financing loan or the permanent financing loan obtained by the Building Corporation and/or by the Union;

(j) Under the terms of the current collective bargaining agreement(s) and any future collective bargaining agreement(s), the Union has the ability, unilaterally, to increase the contribution rate to the Fund at any time by diverting money from wages and contributions to other benefit funds within the total wage and benefit package, and the Union is obligated to do so in order to prevent a default by the Fund under the terms of the financing obtained by the Fund to purchase the Condo;

(k) In the event, the Building Corporation and/or the Union defaults on the construction financing loan or the permanent financing loan obtained by the Building Corporation and/or the Union, the creditors under the terms of such construction financing loan or such permanent financing loan shall have no recourse against the Condo or any of the assets of the Fund;

(l) IFS, acting as the independent fiduciary with respect to the Fund, is responsible for reviewing and approving the allocation between funding the purchase of the Condo from the Fund's existing assets or financing such purchase;

(m) IFS, acting as the independent fiduciary with respect to the Fund, is responsible for determining whether the proposed transaction satisfies the criteria, as set forth in section 404 and section 408(a) of the Act.

Notice to Interested Persons

Those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include all members of the Locals in the Boston area and the Employer Associations.

It is represented that notification will be provided to all such interested persons by first class mail within fifteen (15) calendar days of the date of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement, as required, pursuant to 29 CFR § 2570.43(b)(2) of the Department's regulations, which will advise all interested persons of the right to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than forty-five (45) days from the date of the publication of the Notice in the **Federal Register**.

Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 693–8551 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of December 2009.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E9–30262 Filed 12–21–09; 8:45 am]

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