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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133-AD64

Exception to the Maturity Limit on Second Mortgages

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: On June 24, 2009, the NCUA published an interim final rule amending its lending rules to create a limited exception to the 20-year maturity limit on second mortgage loans. The amendment will permit Federal credit unions participating in the Department of the Treasury's Making Home Affordable Program to modify a second mortgage loan, beyond 20 years, to match the term of a modified first mortgage loan. This rule confirms those amendments as final without change.

DATES: Effective December 24, 2009, the interim final rule amending 12 CFR Parts 701 published on June 24, 2009 (74 FR 29933) which was effective June 24, 2009 is confirmed as final.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Staff Attorney, at 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

I. Background

In June 2009, NCUA issued an interim final rule, with request for comments, to create a limited exception to the 20-year maturity limit on second mortgage loans. 74 FR 29933 (June 24, 2009). In this final rule, NCUA is finalizing the amendments to its lending rules to permit Federal credit unions participating in the Department of the Treasury's Making Home Affordable Program to modify a second mortgage

loan, beyond 20 years, to match the term of a modified first mortgage loan.

A. The Financial Stability Plan

The Emergency Economic Stabilization Act of 2008 (EESA) granted the Secretary of the Treasury emergency authorities and facilities to help restore liquidity and stability to the U.S. financial system. To address the ongoing financial crisis, the Department of the Treasury (Treasury) established the Financial Stability Plan, a comprehensive plan designed to address the credit crisis on multiple fronts. As part of this plan, Treasury has launched a series of initiatives toward financial recovery, including the Making Home Affordable (MHA) Program.

B. Making Home Affordable Program

In February 2009, Treasury introduced the MHA Program to stabilize the American housing market and help struggling homeowners reduce their monthly mortgage payments to more affordable levels. The MHA Program aims to help millions of homeowners by providing new access to low-cost refinancing and by creating an affordable loan modification program to help families stay in their homes.

Treasury estimates up to 50 percent of at-risk mortgages currently have second liens. In these cases, even if the first lien is modified to improve affordability, a second lien can put a homeowner at risk of foreclosure. To address this problem, Treasury launched a Second Lien Program in an effort to reach more troubled homeowners, and to maximize the effectiveness of the first lien modification program. The MHA Second Lien Program coordinates with the first lien program to help create a sustainable mortgage payment for those homeowners who qualify for a first mortgage modification, yet are still faced with the difficulty of affording their housing payments due to a second lien. Full details about the MHA Second Lien Program are available online at <http://makinghomeaffordable.gov> and <http://www.financialstability.gov/docs/042809SecondLienFactSheet.pdf>.

C. Loans to Members

The interim rule sought to provide credit unions with the ability to participate in the MHA Second Lien Program and, thus, to better assist struggling homeowners unable to afford their housing payments. Absent a

rulemaking, Federal credit union participation in the MHA Second Lien Program would be limited because NCUA's lending rules impose a 20-year maturity limit on second mortgage loans that are secured by the member-borrower's primary residence. 12 CFR 701.21(f)(1)(ii). First mortgages, however, may be made with maturities of up to 40 years, or longer if permitted by the NCUA Board. 12 CFR 701.21(g).

The MHA Secondary Lien Program guidelines require that, for amortizing loans, mortgage servicers "[e]xtend the term of the modified second mortgage to match the term of the modified first mortgage, by amortizing the unpaid principal balance of the second lien over a term that matches the term of the modified first mortgage." For interest-only loans, "[t]he second lien will amortize over the longer of the remaining term of the modified first lien or the originally scheduled amortization term, with amortization to begin at the time specified in the original contract." Without an amendment to § 701.21(f), Federal credit unions cannot participate in the MHA Second Lien Program if the first mortgage is for a term longer than 20 years.

II. Summary of Public Comments

NCUA received six comments on the interim final rule: Three from Federal credit unions, two from credit union trade associations, and one from a State credit union league. All the commenters were supportive of the interim final rule but urged NCUA to permit Federal credit unions to extend the term of second mortgages to be coextensive with the term of existing first mortgages without participating in the MHA Second Lien Program. Some commenters stated the MHA Second Lien Program was cumbersome for some credit unions because of reporting requirements and others stated some credit unions are not interested in the government payment but simply wanted additional flexibility in modifying member loans. A couple of the commenters believed the 20-year maturity limit for second liens should be eliminated entirely, contending it would make Federal credit unions more competitive with other lenders. These comments are beyond the scope of the interim final rule and, therefore, the Board is constrained by the provisions of the Administrative Procedure Act

from making such changes in a final rule. The Board, however, may take these comments into consideration if it considers other changes to NCUA's lending regulation in the future.

III. Final Rule

This final regulation adopts the amendments made in the interim final rule without change. The final rule creates a limited exception to the 20-year maturity limit on second mortgage loans. The new provision, § 701.21(f)(3), permits Federal credit unions participating in Treasury's MHA Program to modify a second mortgage to match the term of a modified first mortgage, beyond 20 years. Credit unions that are not participating in the MHA Second Lien Program are still subject to the current 20-year maturity limitation on second liens. The final rule is intended to create a narrow exception to NCUA's lending rules to enable Federal credit unions to fully participate in the MHA Second Lien Program.

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This final rule does not impose any regulatory burden but provides flexibility to all Federal credit unions to allow for participation in the MHA Second Lien Program. Accordingly, it will not have a significant economic impact on a substantial number of small credit unions, and therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

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

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within the Office of Management and Budget, has determined that this is not a major rule for purposes of SBREFA.

List of Subjects in 12 CFR Part 701

Credit, Credit Unions, Mortgages.

■ For the reasons discussed above, NCUA confirms as final without change, the interim final rule amending 12 CFR Parts 701 published on June 24, 2009, 74 FR 29933.

By the National Credit Union Administration Board, this 17th day of December 2009.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E9-30435 Filed 12-23-09; 8:45 am]

BILLING CODE 7535-01-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 734, 736, 738, 742, 744, 745, 754 and 774

[Docket No. 0910231376-91377-01]

RIN 0694-AE76

Updated Statements of Legal Authority To Reflect Continuation of Emergency Declared in Executive Order 12938 and Changes to the United States Code

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule updates the Code of Federal Regulations (CFR) legal authority citations for the Export Administration Regulations (EAR) to replace citations to the President's Notice of November 10, 2008—*Continuation of Emergency Regarding Weapons of Mass Destruction* with the President's Notice of November 6, 2009 on the same subject and to reflect the recodification of former 42 U.S.C. app. 466c as 15 U.S.C. 1824a. BIS is making these changes to keep the CFR legal authority citations for the EAR current.

DATES: *Effective Date:* December 24, 2009.

ADDRESSES: Comments concerning this rule should be sent to publiccomments@bis.doc.gov, fax (202) 482-3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694-AE76 in all comments, and in the subject line of e-mail comments.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Bureau of Industry and Security, *telephone:* (202) 482-2440.

SUPPLEMENTARY INFORMATION:

Background

In Executive Order 12938 of November 14, 1994 (59 FR 59099, 3 CFR, 1994 Comp., p. 950), the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy and economy of the United States posed by the proliferation of nuclear, biological and chemical weapons and the means of delivering such weapons. That emergency has been continued in effect through successive annual presidential notices. By Notice of November 6, 2009 (74 FR 58187, (Nov. 10, 2009)), the President continued that emergency for another one-year period. The authority for parts 730, 734, 736, 742, 744 and 745 of the EAR is based in part on Executive Order 12938, as amended, and the successive annual notices continuing the national emergency declared in that executive order. This rule revises the authority citations in the CFR for parts 730, 734, 736, 742, 744 and 745 of the EAR (15 CFR parts 730, 734, 736, 742, 744 and 745) to cite the notice of November 6, 2009, and to remove the citation to the notice of November 10, 2008 on the same topic.

Certain provisions of the Horse Protection Act of 1970, as amended (15 U.S.C. 1821-1831 (HPA)), relating to export of horses by sea, are implemented through parts 730, 738, 754 and 774 of the EAR. Those provisions of the HPA were codified at 46 U.S.C. app. § 466c prior to the completion of the enactment of Title 46, Shipping, by Public Law 109-304, Oct. 6, 2006, 120 Stat. 1485. Pursuant to the 2006 law, those provisions were transferred and are now codified at 15 U.S.C. 1824a. This rule revises the authority citations in the CFR for parts 730, 738, 754 and 774 of the EAR (15 CFR parts 730, 738, 754 and 774) to cite 15 U.S.C. 1824a and to remove the citation to 46 U.S.C. app. § 466c.

This rule makes no changes to the text of the EAR.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule does not involve any collection of information.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because they are unnecessary. This rule only updates legal authority citations. This rule does not alter any right, obligation or prohibition that applies to any person under the EAR. Because these revisions are not substantive changes, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Parts 736 and 738

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15 CFR Part 744

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15 CFR Part 745

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15 CFR Part 754

Agricultural commodities, Exports, Forests and forest products, Horses, Petroleum

15 CFR Part 774

Exports, Reporting and recordkeeping requirements

■ Accordingly, the EAR (15 CFR parts 730—774) is amended as follows:

PART 730—[AMENDED]

■ 1. The authority citation for 15 CFR part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p.208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

PART 734—[AMENDED]

■ 2. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001

Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

PART 736—[AMENDED]

■ 3. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

PART 738—[AMENDED]

■ 4. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

PART 742—[AMENDED]

■ 5. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

PART 744—[AMENDED]

■ 6. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p.

786; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

PART 745—[AMENDED]

■ 7. The authority citation for 15 CFR part 745 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

PART 754—[AMENDED]

■ 8. The authority citation for 15 CFR part 754 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

PART 774—[AMENDED]

■ 9. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

Dated: December 18, 2009.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E9-30481 Filed 12-23-09; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM09-8-000; Order No. 730]

Revised Mandatory Reliability Standards for Interchange Scheduling and Coordination

Issued December 17, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Federal Energy Regulatory Commission hereby approves the North American Electric Reliability Corporation's revision of

three Commission-approved Reliability Standards, designated INT-005-3, Interchange Authority Distributes Arranged Interchange; INT-006-3, Response to Interchange Authority; and INT-008-3, Interchange Authority Distributes Status.

DATES: *Effective Date:* The Final Rule will become effective January 25, 2010.

FOR FURTHER INFORMATION CONTACT: Danny Johnson (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502-8892. Rheta Johnson (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502-6503. Richard M. Wartchow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Telephone: (202) 502-8744.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Suedeen G. Kelly, Marc Spitzer, and Philip D. Moeller.

Order No. 730

Final Rule

Issued December 17, 2009

1. Pursuant to section 215 of the Federal Power Act (FPA), the Commission hereby approves three revised Interchange Scheduling and Coordination (INT) Reliability Standards developed by the North American Electric Reliability Corporation (NERC): INT-005-3, Interchange Authority Distributes Arranged Interchange; INT-006-3, Response to Interchange Authority; and INT-008-3, Interchange Authority Distribution of Information.¹ The approved changes provide consistency in responding to interchange requests by clarifying timing requirements for all affected entities, and facilitate the reliable operation of the Bulk-Power System by providing Western Electricity Coordinating Council (WECC) entities sufficient time to assess and respond to requests for interchange service.

I. Background

A. EPAct 2005 and Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified Electric

Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Section 215(d)(2) of the FPA states that the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.² If the Commission disapproves of the proposed Standard in whole or in part, it must remand the proposed Standard to the ERO for further consideration.³ Section 215(d)(5) grants the Commission authority, upon its own motion or upon complaint, to order the ERO to submit to the Commission a proposed Reliability Standard or a modification to a Reliability Standard that addresses a specific matter if the Commission considers such a modified Reliability Standard appropriate to carry out section 215. Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.⁴

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO⁵ and, subsequently, certified NERC as the ERO.⁶ On April 4, 2006, as modified on August 28, 2006, NERC submitted to the Commission a petition seeking approval of 107 proposed Reliability Standards. On March 16, 2007, the Commission issued a Final Rule, Order No. 693, approving 83 of these 107 Reliability Standards and directing other action related to these Reliability Standards.⁷ In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to 56 of the 83 approved Reliability Standards.⁸

B. Order No. 713

4. In response to a February 7, 2007 urgent action request from WECC, NERC developed the version 2 INT Reliability Standards, which were approved by the

² 16 U.S.C. 824o(d)(2).

³ 16 U.S.C. 824o(d)(4).

⁴ See 16 U.S.C. 824o(e)(3).

⁵ *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

⁶ *North American Electric Reliability Corp.*, 116 FERC ¶ 61,062, *order on reh'g & compliance*, 117 FERC ¶ 61,126 (2006), *aff'd Alcoa, Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009).

⁷ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

⁸ 16 U.S.C. 824o(d)(5).

¹ 16 U.S.C. 824o. The Commission is not adding any new or modified text to its regulations.

Commission in Order No. 713.⁹ The version 2 changes increased from five to ten minutes the time for entities in the Western Interconnection to assess interchange requests submitted from 30 to 60 minutes before the requested start time.¹⁰ The approved version 2 Reliability Standards responded to a problem that balancing authorities and transmission service providers in WECC were unable to review certain interchange service requests during the then universal five minute assessment time.¹¹ This inability caused the e-Tag requests to be denied, requiring resubmission and creating both frustration and inefficiencies.¹²

5. NERC's action in response to an urgent action request must be made permanent, through a full vetting in the regular standards-development process. Shortly after receiving the urgent action request, WECC and a joint NERC/NAESB¹³ work group submitted a Standards Authorization Request to NERC seeking permanent revisions to the INT Reliability Standards to accommodate the expanded WECC timing requirements. In response, NERC developed the permanent revisions embodied in the version 2 INT Reliability Standards, along with new glossary terms, discussed more fully below.¹⁴

C. NERC Filing

6. On February 5, 2009, NERC filed a petition for Commission approval of the

⁹ *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards*, Order No. 713, 124 FERC ¶ 61,071, at P 58–67 (2008).

¹⁰ Interchange service refers to requests for energy transfers that cross balancing authority boundaries. See NERC Glossary of Terms Used in Reliability Standards (as revised) (glossary), *Interchange* (2009). The glossary was originally filed with NERC's April 4, 2006 Request for Approval of Reliability Standards in Docket No. RM06–16–000 and was affirmed in Order No. 693, FERC Stats. and Regs. ¶ 31,242. The glossary is appended to the Reliability Standards and is available on the NERC Web site, <http://www.nerc.com>.

¹¹ It was originally anticipated that different practices in the Western Interconnection would be reflected in a regional difference. However the regional difference was withdrawn, making WECC entities subject to the same practices in effect for the Eastern Interconnection. See NERC, Compliance Filing, RM08–16–000 (Jun. 14, 2007) (responding to Commission directive in Order No. 693, FERC Stats. and Regs. ¶ 31,242 at P 825, and withdrawing request for approval of regional difference for the Western Interconnection).

¹² Order No. 713, 124 FERC ¶ 61,071 at P 63.

¹³ North American Energy Standards Board.

¹⁴ As with Reliability Standards, the Commission also reviews and approves revisions to the NERC glossary pursuant to FPA section 215(d)(2). Further, the Commission may direct a modification to address a specific matter identified by the Commission pursuant to section 215(d)(5). See, e.g., Order No. 693, FERC Stats. and Regs. ¶ 31,242 at P 1893–98.

version 3 INT Reliability Standards, INT–005–3; INT–006–3; and INT–008–3.¹⁵ Reliability Standard INT–005–3 applies to interchange authorities and is intended to “ensure that the implementation of Interchange between Source and Sink Balancing Authorities is distributed by an Interchange Authority such that Interchange information is available for reliability assessments.”¹⁶ Reliability Standard INT–006–3 applies to balancing authorities and transmission service providers and is intended to “ensure that each Arranged Interchange is checked for reliability before it is implemented.”¹⁷ Reliability Standard INT–008–3 applies to interchange authorities and is intended to “ensure that the implementation of Interchange between Source and Sink Balancing Authorities is coordinated by an Interchange Authority.”¹⁸ Thus, INT–008–3 contains requirements establishing an interchange authority's responsibilities to oversee and coordinate the interchange of electricity from one balancing authority to another.

7. The revised INT Reliability Standards incorporate separate timing tables for the Western Interconnection and the Eastern Interconnections, which includes Electric Reliability Council of Texas (ERCOT) and Hydro-Quebec. Consistent with Order No. 713, these tables affirm and clarify the increase in the reliability assessment times for WECC from five minutes to ten minutes for requests submitted less than 60 minutes and no less than 15 minutes prior to ramp start time. The tables specify Western Interconnection response times and clarify that balancing authorities and transmission service providers may submit on-time e-Tags¹⁹ up to 20 minutes prior to the operating hour. NERC also makes minor textual modifications to clarify that all entities subject to the INT Reliability Standards must respond to “on-time” requests, as well as to all requests for

¹⁵ The revised INT Reliability Standards are provided in the petition and are available on the Commission's eLibrary document retrieval system in Docket No. RM09–8–000 and also on NERC's Web site, <http://www.nerc.com>.

¹⁶ INT–005–3, Purpose Statement.

¹⁷ INT–006–3, Purpose Statement.

¹⁸ INT–008–3, Purpose Statement.

¹⁹ Electronic Tagging, or e-Tag, is a request to implement a new interchange transaction as a physical energy flow, i.e., an RFI. The e-Tag documents the requested physical interchange transaction and identifies participants. E-Tags include expected flows, and the information provided may be used in mitigating constraints, when needed. See NERC's Joint Interchange Scheduling Work Group, Electronic Tagging Functional Specification Version 1.8.0 (Nov. 7, 2007); see also Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 795.

emergency and reliability adjustment interchange service.²⁰ NERC revises the version 3 tables to accommodate regions in which a response to arranged interchange is required, and clarifies INT–006–3, Measure M1 to correspond more closely to Requirement R1.

8. Revised Requirement R1 of INT–006–003 clarifies that balancing authorities and transmission service providers in all interconnections must respond to “on-time” requests for interchange service, as well as to each request for Emergency and Reliability Adjustment interchange services. To implement these requirements, NERC proposes three related definitions for its glossary: “After the Fact,” “Emergency Request for Interchange (RFI),” and “Reliability Adjustment RFI,” and specifies appropriate responses for “Late,” “On-time” and “After the Fact” requests for service referenced in the timing tables:

After the Fact: A time classification assigned to a Request for Interchange (RFI) when the submittal time is greater than one hour after the start time of the RFI.

Emergency Request for Interchange: RFI to be initiated [for] Emergency or Energy Emergency conditions.

Reliability Adjustment RFI: Request to modify an Implemented Interchange Schedule for reliability purposes.

9. NERC states that the version 3 INT Reliability Standards (INT–005–3, INT–006–3, and INT–008–3) ensure the safe and reliable operation of the Bulk-Power System. According to NERC, the Reliability Standards improve Bulk-Power System reliability by providing WECC entities sufficient time to assess and respond to requests for interchange service. In addition, establishing a separate timing table for WECC clarifies the timing requirements for the Western Interconnection. The timing requirements for the Eastern Interconnections (including ERCOT and Hydro-Quebec) are also modified by adopting the on-time, late, and after-the-fact classifications and proposing appropriate responses under the Reliability Standards. NERC reports that the new terms incorporated in the timing tables are consistent with existing industry e-Tag specifications, which are used to request and arrange interchange service, and use of these terms will ensure uniform treatment for all entities subject to the INT Reliability Standards.

10. Consistent with the NERC Rules, a NERC-assembled ballot body, consisting of industry stakeholders, developed the revisions using the NERC Reliability Standards Development

²⁰ INT–006–003, Requirement R1.

Procedure.²¹ The NERC Board of Trustees (Board) approved the revisions.²² NERC requests that the revised INT Reliability Standards be effective on the first day of the quarter, three months after regulatory approval is granted.²³

D. Notice of Proposed Rulemaking (NOPR) and Comment

11. On June 18, 2009, the Commission issued a NOPR seeking comment on its proposal to approve NERC's revisions to Reliability Standards INT-005-3, INT-006-3 and INT-008-3.²⁴

12. No participant filed comments opposing the Commission's proposal to approve NERC's revised INT Reliability Standards. In fact, Ameren Services Co. filed the sole comment, requesting clarification that a NOPR reference to "transmission operators" was not intended to modify the Reliability Standard requirements, which apply to transmission service providers. The reference is corrected to refer to "transmission service providers" in the discussion in this order.

II. Discussion

13. Pursuant to section 215(d) of the FPA, the Commission approves Reliability Standards INT-005-3, INT-006-3 and INT-008-3 and the related glossary terms as mandatory and enforceable. The revised INT Reliability Standards facilitate the reliable operation of the Bulk-Power System by providing WECC entities sufficient time to assess and respond to requests for interchange service before the underlying e-Tags for these requests expire, and by clarifying timing requirements for all affected entities.

14. These version 3 INT Reliability Standards finalize and improve upon the version 2 changes approved in Order No. 713. The Commission agrees that separating the WECC- and Eastern-Interconnection/ERCOT requirements in the timing tables adds clarity for entities operating in the WECC system. In addition, retaining the slightly modified versions of the prior timing tables for the Eastern Interconnection and ERCOT helps to ensure consistency in responding to interchange requests in those areas.

15. Accordingly, the Commission finds that the ERO's revisions are just, reasonable, not unduly discriminatory or preferential, and in the public interest. Therefore, the Commission approves the revised INT Reliability Standards as mandatory and enforceable, effective as requested.²⁵ While we are accepting the revised INT Reliability Standards, the Commission will discuss below specific issues, in particular the changes to Reliability Standard INT-006-3 to highlight the effect on reliability.

Specific Issues

16. INT-006-3, Requirement R1 requires communication between balancing authorities, transmission service providers, and an interchange authority regarding when to respond to a request for interchange service:

Requirement R1: Prior to the expiration of the reliability assessment period defined in the timing requirements tables in this standard, Column B, the Balancing Authority and the Transmission Service Provider shall respond to each On-time Request for Interchange (RFI), and to each Emergency RFI and Reliability Adjustment RFI from an Interchange Authority to transition an Arranged Interchange to a Confirmed Interchange.

17. Balancing authorities and transmission service providers must review proposed interchange transactions to ensure that transmission service is available and system limits are not violated and must inform the interchange authority whether a request may be confirmed.²⁶ Reliability coordinators and transmission service providers must review composite energy interchange transaction information to ensure that their systems can accommodate the energy, generation is available based on start-up characteristics, and the scheduling path is available on both local and adjacent systems.

18. NERC's proposal incorporates one important change from the version 2 requirements. The prior revision, reflected in version 2, requires responsible entities to "respond to a request from an Interchange Authority to transition an Arranged Interchange to a Confirmed Interchange." This language suggests that a response is required for requests within the designated time periods. In version 3,

²⁵ The petition makes no modification to the violation risk factors or violation severity levels for the revised INT Reliability Standards. Therefore, the currently effective violation risk factors and violation severity levels will continue to apply.

²⁶ See INT-005-3, Requirement R1; INT-006-3, Requirement R1 (Response to Interchange Authority).

Requirement R1 is clarified, directing the applicable entity to respond to "on-time" requests for interchange service within a given time period, and also to all Emergency and Reliability Adjustment requests for interchange service.²⁷ Entities are required to respond to each of these latter two requests regardless of the timelines identified in the timing tables, with paperwork to follow later. Time classifications and deadlines apply to both initial arranged interchange submittals and any subsequent modifications to the arranged interchange.

19. The Commission finds the clarification to INT-006-3, Requirement R1 acceptable. Responsible entities are still required to respond to all on-time requests for interchange service, as well as all requests for Emergency interchange service and Reliability Adjustment interchange service.

20. In Order No. 713, the Commission approved version 2 of the INT Reliability Standards, noting that NERC's compliance with the Order No. 693 directive to modify Reliability Standard INT-006-1 is ongoing.²⁸ While we accept the current changes, in light of NERC's efforts to modify the Reliability Standards, we remind NERC to ensure the Commission's outstanding directives are addressed in future changes to the INT Reliability Standards.

21. Consistent with the NOPR, the Commission finds the revisions to the three revised INT Reliability Standards, INT-005-3, INT-006-3 and INT-008-3, and the associated glossary terms reasonable in providing consistent and clear rules for responding to interchange service requests. The Commission accepts the revised INT Reliability Standards as mandatory and enforceable and the related glossary terms, as discussed.

III. Information Collection Statement

22. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.²⁹ The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.³⁰

23. As stated above, the Commission previously approved, in Order No. 693, each of the Reliability Standards that are

²⁷ See INT-006-3, Measure M1.

²⁸ Order No. 713, 124 FERC ¶ 61,071 at P 67 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 866).

²⁹ 5 CFR 1320.11.

³⁰ 44 U.S.C. 3507(d).

²¹ See NERC's Rules of Procedures, Appendix 3A.

²² NERC petition at 3.

²³ The petition makes no modification to the violation risk factors or violation severity levels for the revised INT Reliability Standards. Therefore, the currently effective violation risk factors and violation severity levels will continue to apply.

²⁴ *Electric Reliability Organization Revised Mandatory Reliability Standards for Interchange Scheduling and Coordination*, Notice of Proposed Rulemaking, 74 FR 30027 (Jun. 24, 2009), FERC Stats. & Regs. ¶ 32,643 (2009) (NOPR).

the subject of the current rulemaking. This Final Rule approves revisions to three previously approved Reliability Standards (as revised) developed by NERC as the ERO. The approved revisions relate to existing Reliability Standards and do not substantially change the requirements or reporting obligations established by these standards; therefore, they do not add to or otherwise increase entities' current reporting burden. Thus, the Final Rule does not materially and adversely affect the burden estimates relating to the currently effective version of the Reliability Standards presented in Order No. 693.

24. Reliability Standards INT-005-3, INT-006-3, and INT-008-3 that are the subject of the approved revisions were approved in Order No. 693, and the related information collection requirements were reviewed and approved, accordingly.³¹ The approved revisions do not modify or otherwise affect the collection of information already in place. With respect to the INT Reliability Standards, the revisions are mainly concerned with the timing of responses to requests for service rather than the required documentation.³² Under the existing requirements, affected entities were required to respond to all requests for service covered by the INT Reliability Standards, while the approved revisions clarify that entities need not respond to late requests for service (with exceptions for services needed for emergency or reliability purposes). As we noted above, the revisions continue to be consistent with existing industry e-Tag specifications used to request and arrange interchange service and will ensure uniform treatment for all entities subject to the INT Reliability Standards. The revised provisions apply to processing requests for service in the next hour, typically for economy energy exchanges, and should not result in a noticeable change in the e-Tagging practices for power sales or in the fulfillment of exchanges or ability to attain cost savings. In fact, the revisions should facilitate cost saving by affirming that utilities must respond to all emergency or reliability exchange services requests, providing parties submitting late requests with an opportunity to correct their error.

25. Finally, the revisions do not establish any significant reporting obligations. The Commission does not consider this a significant burden. We did not receive any comments on our determination in the NOPR with respect to the reporting burden. We will submit this Final Rule to OMB for informational purposes.

Title: FERC-725A, Electric Reliability Organization Revised Mandatory Reliability Standards for Interchange Scheduling and Coordination.

Action: Final Rule.

OMB Control No.: 1902-0244.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This Final Rule approves revisions of three Commission-approved Reliability Standards. The Final Rule finds that the revisions promote reliable operation of the Bulk-Power System; are just, reasonable, not unduly discriminatory or preferential; and in the public interest.

26. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502-8415, fax: (202) 273-0873, e-mail: michael.miller@ferc.gov].

27. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395-4638, fax: (202) 395-7285, e-mail: oir_submission@omb.eop.gov].

IV. Environmental Analysis

28. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.³³ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective,

or procedural or that do not substantially change the effect of the regulations being amended.³⁴ The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Analysis

29. The Regulatory Flexibility Act of 1980 (RFA)³⁵ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business.³⁶ For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The RFA is not implicated by this Final Rule because the revisions discussed herein will not have a significant economic impact on a substantial number of small entities.

30. In Order No. 693, the Commission adopted policies to minimize the burden on small entities, including approving the ERO compliance registry process to identify those entities responsible for complying with mandatory and enforceable Reliability Standards. The ERO registers only those distribution providers or load serving entities that have a peak load of 25 MW or greater and are directly connected to the bulk electric system or are designated as a responsible entity as part of a required under-frequency load shedding program or a required under-voltage load shedding program. Similarly, for generators, the ERO registers only individual units of 20 MVA or greater that are directly connected to the bulk electric system, generating plants with an aggregate rating of 75 MVA or greater, any blackstart unit material to a restoration plan, or any generator that is material to the reliability of the Bulk-Power System. Further, the ERO will not register an entity that meets the above criteria if it has transferred responsibility for compliance with mandatory Reliability Standards to a joint action agency or other organization. The Commission

³¹ See Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1901-07.

³² The OMB control number used in this analysis was issued in Docket No. RM06-16-000, Order No. 693, FERC Stats. and Regs. ¶ 31,242 at P 1907 and incorporated to support the information collection statement in Order No. 713, 124 FERC ¶ 61,071 at P 69.

³³ *Regulations Implementing National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

³⁴ 18 CFR 380.4(a)(2)(ii).

³⁵ 5 U.S.C. 601-12.

³⁶ See 13 CFR 121.201.

estimated that the Reliability Standards approved in Order No. 693 would apply to approximately 682 small entities (excluding entities in Alaska and Hawaii), but also pointed out that the ERO's Compliance Registry Criteria allow for a joint action agency, generation and transmission (G&T) cooperative or similar organization to accept compliance responsibility on behalf of its members. Once these organizations register with the ERO, the number of small entities registered with the ERO will diminish and, thus, significantly reduce the impact on small entities.³⁷

31. Finally, as noted above, this Final Rule addresses revisions of the INT Reliability Standards, which were already approved in Order No. 693, and, therefore, do not create an additional regulatory impact on small entities.

VI. Document Availability

32. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

33. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

34. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or e-mail at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

35. These regulations are effective January 25, 2010. The Commission has determined, with the concurrence of the Administrator of the Office of

Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.
Nathaniel J. Davis, Sr.,
Deputy Secretary.
 [FR Doc. E9-30587 Filed 12-23-09; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 149

[Docket Number USCBP-2007-0077]

RIN 1651-AA70

Importer Security Filing and Additional Carrier Requirements; Correction

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Correcting amendments.

SUMMARY: This document contains correcting amendments to the interim final rule entitled "Importer Security Filing and Additional Carrier Requirements" published in the **Federal Register** on November 25, 2008. The interim final rule, which requires the submission of an Importer Security Filing (ISF) for cargo arriving in the United States by vessel and a bond to secure compliance with the ISF requirement, inadvertently omitted the liability amounts for breach of the importer security filing bond and neglected to make provision for using the importer security filing bond to secure a single ISF transaction. This document clarifies the bond terms applicable to the importer security filing bond as set forth in an Appendix to the Customs and Border Protection bond regulations by adding the liability amounts for a breach of the bond and by adding a paragraph to cover a single transaction.

DATES: This amendment is effective on December 24, 2009. The compliance dates for the regulations are set forth in 19 CFR 4.7c(d), 4.7d(f), and 149.2(g).

FOR FURTHER INFORMATION CONTACT: Richard Di Nucci, Office of Field Operations, (202) 344-2513.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2008, Customs and Border Protection (CBP) published an interim final rule entitled "Importer Security Filing and Additional Carrier Requirements" in the **Federal Register** (73 FR 71730). Pursuant to that interim final rule, an Importer Security Filing (ISF) must be submitted for cargo arriving within the limits of a port in the United States by vessel prior to arrival of the cargo. Generally, with certain exceptions, the ISF must be filed no later than 24 hours before the cargo to which the information relates is laden aboard a vessel at a foreign port. The rule was effective on January 26, 2009. On July 14, 2009, CBP published a correction to the interim final rule in the **Federal Register** (74 FR 33920) that amended the regulations by providing the time frame for transmitting an ISF for shipments intended to be transported in-bond for immediate exportation or for transportation and exportation. The document also corrected two CBP Responses to comments in the preamble text to align them with the regulatory text.

II. Clarification of the ISF Bond Terms

Under the rule, all ISF Importers must possess a bond as security for the ISF requirement. Specifically, 19 CFR 149.5(b) provides that the ISF Importer must possess a basic importation and entry bond containing all the provisions of 19 CFR 113.62, a basic custodial bond containing all the provisions of 19 CFR 113.63, an international carrier bond containing all the provisions of 19 CFR 113.64, a foreign trade zone operator bond containing all the provisions of 19 CFR 113.73, or an importer security filing bond as provided in Appendix D of part 113 of 19 CFR. In light of this bond requirement, CBP amended 19 CFR 113.62, 113.63, 113.64, and 113.73, to provide that the principal agrees to comply with ISF requirements and in the event of a breach of the bond, agrees to pay liquidated damages in the amount of \$5,000 per violation. CBP also amended Part 113 by adding Appendix D, titled "Appendix D to Part 113—Importer Security Filing Bond", which lists the terms of the ISF bond. However, the liquidated damages language contained in the Appendix D ISF bond does not expressly provide for the payment of liquidated damages in the amount of \$5,000 per violation. Instead, the Appendix D ISF bond contains broad language that requires ISF Importers to pay any amount prescribed by law or regulation upon demand by CBP for a violation of 19

³⁷ To be included in the compliance registry, the ERO determines whether a specific small entity has a material impact on the Bulk-Power System. If these small entities should have such an impact then their compliance is justifiable as necessary for Bulk-Power System reliability.

CFR part 149. CBP is revising the Appendix D ISF bond language to add the \$5,000 liquidated damages clause contained in the other bond provisions.

This amendment is consistent with the background portion of the Supplementary Information to the interim final rule. In discussing the changes made from the Notice of Proposed Rulemaking, CBP explained that “[t]he liquidated damages amount for violations of the Importer Security Filing requirements are changed from the value of the merchandise, as proposed, to \$5,000 for each violation in proposed §§ 113.62(j), 113.64(e), and 113.73(c) and new § 113.63(g) and Appendix D to part 113 (emphasis added).” 73 FR 71736. The inclusion of the \$5,000 liquidated damages clause in the Appendix D ISF bond will bring the Appendix D ISF bond language into conformity with sections 113.62, 113.63, 113.64, and 113.73 and with CBP’s stated intention in the Supplementary Information section of the interim final rule.

This document also clarifies the applicable time period for an Appendix D ISF bond. The current Appendix D language states that the bond is effective for one year beginning with the effective date and for each succeeding annual period, or until terminated. The text is being revised to make clear that the Appendix D ISF bond may also be used to cover a single transaction. This clarification will facilitate compliance with the ISF requirement by ISF Importers and is consistent with the Supplementary Information portion of the interim final rule in which CBP stated that it would accept single transaction bonds on a case-by-case basis. 73 FR 71760. Despite this statement, the terms of the Appendix D ISF bond did not make provision for using it as security for a single transaction.

III. Inapplicability of Notice and Comment and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), CBP has determined that it would be impracticable, unnecessary, and contrary to the public interest to require notice and public procedure for these amendments as CBP is simply clarifying the terms of the importer security filing bond in Appendix D consistent with both the preamble of the interim final rule and the other regulatory language in other bonds used to secure the ISF. In addition, the amendment to add text to clarify that the importer security filing bond can be used as either a continuous or single transaction bond confers a benefit to ISF Importers and imposes no burden on any interested

parties. For these same reasons, pursuant to 5 U.S.C. 553(d)(1) and (d)(3), there is good cause for these amendments to not have a delayed effective date.

IV. The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Also, this amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

V. Amendments

List of Subjects in 19 CFR Part 113

Common carrier, Customs duties and inspection, Freight, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Amendments to the Regulations

- Part 113 of title 19, code of Federal Regulations (19 CFR part 113), is amended as set forth below.

PART 113—CUSTOMS BONDS

- 1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

- 2. Revise Appendix D to part 113 to read as follows:

Appendix D to Part 113—Importer Security Filing Bond

This appendix contains the relevant terms and conditions for Importer Security Filing Bonds.

Importer Security Filing Bond

KNOW ALL MEN BY THESE PRESENTS, that _____ of _____, as principal having Customs and Border Protection (CBP) Identification Number _____ and _____, as surety are held and firmly bound unto the United States of America up to the sum of _____ dollars (\$ _____) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the named principal (including the named principal’s employees, agents and contractors) agrees to comply with all Importer Security Filing requirements set forth in 19 CFR part 149, including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation.

If the principal defaults on the conditions of this obligation, the principal and surety jointly and severally, agree to pay liquidated damages of \$5,000 for each violation, or such other amount as may be authorized by law or regulation upon demand by CBP.

[Complete this paragraph only for a single transaction bond]

This single transaction bond secures the single transaction identified by Importer Security Filing transaction number _____ issued by CBP on _____, 20_____.

[Complete this paragraph only for a continuous bond]

This continuous bond is effective _____, 20_____, and remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amount listed above for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the period and manner prescribed in the CBP Regulations.

This bond is executed on _____, 20_____.
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

(Name) (Address)

(Name) (Address)

(Principal Name) (Seal)

(Principal Address)

(Surety Name) (Seal)

Surety No. _____

(Surety Mailing Address)

Surety Agent Name _____

Surety Agent ID Number _____

Dated: December 18, 2009.

Jayson P. Ahern,
Acting Commissioner.

[FR Doc. E9–30570 Filed 12–23–09; 8:45 am]
BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA–2009–0074]

RIN 2125–AF33

National Bridge Inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The American Association of State Highway and Transportation Officials (AASHTO) Manual for Condition Evaluation of Bridges, 1994,

second edition (also referred to as “the Manual”), together with the 2001 and 2003 Interim Revisions, is incorporated by reference in FHWA regulations, approved by the Federal Highway Administration, and recognized as a national standard for bridge inspections and load rating. The purpose of this final rule is to update the incorporation by reference language to incorporate the most recent version of the AASHTO Manual, now known as The Manual for Bridge Evaluation, First Edition, 2008.

DATES: This rule becomes effective January 25, 2010. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 25, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Everett, Office of Bridge Technology, (202) 366-4675; or Mr. Robert Black, Office of the Chief Counsel, (202) 366-1359, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document, the notice of proposed rulemaking (NPRM), and all comments received can be viewed online through the Federal eRulemaking portal at: <http://www.regulations.gov>. It is available 24 hours each day, 365 days each year.

An electronic copy of this document may also be downloaded from the Office of the Federal Register’s home page at: <http://www.archives.gov> and the Government Printing Office’s Web page at: <http://www.access.gpo.gov/nara>.

Background

This Final Rule is being issued to announce the revision to the incorporation by reference of the AASHTO Manual in the National Bridge Inspection Standards (NBIS).

The Manual for Bridge Evaluation, First Edition (MBE) was adopted by the AASHTO Highways Subcommittee on Bridges and Structures in 2005. The MBE combines The Manual for Condition Evaluation of Bridges, Second Edition, and its 2001 and 2003 Interim Revisions with the Guide Manual for Condition Evaluation and Load and Resistance Factor Rating of Highway Bridges, First Edition, and its 2005 Interim Revisions. Revisions based on approved agenda items from annual AASHTO Subcommittee meetings in 2007 and 2008 are also incorporated into the MBE.

The MBE, First Edition, 2008, supersedes The Manual for Condition Evaluation of Bridges, Second Edition, and the 2001 and 2003 Interim Revisions, which are currently incorporated by reference at 23 CFR 650.317. The MBE offers assistance to bridge owners at all phases of bridge inspection and evaluation. The Manual serves as a standard and provides uniformity in the procedures and policies for determining the physical condition, maintenance needs, and load capacity of the Nation’s highway bridges.

Because the information incorporated by reference at 23 CFR 650.317 has been superseded, the FHWA is updating the NBIS regulation to reflect the latest information contained in the AASHTO documents. The FHWA also is updating the definition for “AASHTO Manual” to reflect the updated document.

The FHWA proposed these revisions in its NPRM published in the **Federal Register** at 74 FR 44793 on August 31st. The FHWA did not receive any comments to the NPRM and therefore adopts the revisions as proposed.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. The FHWA believes that the incorporation of the MBE within the NBIS regulation will greatly improve consistency and uniformity in the application of bridge inspection and load rating procedures. In addition, these changes would not create a serious inconsistency with any other agency’s action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of these changes on small entities and has determined that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This Final Rule would not impose unfunded mandates as defined by the

Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48, March 22, 1995). This action would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$128.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States’ ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal law. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this action 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 likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA

has determined that this action does not contain collection information requirements for purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—Transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued on: December 15, 2009.

Victor M. Mendez,
Administrator.

■ In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations part 650 as follows:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

■ 1. The authority citation for part 650 continues to read as follows:

Authority: 23 U.S.C. 109(a) and (h), 144, 151, 315, and 319; 33 U.S.C. 401, 491 *et seq.*; 511 *et seq.*; sec. 4(b) of Pub. L. 97–134, 95 Stat. 1699 (1981); sec. 161 of Pub. L. 97–424, 96 Stat. 2097, at 3135 (1983); sec. 1311 of Pub. L. 105–178, as added by Pub. L. 105–206, 112 Stat. 842 (1998); 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988 (3 CFR, 1977 Comp., p. 117); Department of Transportation Order 5650.2, dated April 23, 1979 (44 FR 24678).

Subpart C—National Bridge Inspection Standards

■ 2. Amend § 650.305 by revising the definition of “American Association of State Highway and Transportation Officials (AASHTO) Manual” to read as follows:

§ 650.305 Definitions.

* * * * *

American Association of State Highway and Transportation Officials (AASHTO) Manual. “The Manual for Bridge Evaluation,” First Edition, 2008, published by the American Association of State Highway and Transportation Officials (incorporated by reference, *see* § 650.317).

* * * * *

■ 3. Revise § 650.317 to read as follows:

§ 650.317 Reference manuals.

(a) The materials listed in this subpart are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these documents will be published in the **Federal Register**. The materials are available for purchase at the address listed below, and are available for inspection at the National Archives and Records Administration (NARA). These materials may also be reviewed at the Department of Transportation Library, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–0761. For information on the availability of these materials at NARA call (202) 741–6030, or go to the following URL: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm. In the event there is a conflict between the standards in this subpart and any of these materials, the standards in this subpart will apply.

(b) The following materials are available for purchase from the

American Association of State Highway and Transportation Officials, Suite 249, 444 N. Capitol Street, NW., Washington, DC 20001, (202) 624–5800. The materials may also be ordered via the AASHTO bookstore located at the following URL: <http://www.transportation.org>.

(1) The Manual for Bridge Evaluation, First Edition, 2008, AASHTO, incorporation by reference approved for §§ 650.305 and 650.313.

(2) [Reserved]

[FR Doc. E9–30469 Filed 12–23–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AC81

Special Uses

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical correction.

SUMMARY: This final rule is making minor, purely technical changes to the Forest Service’s special use regulations. The Agency is clarifying a definition of a term in which a phrase was inadvertently omitted from previous versions of the rule and which properly reflect the Forest Service’s authority to issue special use authorizations. The rule also corrects inaccurate citations and terms and removes obsolete requirements.

DATES: *Effective Date:* This rule is effective December 24, 2009.

FOR FURTHER INFORMATION CONTACT: Julett Denton, Special Uses Program Manager, Lands Staff, 202–205–1256.

SUPPLEMENTARY INFORMATION: Forest Service regulations at 36 CFR part 251, subpart B, govern special use authorizations for use and occupancy of National Forest System lands. Approximately 72,000 special use authorizations are in effect on National Forest System lands. These uses cover a variety of activities ranging from individual private uses to large-scale commercial facilities and public services. Examples of authorized uses include road rights-of-way, apiaries, water storage and transmission facilities, telephone and electric transmission line rights-of-way, ski areas, resorts, marinas, outfitting and guiding, and campgrounds. The Department is making minor, purely technical changes to the regulations governing special use authorizations.

Good Cause Statement

The Administrative Procedure Act (APA) exempts certain rulemaking from its public notice and comment requirements, including rulemaking involving “public property” (5 U.S.C. 553(a)(2)), such as Federal lands managed by the Forest Service. Furthermore, the APA allows agencies to promulgate rules without public notice and comment when an agency for good cause finds that public notice and comment are “impracticable, unnecessary, or contrary to the public interest” (5 U.S.C. 553(b)(B)).

In 1971, Secretary of Agriculture Hardin announced a voluntary waiver of the public property exemption from public notice and comment rulemaking under the APA (36 FR 13804, July 24, 1971). Thus, agencies in the U. S. Department of Agriculture (USDA) generally provide public notice and comment in promulgating rules. However, the Hardin policy permits USDA agencies to promulgate final rules without public notice and comment when the agencies find for good cause that notice and comment procedures would be impracticable, unnecessary, or contrary to the public interest, consistent with 5 U.S.C. 553(b)(B). The courts have recognized this good cause exception to the Hardin policy and have indicated that since the public notice and comment requirement was adopted voluntarily, the Secretary should be afforded “more latitude” in making a good cause determination. *See Alcaraz v. Block*, 746 F.2d 593, 612 (9th Cir. 1984).

The Department finds that good cause exists to exempt this rulemaking from public notice and comment pursuant to 5 U.S.C. 553(b)(B). This rulemaking merely clarifies the definition of “applicant” to make it consistent with agency practice and authority regarding who may apply for a special use authorization; inserts the words “or a permit” after “easement” and “or permits” after “easements,” which were inadvertently omitted in several paragraphs of this chapter and which are needed to reflect the scope of the Forest Service’s authority; corrects inaccurate citations and terms; and removes obsolete provisions. Public comment on these minor and purely technical changes is unnecessary pursuant to 5 U.S.C. 553(b)(B).

Section-by-Section Analysis of the Final Rule

Section 251.51 Definitions. The Department is clarifying the definition for “applicant” to include any entity, not just a business or governmental

entity, consistent with the Forest Service’s practice and authority regarding who may apply for a special use authorization.

Section 251.53(e) Authorities. Consistent with applicable law and directives, the Department is inserting the words “or permits” after the word “easements” in the two places where that word appears in § 251.53(e). Direction in Forest Service Manual (FSM) 2701.1, paragraph 4, and 2710.11a, paragraph 4, and Forest Service Handbook (FSH) 2709.11, section 19, exhibit 03, uses the term “permit” as well as the term “easement” to refer to a special use authorization for a pipeline issued under the Mineral Leasing Act (MLA). Additionally, section 28 of the MLA (30 U.S.C. 185) uses the term “right-of-way or permit” throughout. It has always been the Forest Service’s practice to issue a permit or an easement for a pipeline authorized under the MLA.

Section 251.54 Proposal and application requirements and procedures. The Department is removing the requirement in § 251.54(f)(1)(ii) to wait 60 days before issuing a right-of-way for a pipeline 24 inches or more in diameter, after notifying Congress. Public Law 101–475, enacted in 1990, repealed the 60-day waiting period in section 28(w)(2) of the MLA (30 U.S.C. 185(w)(2)).

In addition, the Department is deleting the unnecessary requirement in § 251.54(f)(2) to refer proposals for electric transmission lines that would carry 66 kilovolts or more of energy to the Secretary of Energy for coordination. There is no statutory requirement for this referral, nor does the U. S. Department of Energy require the referral. In addition, provisions on interagency cooperation and coordination in the Energy Policy Act of 2005 have made this requirement obsolete.

Section 251.60 Termination, revocation, and suspension. In § 251.60(a)(1)(a)(i)(A), the Department is replacing the citation to § 251.54(h)(1) with § 251.54(g)(3)(ii), which is the correct citation for the provision governing evaluation criteria for noncommercial group use applications.

Consistent with applicable law and Forest Service directives, in § 251.60(a)(2)(i), (a)(2)(ii), and (g), the Department is inserting the words “a permit or” in front of the words “an easement” and “permits or” in front of the word “easements” in these sections. FSM 2701.1, paragraph 4, and 2710.11a, paragraph 4, and FSH 2709.11, section 19, exhibit 03, use the term “permit” as well as the term “easement” to refer to

a pipeline authorized under the MLA. Additionally, section 28 of the MLA (30 U.S.C. 185) uses the term “right-of-way or permit” throughout. It has always been the Forest Service’s practice to issue either a permit or an easement for a pipeline authorized under the MLA.

Section 251.65 Information collection requirements. The Department is adding the words “proposals and” before “applications,” since requirements for proposals as well as applications entail information collection requirements. In addition, the Department is removing the citation to § 251.59 in reference to special use applications, since § 251.59 governs transfer of authorized improvements. With respect to terms and conditions, the Department is replacing the citation to § 251.54 with § 251.56, which is the correct citation for the provision governing terms and conditions in special use authorizations. Finally, the Department is inserting the word “collection” between “information” and “requirements” in the text, consistent with the heading of this section and applicable law.

Regulatory Certifications

Environmental Impact

This final rule makes purely minor, technical changes to the Forest Service’s regulations. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions.” The Department has concluded that this final rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that this is not a significant rule. This final rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights

and obligations of beneficiaries of such programs. Accordingly, this final rule is not subject to OMB review under E.O. 12866.

Regulatory Flexibility Act

The Department has considered this final rule in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The final rule makes purely minor, technical changes to the Forest Service's regulations. This final rule will not have a significant economic impact on a substantial number of small entities as defined by the act because the final rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

The Department has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12630. The Department has determined that the final rule will not pose the risk of a taking of private property.

Civil Justice Reform

The Department has reviewed this final rule under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) All State and local laws and regulations that conflict with this final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Department has considered this final rule under the requirements of E.O. 13132 on federalism and has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Moreover, this final rule does not have Tribal implications as defined by E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

Energy Effects

The Department has reviewed this final rule under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Department has determined that this final rule does not constitute a significant energy action as defined in the E.O.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule will not compel the expenditure of \$100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

■ Therefore, for the reasons set forth in the preamble, the Forest Service is amending subpart B of part 251 of Title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

■ 1. The authority citation for part 251 continues to read as follows:

Authority: 7 U.S.C. 1011; 16 U.S.C. 518, 551, 678a; Pub. L. 76–867, 54 Stat. 1197.

Subpart B—Special Uses

■ 2. In § 251.51 revise the definition of “applicant” to read as follows:

§ 251.51 Definitions.

Applicant—any individual or entity that applies for a special use authorization.

* * * * *

■ 3. Revise § 251.53(e) to read as follows:

§ 251.53 Authorities.

* * * * *

(e) Permits or easements for a right-of-way for a pipeline for the transportation of oil, gas, or oil or gas products, where no Federal land besides National Forest System lands is required, and permits for the temporary use of additional National Forest System lands necessary for construction, operation, maintenance, or termination of a pipeline or to protect the natural environment or public safety under section 28 of the Mineral Leasing Act, 41 Stat. 449, as amended (30 U.S.C 185);

* * * * *

■ 4. Revise § 251.54(f)(1)(ii) and remove paragraph (f)(2) and redesignate paragraph (f)(3) as (f)(2).

The revision reads as follows:

§ 251.54 Proposal and application requirements and procedures.

* * * * *

(f) *Special requirements for certain proposals*—(1) *Oil and gas pipeline rights-of-way.* * * *

(ii) The authorized officer shall promptly notify the House Committee on Resources and the Senate Committee on Energy and Natural Resources upon receipt of a proposal for a right-of-way for a pipeline 24 inches or more in diameter, and no right-of-way for that pipeline shall be granted until notice of intention to grant the right-of-way, together with the authorized officer's detailed findings as to the term and conditions the authorized officer proposes to impose, have been submitted to the committees.

* * * * *

■ 5. Revise § 251.60(a)(1)(i)(A), (a)(2)(i), (a)(2)(ii), and (g) to read as follows:

§ 251.60 Termination, revocation, and suspension.

(a) *Grounds for termination, revocation, and suspension*—(1) *Noncommercial group uses.* (i) *Revocation or suspension.* * * *

(A) Under the criteria for which an application for a special use authorization may be denied under § 251.54(g)(3)(ii);

* * * * *

(2) *All other special uses.* (i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for all other special uses, except a permit or an easement issued pursuant to § 251.53(e) or (l) of this subpart: * * *

(ii) *Administrative review.* Except for revocation or suspension of a permit or an easement issued pursuant to § 251.53(e) or (l) of this subpart, suspension or revocation of a special

use authorization under this paragraph is subject to administrative appeal in accordance with 36 CFR part 251, subpart C, of this chapter.

* * * * *

(g) The authorized officer may suspend or revoke permits or easements issued under § 251.53(e) or (l) of this subpart under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings instituted by the Secretary under 7 CFR 1.130 through 1.151. No administrative proceeding shall be required if the permit or easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

* * * * *

■ 6. Revise § 251.65 to read as follows:

§ 251.65 Information collection requirements.

The rules of this subpart governing special use proposals and applications (§ 251.54), terms and conditions (§ 251.56), rental fees (§ 251.57), and modifications (§ 251.61) specify the information that proponents or applicants for special use authorizations or holders of existing authorizations must provide to allow an authorized officer to act on a request or administer the authorization. Therefore, these rules contain information collection requirements as defined in 5 CFR part 1320. These information collection requirements are assigned OMB Control Number 0596-0082.

Dated: December 16, 2009.

Hank Kashdan,
Associate Chief.

[FR Doc. E9-30510 Filed 12-23-09; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 231

RIN 0750-AF85

Defense Federal Acquisition Regulation Supplement; Allowability of Costs To Lease Government Equipment for Display or Demonstration (DFARS Case 2007-D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal

Acquisition Regulation Supplement (DFARS) to address limitations on the allowability of contractor costs associated with the leasing of Government equipment for display or demonstration. The rule specifies that monies paid to the Government for the leasing of Government equipment are unallowable, except in the case of foreign military sales contracts.

DATES: *Effective Date:* December 24, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0310; facsimile 703-602-0350. Please cite DFARS Case 2007-D004.

SUPPLEMENTARY INFORMATION:

A. Background

DoD Instruction 7230.08, Leases and Demonstrations of DoD Equipment, contains policy on the leasing of DoD equipment to defense contractors for demonstration to foreign governments or for display or demonstration at international trade shows and exhibitions. In addition to the leasing of equipment, contractors may obtain related support services from DoD. The Instruction provides that the contractor leasing the equipment may not recover the DoD charges associated with the lease, directly or indirectly through any U.S. Government contract, except to the extent chargeable to contracts for foreign military sales. For consistency with the policy in DoD Instruction 7230.08, this final rule adds DFARS text to address the limitations on the allowability of costs associated with the leasing of Government equipment.

DoD published a proposed rule at 72 FR 69176 on December 7, 2007. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is consistent with existing DoD policy, and applies only in those situations where a contractor chooses to lease military equipment for display or demonstration purposes.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 231

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 225 and 231 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.7303-2 is amended by revising paragraph (b) and adding paragraph (e) to read as follows:

225.7303-2 Cost of doing business with a foreign government or an international organization.

* * * * *

(b) Costs not allowable under FAR Part 31 are not allowable in pricing FMS contracts, except as noted in paragraphs (c) and (e) of this subsection.

* * * * *

(e) The limitations in 231.205-1 on allowability of costs associated with leasing Government equipment do not apply to FMS contracts.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Section 231.205-1 is added to read as follows:

231.205-1 Public relations and advertising costs.

(e) *See* 225.7303-2(e) for allowability provisions affecting foreign military sales contracts.

(f) Unallowable public relations and advertising costs also include monies paid to the Government associated with the leasing of Government equipment, including lease payments and reimbursement for support services, except for foreign military sales contracts as provided for at 225.7303-2.

[FR Doc. E9-30295 Filed 12-23-09; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 225 and 252**

RIN 0750-AF22

Defense Federal Acquisition Regulation Supplement; Definitions of Component and Domestic Manufacture (DFARS Case 2005-D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing this final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the definitions of “component” and “domestic manufacture” as they relate to policy on foreign acquisition.

DATES: *Effective date:* December 24, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0328; facsimile 703-602-7887. Please cite DFARS Case 2005-D010.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD published a proposed rule at 71 FR 18695 on April 12, 2006. We did not receive any public comments. Therefore, DoD has issued a final rule with only a minor editorial correction and an update of the baseline.

This final rule amends DFARS Part 225 and associated provisions and clauses to clarify the distinction between foreign acquisition policies that apply only to top-level components of end products and those that apply to both top-level and lower-tier components of end products. As used in this background discussion, “top-level components” are those components that are incorporated directly into the end product; and “lower-tier components” are components that are incorporated into a component of the end product.

The general definition of “component” in FAR 2.101 is “any item supplied to the Government as part of an end item or of another component.” Therefore, for general use, the term includes both top-level components and lower-tier components. For purposes of determining whether a product is a domestic end product under the Buy American Act or the Balance of

Payments Program, the term “component” is defined in FAR 25.003 to include only “an article, material, or supply incorporated directly into an end product or construction material” (*i.e.*, only top-level components). This definition would also be applicable to any other situation in which evaluation of the end product is based on the value of the components, similar to that under the Buy American Act (*e.g.*, to determine a qualifying country end product or whether anchor chain is a domestic end product).

In broadly applying these concepts to DFARS Part 225, “component” has been defined to apply only to top-level components, except in Subpart 225.70, where the term “component” includes components at all tiers. However, there are some requirements of Part 225 other than those in 225.70 that are not based on or are not similar to the Buy American Act, and there are some requirements in 225.70 that should be treated as similar to the Buy American Act.

Therefore, the definitions of “component” included in the final rule reflect the correct applicability of foreign acquisition policies as follows:

- 225.900-70 and 252.225-7013, Duty-Free Entry. Duty-free entry is not related to evaluation of domestic products under the Buy American Act and should apply to qualifying country components at any tier.
- 252.225-7019, Restriction on Anchor and Mooring Chain—The requirement that the cost of components manufactured in the United States exceed 50 percent of the total cost of components is similar to the Buy American Act component test, in which only top-level components are considered. Therefore, the definition restricting application to top-level components should apply.
- 252.225-7025, Restriction on Acquisition of Forgings—The requirement to acquire forging items that are of domestic manufacture is not related to evaluation of domestic products under the Buy American Act and should apply to components at any tier.

In addition, the rule eliminates references to the DoD Industrial Preparedness Production Planning Program, at 225.7005-1 and in the definition of “domestic manufacture” at 252.225-7025, since DoD no longer has an Industrial Preparedness Production Planning Program.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule updates and clarifies DFARS terminology, but makes no significant change to DoD acquisition policy. DoD did not receive any comments on regulatory flexibility and impact of the rule on small business entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225, 236, and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulation System.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.900-70 is added to read as follows:

225.900-70 Definition.

“Component,” as used in this subpart, means any item supplied to the Government as part of an end product or of another component.

■ 3. Section 225.7001 is amended by revising paragraph (b); by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) respectively; and by adding a new paragraph (c) to read as follows:

225.7001 Definitions.

* * * * *

(b) “Component” is defined in the clauses at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals; 252.225-7012, Preference for Certain Domestic Commodities, and 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, except that for use in 225.7007, the term has the meaning given in the clause at 252.225-7019, Restriction on Acquisition of Anchor and Mooring Chain.

(c) "End product" is defined in the clause at 252.225-7012, Preference for Certain Domestic Commodities.

* * * * *

■ 4. Section 225.7005-1 is revised to read as follows:

225.7005-1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical weapons antidote or component is manufactured in the United States or Canada by a company that—

(a) Has received all required regulatory approvals; and

(b) Has the plant, equipment, and personnel to perform the contract in the United States or Canada at the time of contract award.

■ 5. Section 225.7101 is revised to read as follows:

225.7101 Definitions.

"Component" and "domestic manufacture," as used in this subpart, are defined in the clause at 252.225-7025, Restriction on Acquisition of Forgings.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Section 252.225-7000 is amended by revising the clause date and paragraph (a) to read as follows:

252.225-7000 Buy American Act—Balance of Payments Program Certificate.

* * * * *

Buy American Act—Balance of Payments Program Certificate (DEC 2009)

(a) *Definitions.* "Commercially available off-the-shelf (COTS) item," "component," "domestic end product," "foreign end product," "qualifying country," "qualifying country end product," and "United States" have the meanings given in the Buy American Act and Balance of Payments Program clause of this solicitation.

* * * * *

■ 7. Section 252.225-7013 is amended by:

■ a. Revising the clause date;

■ b. Redesignating paragraphs (a)(1) through (3) as paragraphs (a)(2) through (4) respectively; and

■ c. Adding a new paragraph (a)(1) to read as follows:

252.225-7013 Duty-Free Entry.

* * * * *

Duty-Free Entry (DEC 2009)

(a) * * *

(1) "Component" means any item supplied to the Government as part of an end product or of another component.

* * * * *

■ 8. Section 252.225-7019 is amended by:

■ a. Revising the clause date;

■ b. Redesignating paragraphs (a) through (c) as paragraphs (b) through (d) respectively;

■ c. Adding a new paragraph (a);

■ d. Amending newly designated paragraph (c) by removing "paragraph (a) of this clause" and by adding "paragraph (b) of this clause" in its place; and

■ e. Revising newly designated paragraph (d) to read as follows:

252.225-7019 Restriction on Acquisition of Anchor and Mooring Chain.

* * * * *

Restriction on Acquisition of Anchor and Mooring Chain (DEC 2009)

(a) *Definition.*

"Component," as used in this clause, means an article, material, or supply incorporated directly into an end product.

* * * * *

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing welded shipboard anchor and mooring chain, four inches or less in diameter.

■ 9. Section 252.225-7025 is amended by:

■ a. Revising the clause date;

■ b. Redesignating paragraphs (a)(1) and (2) as paragraphs (a)(2) and (3) respectively;

■ c. Adding a new paragraph (a)(1); and

■ d. Revising newly designated paragraph (a)(2) and paragraph (b) to read as follows:

252.225-7025 Restriction on Acquisition of Forgings.

* * * * *

Restriction on Acquisition of Forgings (DEC 2009)

(a) * * *

(1) Component means any item supplied to the Government as part of an end product or of another component.

(2) Domestic manufacture means manufactured in the United States, its outlying areas, or Canada.

* * * * *

(b) End products and their components delivered under this

contract shall contain forging items that are of domestic manufacture only.

* * * * *

■ 10. Section 252.225-7035 is amended by revising the clause date and paragraph (a) to read as follows:

252.225-7035 Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

* * * * *

Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate (DEC 2009)

(a) *Definitions.* "Bahrainian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "foreign end product," "Moroccan end product," "qualifying country end product," and "United States," as used in this provision, have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

* * * * *

[FR Doc. E9-30296 Filed 12-23-09; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

Defense Federal Acquisition Regulations Supplement; Statutory Waiver for Commercially Available Off-the-Shelf Items (DFARS Case 2008-D009)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to the FAR changes implementing the waiver of the component test of the Buy American Act to contracts and subcontracts. The Federal Acquisition Regulation (FAR) Case 2000-305 implemented 41 U.S.C. 431 with respect to the inapplicability of certain laws to contracts and subcontracts for the acquisition of commercially available off-the-shelf (COTS) items.

DATES: *Effective Date:* December 24, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD(AT&L) DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0328; facsimile 703-602-7887. Please cite DFARS Case 2008-D009.

SUPPLEMENTARY INFORMATION:

A. Background

The Buy American Act (41 U.S.C. 10a-10b) uses a two-part test to define a “domestic end product” (manufactured in the United States and a formula based on cost of domestic components) (*see* FAR 25.001(c)(1) and definition of “domestic end products” at 25.003). The second part of this test is referred to as the “component test.”

DoD published an interim rule on January 15, 2009 (74 FR 2422), to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to the FAR changes implementing the waiver of the component test of the Buy American Act for the acquisition of commercially available off-the-shelf (COTS) items (FAR Case 2000-305), published as a final rule in the **Federal Register** on January 15, 2009 (74 FR 2713), and effective February 17, 2009.

The comment period on the DFARS interim rule closed on March 16, 2009.

DoD received two responses, both representing the view of manufacturers of specialty metals.

1. The rule has been promulgated and justified based on circular logic.

One respondent objects that the final rule under FAR Case 2000-305 and the interim rule under DFARS Case 2008-D009 employ circular reasoning in changing the definition of COTS item. The respondent states that “each of the two rules is justified by pointing to the other.” The respondent objects that GSA and DoD have adopted a rule without meaningfully addressing comments on the new COTS definition submitted in response to DoD’s proposed rule 2008-D003.

Response: This case was not based on circular logic but on a progression from the DFARS proposed rule 2008-D003 to the FAR Case 2000-305 and to the interim rule under this DFARS Case 2008-D009. The comments submitted in response to the proposed rule were thoroughly reviewed and analyzed prior to the decision to incorporate this definition in the FAR rule and this DFARS rule and were then addressed in the **Federal Register** when the final rule 2008-D003 was subsequently published on July 29, 2009 (74 FR 52895).

2. Definition of COTS item should not allow modification to COTS items at higher tiers in the supply chain.

Both respondents opposed the definition of “commercially available off-the-shelf (COTS) item” because they consider it inconsistent with the statutory definition of COTS item (41 U.S.C. 431(c)) to allow modifications to occur at the next higher tier in the supply chain.

The respondents were concerned that an item could be substantially modified by downstream contractors prior to delivery to the Government.

- One respondent stated that under this definition, a COTS item can be modified in any way and still retain its character as a COTS item.

- The respondent further stated that this definition of COTS items results in the COTS exception applying to all commercial items.

- The respondent is concerned that contractors may opt to deconstruct major equipment end items such as green aircraft with the expectation that this approach would leave them with just a very small set of items requiring compliance. The respondent considered that the use of the commercial derivative military article exception would be more appropriate.

- The respondents cited language from the House Armed Services Committee report which stated that the exception for COTS items and components generally applies to items incorporated in non-commercial end items. The Committee also stated that if a contractor is using COTS items with more substantial modifications, it must use the de minimis or commercial derivative military article (CDMA) exceptions.

- The respondents requested that DoD allow only modifications that are incidental to installation, joining, or incorporation into the non-commercial end item.

Response: The arguments of these respondents are not pertinent to this DFARS rule and this DFARS rule has no impact on these respondents. This case implements a waiver of the component test under the Buy American Act for end items that are COTS items. The concern of these respondents relates to treatment of components containing specialty metals as COTS items. Their rationale is applicable to the restrictions of 10 U.S.C. 2533b on acquisition of specialty metals, but not to the Buy American Act.

The comments relating to the House Report that accompanied the FY-09 Duncan Hunter National Defense Authorization Act are inapplicable to this case, as are the comments regarding

exceptions for commercial derivative military articles and de minimis amounts of specialty metals, as these apply only to the specialty metals restriction at 10 U.S.C. 2533b.

The comments with regard to treatment of components as COTS items were addressed in more detail in the preamble to the final rule under DFARS Case 2008-D003 (74 FR 52895). However, the statement that, under this definition, COTS items that have been substantially modified are still considered to be COTS items is not accurate. The item must be provided to the next higher tier of the supply chain without modification. Whether it is a COTS item is determined at the time of transfer. DoD considers it reasonable to view COTS items that are provided from the global supply chain to the next higher tier supplier, without any modifications, to be “delivered to the Government” by those suppliers without modification. If DoD were not to view such items in this way, these COTS suppliers would not be able to provide globally available COTS items to the Government without burdensome investigations to track the eventual use of the COTS item to the end of the final assembly. Further, the COTS item definition, unlike the definition of “commercial item”, requires that the item must be sold in substantial quantities in the commercial marketplace.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Under the rule, all offerors and contractors (including small businesses) that provide U.S.-made items will no longer have to track the origin of the components in order to determine whether the items qualify as domestic end products or domestic construction material under the Buy American Act. While beneficial in acquisitions subject to the Buy American Act, the impact of this change is not considered to be a significant economic impact on small businesses, because DoD has already waived the component test for U.S.-made items in acquisitions that are subject to the World Trade Organization Government Procurement Agreement (WTO GPA), and contractors generally pass on to the Government the administrative costs incurred in complying with burdensome

Government regulations such as the component test under the Buy American Act, or decline to sell to the Government. No comments were received with regard to impact on small business.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies, because this rule will result in some reduced burdens under OMB Control number 0704-0229, DFARS Part 225 and associated clauses. A Paperwork Burden Act Change to pertinent existing burdens has been submitted to the Office of Management and Budget under 44 U.S.C. 2502, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Amy G. Williams,
Executive Editor, Defense Acquisition Regulations System.

PART 252—[AMENDED]

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 252, which was published at 74 FR 2422 on January 15, 2009, is adopted as a final rule without change.

[FR Doc. E9-30294 Filed 12-23-09; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS-R9-MB-2008-0124; 91200-1231-9BPP-L2]

RIN 1018-AW31

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

Correction

In rule document E9-22874 beginning on page 49244 in the issue of Friday, September 25, 2009 make the following corrections:

On pages 49247, 49253 through 49276, 49280, and 49281, the incorrect graphics published. These graphics are being reprinted to read as set forth below:

BILLING CODE 1301-00-C

Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations.

Area descriptions were published in the August 13, 2009 (74 FR 41008) and August 25, 2009 (74 FR 43008), Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2009, Federal Register (74 FR 45032).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16

ATLANTIC FLYWAY

		* * * * *		
<u>Massachusetts</u> (5)	Sept. 1-Nov. 7	Closed	Oct. 15-Oct. 31 & Nov. 2-Nov. 14	Sept. 1-Dec. 16
		* * * * *		
<u>Vermont</u>	Closed	Closed	Oct. 8-Nov. 6	Oct. 10-Dec. 18
		* * * * *		

MISSISSIPPI FLYWAY

		* * * * *		
<u>Louisiana</u>	Sept. 12-Sept. 27 & Nov. 14-Jan. 6	Sept. 12-Sept. 27 & Nov. 14-Jan. 6	Dec. 18-Jan. 31	Nov. 7-Dec. 11 Dec. 19-Feb. 28
		* * * * *		
<u>Tennessee</u> Reelfoot Zone	Nov. 14-Nov. 15 & Dec. 5-Jan. 31	Closed	Oct. 31-Dec. 14	Nov. 14-Feb. 28

	Season Dates	Bag	Limits	
				Possession
<u>Connecticut (cont.)</u>				
South Zone	Oct. 1-Nov. 30 & Jan. 6-Mar. 10	15 15	--	--
Brant:				
North Zone	Nov. 13-Jan. 9	2		4
South Zone	Nov. 27-Jan. 23	2		4
<u>Delaware</u>				
Ducks	Oct. 30-Nov. 11 & Nov. 23-Dec. 5 & Dec. 19-Jan. 30	6		12
Mergansers	Same as for Ducks	5		10
Coots	Same as for Ducks	15		30
Canada Geese	Nov. 23-Dec. 5 & Dec. 19-Jan. 26	2 2		4 4
Light Geese (1)	Oct. 1-Jan. 30	15		--
Brant	Dec. 4-Jan. 30	2		4
<u>Florida</u>				
Ducks	Nov. 21-Nov. 29 & Dec. 12-Jan. 31	6		12
Mergansers	Same as for Ducks	5		10
Coots	Same as for Ducks	15		30
Canada Geese	Nov. 21-Nov. 29 & Dec. 1-Jan. 30	5 5		10 10
Light Geese	Same as for Ducks	15		--
<u>Georgia</u>				
Ducks	Nov. 21-Nov. 29 & Dec. 12-Jan. 31	6		12
Mergansers	Same as for Ducks	5		10
Coots	Same as for Ducks	15		30
Canada Geese (special season)	Same as for Ducks	5		10
Light Geese	Same as for Ducks	5		10
Brant	Closed	--		--
<u>Maine</u>				
Ducks (2):		6		12
North Zone	Sept. 28-Dec. 5			
South Zone	Oct. 1-Oct. 24 & Nov. 9-Dec. 23			
Mergansers	Same as for Ducks	5		10
Coots	Same as for Ducks	5		10
Canada Geese:				
North Zone	Oct. 1-Dec. 9	2		4
South Zone	Same as for Ducks	2		4
Light Geese	Oct. 1-Jan. 31	15		--
Brant:				
North Zone	Oct. 13-Dec. 9	2		4
South Zone	Oct. 13-Oct. 24 & Nov. 9-Dec. 23	2 2		4 4

	Season Dates	Bag	Limits	
				Possession
<u>Maryland</u>				
Ducks and Mergansers (3)	Oct. 17-Oct. 24 & Nov. 14-Nov. 27 & Dec. 15-Jan. 30	6		12
Coots	Same as for Ducks	15		30
Canada Geese:				
RP Zone	Nov. 16-Nov. 27 & Dec. 17-Mar. 6	5 5		10 10
AP Zone	Nov. 21-Nov. 27 & Dec. 17-Jan. 30	2 2		4 4
Light Geese	Oct. 10-Nov. 27 & Dec. 8-Jan. 30	15 15		-- --
Brant	Nov. 21-Nov. 27 & Dec. 11-Jan. 30	2 2		4 4
<u>Massachusetts</u>				
Ducks (4):		6		12
Western Zone	Oct. 14-Nov. 28 & Dec. 11-Jan. 2			
Central Zone	Oct. 15-Nov. 28 & Dec. 17-Jan. 9			
Coastal Zone	Oct. 16-Oct. 24 & Nov. 18-Jan. 16			
Mergansers	Same as for Ducks	5		10
Coots	Same as for Ducks	15		30
Canada Geese:				
NAP Zone				
Central Zone:	Oct. 15-Nov. 28 & Dec. 17-Jan. 9	2 2		4 4
(special season)	Jan. 15-Feb. 15	5		10
Coastal Zone:	Oct. 16-Oct. 24 & Nov. 18-Jan. 16	2 2		4 4
(special season) (5)	Jan. 18-Feb. 15	5		10
AP Zone	Oct. 20-Nov. 28 & Dec. 11-Dec. 22	3 3		6 6
Light Geese:				
Western Zone	Same as for Ducks	15		30
Central Zone	Same as for Ducks & Jan. 15-Feb. 15	15 15		30 30
Coastal Zone	Same as for Ducks & Jan. 18-Feb. 15	15 15		30 30
Brant:				
Western & Central Zone	Closed	--		--
Coastal Zone	Nov. 18-Nov. 28 & Dec. 16-Jan. 30	2 2		4 4
<u>New Hampshire</u>				
Ducks:		6		12
Inland Zone	Oct. 6-Nov. 8 & Nov. 25-Dec. 20			
Coastal Zone	Oct. 7-Oct. 18 & Nov. 25-Jan. 11			

	Season Dates	Bag	Limits Possession
<u>New Hampshire (cont.)</u>			
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Inland Zone	Same as for Ducks	2	4
Coastal Zone	Same as for Ducks	2	4
Light Geese:			
Inland Zone	Oct. 6-Dec. 20	15	--
Coastal Zone	Oct. 7-Jan. 11	15	-
Brant:			
Inland Zone	Oct. 6-Nov. 24	2	4
Coastal Zone	Oct. 7-Nov. 25	2	4
<u>New Jersey</u>			
Ducks:		6	12
North Zone	Oct. 10-Oct. 31 & Nov. 17-Jan. 2		
South Zone	Oct. 17-Oct. 31 & Nov. 14-Jan. 7		
Coastal Zone	Nov. 7-Nov. 14 & Nov. 26-Jan. 26		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	15
Canada and White-fronted Geese:			
North Zone	Nov. 14-Nov. 28 & Dec. 12-Jan. 18	3 3	6 6
South Zone	Same as North Zone	3	6
Coastal Zone	Nov. 26-Dec. 5 & Dec. 8-Jan. 18	3 3	6 6
(special season)	Jan. 19-Feb. 15	5	10
Light Geese:			
North Zone	Oct. 15-Feb. 15	15	--
South Zone	Oct. 15-Feb. 15	15	--
Coastal Zone	Oct. 15-Feb. 15	15	--
Brant:			
North Zone	Oct. 10-Oct. 29 & Nov. 26-Jan. 2	2 2	4 4
South Zone	Oct. 17-Oct. 31 & Nov. 26-Jan. 7	2 2	4 4
Coastal Zone	Nov. 7-Nov. 14 & Nov. 26-Jan. 14	2 2	4 4
<u>New York</u>			
Ducks and Mergansers:		6	12
Long Island Zone	Nov. 25-Nov. 29 & Dec. 8-Jan. 31		
Lake Champlain Zone	Oct. 10-Oct. 13 & Oct. 24-Dec. 18		
Northeastern Zone	Oct. 3-Oct. 11 & Oct. 23-Dec. 12		
Southeastern Zone	Oct. 10-Oct. 18 & Nov. 7-Dec. 27		

	Season Dates	Limits	
		Bag	Possession
<u>New York (cont.)</u>			
Western Zone	Oct. 24-Dec. 6 & Dec. 26-Jan. 10		
Coots	Same as for Ducks	15	30
Canada Geese:			
Western Long Island (AFRP)	Nov. 25-Nov. 29 & Dec. 2-Feb. 14	5	10
Central Long Island (NAP-L)	Nov. 25-Nov. 29 & Dec. 7-Feb. 9	3	6
(Special season)	Feb. 10-Feb. 15	5	10
Eastern Long Island (NAP-H)	Nov. 25-Nov. 29 & Dec. 8-Jan. 31	2	4
Lake Champlain (AP) Zone	Oct. 20-Dec. 3	3	6
Northeast (AP) Zone	Oct. 24-Dec. 7	3	6
East Central (AP) Zone	Oct. 24-Nov. 20 & Nov. 28-Dec. 14	3	6
Hudson Valley (AP) Zone	Oct. 24-Nov. 20 & Dec. 18-Jan. 3	3	6
West Central (AP) Zone	Oct. 24-Nov. 21 & Dec. 26-Jan. 10	3	6
South (RP)	Oct. 24-Dec. 16 & Dec. 26-Jan. 10 & Mar. 1-Mar. 10	5	10
		5	10
		5	10
Light Geese (6):			
Long Island Zone	Nov. 24-Mar. 10	15	--
Lake Champlain Zone	Oct. 1-Dec. 29	15	--
Northeastern Zone	Oct. 1-Dec. 31 & Feb. 24-Mar. 10	15	--
Southeastern Zone	Oct. 10-Jan. 14 & Mar. 1-Mar. 10	15	--
Western Zone	Oct. 24-Dec. 16 & Dec. 26-Jan. 10 & Feb. 2-Mar. 10	15	--
		15	--
		15	--
Brant:			
Long Island Zone	Nov. 25-Nov. 29 & Dec. 18-Jan. 31	2	4
Lake Champlain Zone	Oct. 10-Nov. 28	2	4
Northeastern Zone	Oct. 3-Nov. 21	2	4
Southeastern Zone	Oct. 10-Nov. 28	2	4
Western Zone	Oct. 3-Nov. 21	2	4
<u>North Carolina</u>			
Ducks (7)	Oct. 7-Oct. 10 & Nov. 14-Dec. 5 & Dec. 19-Jan. 30	6	12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Resident Population Hunt Zone	Oct. 7-Oct. 17 & Nov. 14-Dec. 5 & Dec. 19-Feb. 6	5	10
		5	10
		5	10

	Season Dates	Limits	
		Bag	Possession
<u>North Carolina</u> (cont.)			
Southern James Bay Hunt Zone	Oct. 7-Nov. 7 & Nov. 14-Dec. 31	5	10
Northeast Hunt Zone (8)	Jan. 23-Jan. 30	1	2
Light Geese (9)	Oct. 17-Oct. 24 & Nov. 14-Mar. 10	15	--
Brant	Nov. 21-Dec. 5 & Dec. 19-Jan. 30	2	4
<u>Pennsylvania</u>			
Ducks:		6	12
North Zone	Oct. 10-Oct. 24 & Nov. 17-Jan. 9		
South Zone	Oct. 10-Oct. 17 & Nov. 16-Jan. 15		
Northwest Zone	Oct. 10-Nov. 28 & Dec. 14-Jan. 1		
Lake Erie Zone	Oct. 26-Jan. 2		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
AP Zone	Nov. 16-Nov. 28 & Dec. 19-Jan. 26	3	6
SJBP Zone	Oct. 26-Nov. 28 & Dec. 14-Jan. 28	3	6
Resident (RP) Zone	Oct. 24-Oct. 31 & Nov. 16-Nov. 28 & Dec. 11-Feb. 19	5	10
Light Geese	Nov. 6-Feb. 19	15	--
Brant	Oct. 10-Nov. 14 & Dec. 10-Dec. 31	2	4
<u>Rhode Island</u>			
Ducks	Oct. 9-Oct. 12 & Nov. 25-Nov. 29 & Dec. 5-Jan. 24	6	12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese	Nov. 21-Nov. 29 & Dec. 5-Jan. 24	2	4
(special season)	Jan. 29-Feb. 14	5	10
Light Geese	Oct. 10-Jan. 24	15	--
Brant	Dec. 6-Jan. 24	2	4
<u>South Carolina</u>			
Ducks (10)(11)	Nov. 25-Nov. 29 & Dec. 5 only & Dec. 12-Jan. 31	6	12
Mergansers (12)	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30

	Season Dates	Limits	
		Bag	Possession
<u>South Carolina</u> (cont.)			
Canada and White-fronted Geese (13)	Nov. 25-Nov. 29 &	5	10
	Dec. 5-Feb. 5 &	5	10
	Feb. 8-Feb. 15	5	10
Light Geese	Same as for Ducks	15	--
Brant	Dec. 13-Jan. 31	2	4
<u>Vermont</u>			
Ducks:		6	12
Lake Champlain Zone	Oct. 10-Oct 13 &		
	Oct. 24-Dec. 18		
Interior Zone	Oct. 10-Dec. 8		
Connecticut River Zone	Oct. 6-Nov. 8 &		
	Nov. 25-Dec. 20		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese			
Lake Champlain Zone:	Oct. 20-Dec. 3	3	6
Interior Zone:	Oct. 20-Dec. 3	3	6
Connecticut River Zone	Oct. 6-Nov. 8 &	2	4
	Nov. 25-Dec. 20	2	4
Light Geese			
Lake Champlain Zone	Oct. 1-Dec. 29	15	-
Interior Zone	Oct. 1-Dec. 29	15	-
Connecticut River Zone	Oct. 6-Dec. 20	15	-
Brant			
Lake Champlain Zone	Oct. 10-Nov. 28	2	4
Interior Zone	Oct. 10-Nov. 28	2	4
Connecticut River Zone	Oct. 6-Nov. 24	2	4
<u>Virginia</u>			
Ducks (14):	Oct. 8-Oct. 12 &	5	10
	Nov. 21-Dec. 5 &		
	Dec. 12-Jan. 30		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Eastern (AP) Zone	Nov. 21-Dec. 5 &	2	4
	Dec. 25-Jan. 30	2	4
Western (SJBP) Zone	Nov. 21-Dec. 5 &	3	6
	Dec. 15-Jan. 14 &	3	6
	Jan. 15-Feb. 13	5	10
Western (RP) Zone	Nov. 21-Dec. 5 &	5	10
	Dec. 12-Feb. 27	5	10
Light Geese	Oct. 8-Jan. 30	15	--
Brant	Nov. 21-Nov. 28 &	2	4
	Dec. 12-Jan. 30	2	4

	Season Dates	Limits	
		Bag	Possession
<u>West Virginia</u>			
Ducks (15):		6	12
Zone 1	Oct. 1-Oct. 14 & Dec. 16-Jan. 30		
Zone 2	Oct. 1-Oct. 14 & Dec. 9-Jan. 23		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada Geese:			
Zone 1	Oct. 1-Oct. 31 & Dec. 14-Jan. 31	5	10
Zone 2	Oct. 1-Oct. 31 & Dec. 14-Jan. 31	5	10
Light Geese:			
Zone 1	Same as for Canada geese	5	10
Zone 2	Same as for Canada geese	5	10
Brant			
Zone 1	Dec. 14-Jan. 31	2	4
Zone 2	Dec. 14-Jan. 31	2	4

- (1) In Delaware, the Bombay Hook NWR snow goose season is open Mondays, Wednesdays, and Fridays only.
- (2) In Maine, the daily bag limit may include no more than 4 of any species, with no more than 8 of any one species in possession. The season for Barrow's goldeneye is closed.
- (3) In Maryland, the black duck season is closed October 17 through October 24.
- (4) In Massachusetts, the daily bag limit may include no more than 4 of any single species in addition to the flyway-wide bag restrictions.
- (5) In Massachusetts, the special season in the Coastal Zone is restricted to that portion of the Coastal Zone north of the Cape Cod Canal.
- (6) In New York, light geese may be taken with the aid of recorded or electrically amplified calls in any area or zone when all other waterfowl seasons are closed.
- (7) In North Carolina, the season is closed for black ducks October 7 through October 10 and November 14 through November 30. The daily bag limit for Black and Mottled ducks are combined with no more than 1 allowed in the daily bag.
- (8) In North Carolina, a permit is required to hunt Canada geese in the Northeast Hunt Zone.
- (9) In North Carolina, electronic calls and unplugged shotguns are allowed for light geese from February 8 through March 10.
- (10) In South Carolina, the daily bag limit of 6 may not exceed 1 black-bellied whistling duck, 1 female mallard and 1 black duck or 1 mottled duck in the aggregate.
- (11) In South Carolina, on December 5, 2009, only youth less than 18 years of age may hunt, but they must be accompanied by an adult of at least 21 years of age who is fully licensed. Youth who are 16 and 17 years of age, who hunt, must possess a Federal Waterfowl Stamp and HIP permit.
- (12) In South Carolina, the daily bag limit for mergansers may include no more than 1 hooded merganser.
- (13) In South Carolina, the daily bag limit may include no more than 2 white-fronted geese.
- (14) In Virginia, the season is closed for black ducks October 8 through October 12.
- (15) In West Virginia, the daily bag limit may include no more than 4 long-tailed ducks and the season is closed for eiders, whistling ducks, and mottled ducks.

MISSISSIPPI FLYWAYFlyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 mottled duck, 1 black duck, 1 pintail, 1 canvasback, 2 redheads, 2 scaup, and 3 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 2 hooded mergansers daily and 4 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 daily and 4 in possession may be hooded mergansers.

	Season Dates	Limits	
		Bag	Possession
<u>Alabama</u>			
Ducks:		6	12
North Zone	Nov. 27-Nov. 28 & Dec. 5-Jan. 31		
South Zone	Same as North Zone		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Dark Geese:			
North Zone:			
SJBZ Zone	Sept. 26-Oct. 7 & Dec. 5-Jan. 31	2 2	4 4
Rest of North Zone	Same as SJBZ Zone	2	4
South Zone	Same as Rest of North Zone	2	4
Light Geese:			
North Zone:			
SJBZ Zone	Same as Rest of North Zone	5	5
Monroe and Escambia Counties	Sept. 26-Oct. 7 & Oct. 31-Nov. 15 & Dec. 5-Jan. 31	5 5 5	5 10 5
Rest of North Zone	Same as for Dark Geese	5	5
South Zone	Same as for Dark Geese	5	5
<u>Arkansas</u>			
Ducks	Nov. 21-Nov. 29 & Dec. 10-Dec. 23 & Dec. 26-Jan. 31	6	12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
Northwest Zone	Sept. 26-Oct. 5 & Dec. 26-Jan. 31	2 2	4 4
Remainder of State	Dec. 26-Jan. 31	2	4
White-fronted	Nov. 14-Dec. 5 & Dec. 12-Dec. 24 & Dec. 26-Jan. 31	2 2 2	4 4 4
Brant	Closed	--	--
Light Geese	Nov. 7-Dec. 24 & Dec. 26-Jan. 31	20 20	-- -

	Season Dates	Bag	Limits Possession
<u>Illinois</u>			
Ducks:		6	12
North Zone	Oct. 17-Dec. 15		
Central Zone	Oct. 31-Dec. 29		
South Zone	Nov. 14-Jan. 12		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
North Zone	Oct. 17-Jan. 9	2	4
Central Zone	Oct. 31-Nov. 15 &	2	4
	Nov. 24-Jan. 31	2	4
South Zone	Nov. 14-Nov. 15 &	2	4
	Nov. 29-Jan. 31	2	4
White-fronted:			
North Zone	Oct. 30-Jan. 9	2	4
Central Zone	Nov. 21-Jan. 31	2	4
South Zone	Nov. 14-Nov. 15 &	2	4
	Nov. 29-Jan. 31	2	4
Brant	Same as for Light Geese	1	2
Light Geese			
North Zone	Oct. 17-Jan. 9	20	--
Central Zone	Oct. 31-Jan. 31	20	-
South Zone	Nov. 14-Jan. 31	20	-
<u>Indiana</u>			
Ducks:		6	12
North Zone	Oct. 17-Dec. 15		
South Zone	Oct. 24-Nov. 1 &		
	Nov. 25-Jan. 14		
Ohio River Zone	Oct. 31-Nov. 1 &		
	Nov. 28-Jan. 24		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
North Zone	Oct. 17-Oct. 18 &	2	4
	Nov. 7-Jan. 17	2	4
South Zone	Oct. 24-Nov. 1 &	2	4
	Nov. 25-Jan. 28	2	4
Ohio River Zone	Oct. 31-Nov. 1 &	2	4
	Nov. 21-Jan. 31	2	4
Late Season Zone	Feb. 1-Feb. 15	5	10
White-fronted	Nov. 7-Jan. 31	1	2
Brant	Oct. 17-Jan. 29	1	2
Light Geese	Oct. 17-Jan. 29	20	-
<u>Iowa</u>			
Ducks:		6	12
North Duck Zone	Sept. 19-Sept. 23 &		
	Oct. 10-Dec. 3		

	Season Dates	Limits	
		Bag	Possession
<u>Iowa (cont.)</u>			
South Duck Zone	Sept. 19-Sept. 23 & Oct. 17-Dec. 10		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
North Goose Zone	Sept. 26-Oct. 4 & Oct. 10-Dec. 13 & Dec. 19-Jan. 3	2 2 2	4 4 4
South Goose Zone	Sept. 26-Oct. 4 & Oct. 17-Dec. 13 & Dec. 19-Jan. 10	2 2 2	4 4 4
White-fronted:			
North Goose Zone	Sept. 26-Dec. 6	2	4
South Goose Zone	Sept. 26-Dec. 6	2	4
Brant:			
North Goose Zone	Same as for Canada geese	1	2
South Goose Zone	Same as for Canada geese	1	2
Light Geese	Sept. 26-Jan. 10	20	--
<u>Kentucky</u>			
Ducks:		6	12
West Zone	Nov. 26-Nov. 29 & Dec. 7-Jan. 31		
East Zone	Same as for West Zone		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Canada:			
Western Goose Zone:			
Fulton County	Nov. 23-Jan. 31	2	4
Rest of Zone	Nov. 23-Jan. 31	2	4
Pennyroyal/Coalfield Zone	Nov. 23-Jan. 31	2	4
Rest of State	Nov. 23-Jan. 31	2	4
White-fronted	Nov. 23-Jan. 31	2	4
Brant	Nov. 23-Jan. 31	2	4
Light Geese			
Western Goose Zone:			
Fulton County	Nov. 23-Jan. 31	20	-
Rest of Zone:	Nov. 23-Jan. 31	20	-
Rest of State	Nov. 23-Jan. 31	20	-
<u>Louisiana</u>			
Ducks:		6	12
West Zone	Nov. 14-Dec. 6 & Dec. 19-Jan. 24		
East Zone (including Catahoula Lake)	Nov. 21-Dec. 6 & Dec. 19-Jan. 31		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30

	Season Dates	Bag	Limits Possession
<u>Louisiana (cont.)</u>			
Geese:			
Canada (2)	Dec. 19-Jan. 31	1	2
White-fronted (2):			
West Zone	Nov. 14-Dec. 6 & Dec. 19-Feb. 5	2 2	4 4
East Zone	Nov. 9-Dec. 6 & Dec. 19-Jan. 31	2 2	4 4
Brant	Closed	-	--
Light Geese	Same as for White-fronted	20	--
<u>Michigan</u>			
Ducks (1):		6	12
North Zone	Sept. 26-Nov. 20 & Nov. 26-Nov. 29		
Middle Zone	Oct. 3-Nov. 29 & Dec. 5-Dec. 6		
South Zone	Oct. 10-Dec. 6 & Jan. 2-Jan. 3		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada :			
North Zone	Sept. 16-Oct. 30	2	4
Middle Zone	Oct. 3-Nov. 9 & Nov. 26-Dec. 2	2 2	4 4
South Zone:			
Muskegon Wastewater GMU	Oct. 13-Nov. 14 & Dec. 1-Dec. 12	2 2	4 4
Allegan County GMU	Nov. 28-Dec. 21 & Dec. 28-Jan. 17	2 2	4 4
Saginaw County GMU	Oct. 10-Nov. 12 & Nov. 26-Dec. 6 & Jan. 2-Jan. 31	2 2 2	4 4 4
Tuscola/Huron GMU	Same as Saginaw County GMU	2	4
Remainder of South Zone	Oct. 10-Nov. 12 & Nov. 26-Dec. 6 & Jan. 2-Jan. 31	2 2 5	4 4 10
White-fronted and Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	10	30
<u>Minnesota</u>			
Ducks (1)(3)	Oct. 3-Dec. 1	6	12
Mergansers	Same as for Ducks	5	10
Coots (4)	Same as for Ducks	15	30
Geese:			
Canada:			
West Zone:			
West Central Zone	Oct. 15-Oct. 18 & Oct. 24-Nov. 29	2 2	4 4
Rest of West Zone (Special season)	Oct. 3-Dec. 1 Dec. 12-Dec. 21	2 5	4 10

	Season Dates	Limits	
		Bag	Possession
<u>Minnesota (cont.)</u>			
Southeast Zone	Oct. 3-Dec. 11	2	4
(Special season)	Dec. 19-Dec. 28	2	4
Rest of State	Oct. 3-Dec. 11	2	4
(Special season)	Dec. 12-Dec. 21	5	10
White-fronted	Oct. 3-Dec. 27	1	2
Brant	Oct. 3-Dec. 28	1	2
Light Geese	Oct. 3-Dec. 28	20	40
<u>Mississippi</u>			
Ducks	Nov. 27-Nov. 29 & Dec. 4-Dec. 6 & Dec. 9-Jan. 31	6	12
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada	Nov. 23-Jan. 31	3	6
White-fronted	Nov. 21-Jan. 31	2	4
Brant	Same as for Canada geese	2	4
Light Geese	Same as for White-fronted	20	-
<u>Missouri</u>			
Ducks and Mergansers:		6	12
North Zone	Oct. 31-Dec. 29		
Middle Zone	Nov. 7-Jan. 5		
South Zone	Nov. 26-Jan. 24		
Coots	Same as for Ducks	15	30
Geese:			
Canada	Sept. 26-Oct. 7 & Nov. 26-Jan. 31	3 2	6 4
White-fronted	Nov. 26-Jan. 31	2	4
Brant	Same as for Canada geese	1	2
Light Geese	Oct. 31-Jan. 31	20	--
<u>Ohio</u>			
Ducks (1):		6	12
North Zone	Oct. 17-Dec. 6 & Dec. 26-Jan. 3		
South Zone	Oct. 17-Nov. 1 & Dec. 12-Jan. 24		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
North Zone:			
Lake Erie SJBZ Zone	Oct. 17-Nov. 29 & Dec. 7-Jan. 3	2 2	4 4
Rest of North Zone	Oct. 17-Nov. 29 & Dec. 19-Jan. 17	2 2	4 4
South Zone	Oct. 17-Nov. 8 & Dec. 12-Jan. 31	2 2	4 4

	Season Dates	Limits	
		Bag	Possession
<u>Ohio (cont.)</u>			
White-fronted and Brant	Same as for Canada geese	2	4
Light Geese	Same as for Canada geese	10	30
<u>Tennessee</u>			
Ducks:		6	12
Reelfoot Zone	Nov. 14-Nov. 15 & Dec. 5-Jan. 31		
State Zone	Nov. 28-Nov. 29 & Dec. 5-Jan. 31		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
Northwest Zone	Dec. 5-Feb. 14	2	4
Southwest Zone	Oct. 3-Oct. 9 & Nov. 28-Jan. 31	2	4
Kentucky/Barkley Lakes Zone	Same as Southwest Zone	2	4
Rest of State	Same as Southwest Zone	2	4
White-fronted	Dec. 5-Feb. 14	2	4
Brant	Nov. 23-Jan. 31	2	4
Light Geese	Nov. 25-Mar. 10	20	--
<u>Wisconsin</u>			
Ducks (1):		6	12
North Zone	Sept. 26-Nov. 24		
South Zone	Oct. 3-Oct. 11 & Oct. 17-Dec. 6		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
Horicon Zone	Sept. 16-Dec. 16		Tag System--See State Regulations
Collins Zone	Sept. 16-Nov. 20		Tag System--See State Regulations
Exterior Zone:			
North Portion:			
Brown Co. Subzone - North	Sept. 19-Dec. 12	2	4
Remainder of North Portion	Sept. 19-Dec. 12	2	4
South Portion:			
Rock Prairie Subzone	Sept. 19-Oct. 11 & Oct. 17-Dec. 17	2	4
Brown Co. Subzone - South	Same as Rock Prairie Subzone	2	4
Mississippi River Subzone	Oct. 3-Oct. 11 & Oct. 17-Dec. 31	2	4
Remainder of South Portion	Same as Rock Prairie Subzone	2	4
White-fronted:			
Horicon Zone	Sept. 22-Dec. 16	1	2
Collins and Exterior Zones	Same as for Canada geese	1	2
Brant	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	10	20

- (1) In Michigan, Minnesota, Ohio, and Wisconsin, the daily bag limit may include no more than one hen mallard.
- (2) In Louisiana, during the Canada goose season, the daily bag limit is 2 dark geese (whitefronts and Canada geese) with no more than 1 Canada goose. Possession limits are twice the daily bag limits.
- (3) In Minnesota, the daily bag limit for wood ducks is 2. Possession limits are twice the daily bag limit.
- (4) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots and moorhens in the aggregate.

CENTRAL FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit is 6 ducks, which may include no more than 5 mallards (2 female mallards), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 2 scaup, and 3 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The daily bag limit is 5 mergansers with 10 in possession and may include no more than 2 hooded mergansers daily and 4 in possession. In states that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, of which only 2 daily and 4 in possession may be hooded mergansers.

	Season Dates	Limits	
		Bag	Possession
<u>Colorado</u>			
Ducks (1):		6	12
Eastern Plains Zone:	Oct. 3-Oct. 19 & Nov. 7-Jan. 24		
Mountain/Foothills Zone:	Oct. 3-Nov. 30 & Dec. 19-Jan. 24		
Coots	Same as for Ducks	15	30
Mergansers	Same as for Ducks	5	10
Dark Geese:			
Northern Front Range Unit	Oct. 3-Oct. 12 & Nov. 21-Feb. 14	4	8
South Park/San Luis Valley Unit	Same as N. Front Range Unit	4	8
North Park Unit	Same as N. Front Range Unit	4	8
Rest of State in Central Flyway	Nov. 21-Feb. 14	4	8
Light Geese:			
Northern Front Range Unit	Oct. 31-Feb. 14	20	--
South Park/San Luis Valley Unit	Same as N. Front Range Unit	20	--
North Park Unit	Same as N. Front Range Unit	20	--
Rest of State in Central Flyway	Same as N. Front Range Unit	20	--
<u>Kansas</u>			
Ducks (2):		5	10
High Plains	Oct. 10-Jan. 5 & Jan. 23-Jan. 31		
Low Plains:			
Early Zone	Oct. 10-Dec. 6 & Dec. 19-Jan. 3		
Late Zone	Oct. 31-Jan. 3 & Jan. 23-Jan. 31		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30

	Season Dates	Limits	
		Bag	Possession
<u>Kansas (cont.)</u>			
Dark Geese (3):			
Canada	Oct. 31-Nov. 8 &	3	6
	Nov. 11-Feb. 14	3	6
White-fronted	Oct. 31-Nov. 8 &	2	4
	Nov. 5-Jan. 3 &	2	4
	Feb. 6-Feb. 14	2	4
Light Geese	Oct. 31-Nov. 8 &	20	--
	Nov. 11-Feb. 14	20	--
<u>Montana</u>			
Ducks and Mergansers (4):		6	12
Zone 1:	Oct. 3-Jan. 7		
Zone 2	Same as for Zone 1		
Coots	Same as for Ducks	15	30
Dark Geese	Oct. 3-Jan. 15	4	8
Light Geese	Oct. 3-Jan. 15	6	12
<u>Nebraska</u>			
Ducks (4):		6	12
High Plains:	Oct. 10-Jan. 13		
Low Plains:			
Zones 1 and 2:	Oct. 17-Oct. 18 &		
	Oct. 24-Jan. 3		
Zones 3 and 4:	Oct. 10-Dec. 20 &		
	Dec. 26-Dec. 27		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada:			
Niobrara Unit	Oct. 24-Feb. 5	3	6
East Unit	Oct. 24-Jan. 27	3	6
North Central Unit	Oct. 10-Jan. 22	3	6
Platte River Unit	Same as for Niobrara Unit	3	6
White-fronted	Oct. 10-Dec. 20	2	4
Light Geese	Oct. 10-Jan. 8 &	20	--
	Jan. 23-Feb. 5	20	--
<u>New Mexico</u>			
Ducks and Mergansers (4)(5):		6	12
North Zone:	Oct. 10-Jan. 13		
South Zone:	Oct. 28-Jan. 31		
Coots	Same as for Ducks	15	30
Dark Geese (6):			
Middle Rio Grande Valley Unit (6)	Jan. 2-Jan. 24	2	2
Rest of State	Oct. 17-Jan. 31	4	8
Light Geese	Oct. 17-Jan. 31	20	80

	Season Dates	Limits	
		Bag	Possession
<u>North Dakota</u>			
Ducks (1):		6	12
High Plains	Sept. 26-Dec. 6 & Dec. 12-Jan. 3		
Remainder of State	Sept. 26-Dec. 6		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese (7):			
Canada Geese:			
Missouri River Zone	Sept. 26-Jan. 1	3	6
Rest of State	Sept. 26-Dec. 24	3	6
White-fronted	Sept. 26-Dec. 6	2	4
Light Geese	Sept. 26-Jan. 1	20	--
<u>Oklahoma</u>			
Ducks (1):		6	12
High Plains:	Oct. 10-Jan. 6		
Low Plains:			
Zone 1:	Oct. 24-Nov. 29 & Dec. 12-Jan. 17		
Zone 2:	Nov. 7-Nov. 29 & Dec. 12-Jan. 31		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
Canada	Oct. 31-Nov. 29 & Dec. 12-Feb. 14	3	6
White-fronted	Oct. 31-Nov. 29 & Dec. 12-Feb. 5	2	4
Light Geese	Same as for Canada geese	1	2
<u>South Dakota</u>			
Ducks (4):		6	12
High Plains	Oct. 10-Dec. 22 & Dec. 23-Jan. 14		
Low Plains::			
North Zone	Sept. 26-Dec. 8		
Middle Zone	Same as for North Zone		
South Zone	Oct. 10-Dec. 22		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
White-fronted	Sept. 26-Dec. 20	1	2
Canada:			
Unit 1	Oct. 1-Dec. 20	3	6
Unit 2	Oct. 31-Feb. 12	3	6
Unit 3	Oct. 17-Dec. 20 &	3	6
Light Geese	Jan. 9-Jan. 17 Sept. 26-Dec. 20	3	6
		20	-

	Season Dates	Bag	Limits Possession
<u>Texas</u>			
Ducks (8):		6	12
High Plains	Oct. 24-Oct. 25 & Oct. 30-Jan. 24		
Low Plains:			
North Zone	Oct. 31-Nov. 29 & Dec. 12-Jan. 24		
South Zone	Same as North Zone		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Geese:			
East Tier:			
South Zone:			
Canada geese and Brant	Oct. 31-Jan. 24	3	6
White-fronted	Oct. 31-Jan. 10	2	4
Light Geese	Oct. 31-Jan. 24	20	--
North Zone	Same as for South Zone		
West Tier:			
Dark Geese:			
Canada geese and Brant	Nov. 7-Feb. 7	4	8
White-fronted	Same as for Canada geese	1	2
Light Geese	Same as for Canada geese	20	--
<u>Wyoming</u>			
Ducks (1):		6	12
Zone 1	Oct. 3-Oct. 20 & Oct. 31-Jan. 17		
Zone 2	Sept. 26-Oct. 20 & Oct. 31-Jan. 10		
Mergansers	Same as for Ducks	5	10
Coots	Same as for Ducks	15	30
Dark Geese:			
Zone 1	Oct. 3-Oct. 20 & Oct. 31-Dec. 6 & Dec. 12-Jan. 30	5 5 5	10 10 10
Zone 2	Sept. 26-Nov. 29 & Dec. 12-Jan. 20	5 5	10 10
Zone 3 (3)	Oct. 3-Oct. 20 & Nov. 14-Feb. 8	2 4	4 8
Zone 4	Sept. 26-Oct. 20 & Oct. 31-Dec. 6 & Dec. 12-Jan. 23	5 5 5	10 10 10
Light Geese	Oct. 3-Dec. 27 & Jan. 21-Feb. 8	10 10	40 40

(1) In Colorado, North Dakota, Oklahoma, and Wyoming, the season for mottled ducks is closed the first 5 days of the season in each zone.

(2) In Kansas, the daily bag limit is 5 ducks, which may include no more than 2 redheads, 2 scaup, and 3 wood ducks, and only 1 from the following group - hen mallard, pintail, mottled duck (except for the first 5 days of the season, when mottled ducks are closed), or canvasback. The possession limit is twice the daily bag limit.

- (3) See State regulations for additional restrictions.
- (4) In Montana, Nebraska, New Mexico, and South Dakota, the season for mottled ducks is closed.
- (5) In New Mexico, Mexican-like ducks are included in the aggregate with mallards.
- (6) In New Mexico, the season for dark geese is closed in Bernalillo, Sandoval, Sierra, and Valencia Counties. In the Middle Rio Grande Valley Unit, a state permit is required.
- (7) In North Dakota, see State regulations for additional shooting hour restrictions.
- (8) In Texas, the daily bag limit is 6 ducks, which may include no more than 5 mallards (only 2 of which may be hens), 2 redheads, 2 scaup, 3 wood ducks, 1 canvasback, 1 pintail, and 1 dusky duck (mottled duck, black duck and their hybrids, or Mexican-like duck). The season for dusky ducks is closed the first 5 days of the season in all zones. The possession limit is twice the daily bag limit.

PACIFIC FLYWAY

Flyway-wide Restrictions

Duck and Merganser Limits: The daily bag limit of 7 ducks (including mergansers) may include no more than 2 female mallards, 2 pintails, 2 redheads, 3 scaup, and 1 canvasback. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: Daily bag and possession limits are in the aggregate for the two species.

	Season Dates	Limits	
		Bag	Possession
<u>Arizona</u>			
Ducks (1):		7	14
North Zone:			
Scaup	Oct. 24-Jan. 17	3	6
Other Ducks	Oct.9-Jan.17		
South Zone:			
Scaup	Nov. 7-Jan. 31	3	6
Other Ducks	Oct. 23-Jan. 31		
Coots and moorhens	Same as Other Ducks	25	25
Geese:			
North Zone:	Oct. 9-Jan. 17		
Dark Geese		3	6
Light Geese		6	12
South Zone:	Oct. 23-Jan. 31		
Dark Geese		3	6
Light Geese		6	12
<u>California</u>			
Ducks:		7	14
Northeastern Zone:			
Scaup	Oct. 10-Jan. 3	3	6
Other Ducks	Oct. 10-Jan. 22		
Colorado River Zone:			
Scaup	Nov. 7-Jan. 31	3	6
Other Ducks	Oct. 23-Jan. 31		
Southern Zone:			
Scaup	Nov. 7-Jan. 31	3	6
Other Ducks	Oct. 24-Jan. 31		

	Season Dates	Bag	Limits Possession
<u>California</u> (cont.)			
Southern San Joaquin Valley Zone:			
Scaup	Nov. 14-Jan. 31	3	6
Other Ducks	Oct. 10-Nov. 1 & Nov. 14-Jan. 31		
Balance-of-State Zone:			
Scaup	Nov. 7-Jan. 31	3	6
Other Ducks	Oct. 24-Jan. 31		
Coots and moorhens	Same as for Other Ducks	25	25
Geese:			
Northeastern Zone:		8	16
Canada Geese:			
Small Canada Geese (2)	Oct. 10-Jan. 17	1	2
Large Canada Geese (3)	Oct. 10-Jan. 17	2	4
White-fronted Geese	Oct. 10-Jan. 17	4	8
Light Geese	Oct. 10-Jan. 17	6	12
Colorado River Zone:		6	12
Dark Geese	Oct. 23-Jan. 31	3	6
Light Geese	Oct. 23-Jan. 31	6	12
Southern Zone:		8	16
Dark Geese	Oct. 24-Jan. 31	3	6
Light Geese:			
Imperial Valley	Nov. 7-Jan. 31 & Feb. 13-Feb. 28	6	12
Rest of Zone	Oct. 24-Jan. 31	6	12
Balance-of-State Zone:		8	16
Canada Geese:			
Small Canada geese (2)	Oct. 24-Jan. 31	6	12
Large Canada geese (3)		6	12
White-fronted Geese:			
Sacramento Valley	Oct. 24-Dec. 14	2	4
Rest of Zone	Oct. 24-Jan. 31	4	8
Light Geese	Oct. 24-Jan. 31	6	12
Del Norte & Humboldt Counties:		6	12
Canada:			
Small Canada geese (2)	Nov. 7-Jan. 31 & Feb. 20-Mar. 10	6	12
Large Canada geese (3)	Nov. 7-Jan. 31	1	2
White-fronted Geese	Oct. 24-Jan. 31	4	8
Light Geese	Oct. 24-Jan. 31	6	12
Brant			
North Zone	Nov. 7-Dec. 6	2	4
South Zone	Nov. 14-Dec. 13	2	4
<u>Colorado</u>			
Ducks:		7	14
Scaup	Sept. 26-Oct. 13 & Nov. 6-Jan. 12	3	6
Other Ducks	Sept. 26-Oct. 13 & Nov. 6-Jan. 31	3	6
Coots	Same as for Other Ducks	25	25

	Season Dates	Limits	
		Bag	Possession
<u>Colorado (cont.)</u>			
Dark Geese	Sept. 26-Oct. 4 & Nov. 6-Jan. 31	3 3	6 6
Light Geese	Same as for Dark Geese	10	20
<u>Idaho</u>			
Ducks:		7	14
Zone 1:			
Scaup	Oct. 24-Jan. 15	3	6
Other Ducks	Oct. 3-Jan. 15		
Zone 2	Same as Zone 1		
Zone 3:			
Scaup	Oct. 31-Jan. 22	3	6
Other Ducks	Oct. 10-Jan. 22		
Coots	Same as for Other Ducks	25	25
Dark Geese:			
Zone 1	Oct. 3-Jan. 15	4	8
Zone 2	Oct. 10-Jan. 22	4	8
Zone 3	Same as for Zone 2	4	8
Zone 4	Same as for Zone 1	4	8
Zone 5	Same as for Zone 1	4	8
Light Geese:			
Zone 1	Oct. 3-Jan. 15	10	20
Zone 2	Oct. 29-Jan. 22 & Feb. 20-Mar. 10	10 10	20 20
Zone 3	Same as for Zone 2	10	20
Zone 4 (4)	Same as for Zone 1	10	20
Zone 5 (5)	Same as for Zone 1	10	20
<u>Montana</u>			
Ducks		7	14
Scaup	Oct. 3-Dec. 27	3	6
Other Ducks	Oct. 3-Jan. 15		
Coots	Same as for Other Ducks	25	25
Geese (6):			
Dark	Oct. 3-Jan. 15	4	8
Light	Oct. 3-Jan. 15	6	12
<u>Nevada</u>			
Ducks:		7	14
Lincoln & Clark Counties:			
Scaup	Nov. 7-Jan. 29	3	6
Other Ducks	Oct. 17-Jan. 29		
Rest of State:			
Scaup	Nov. 7-Jan. 30	3	6
Other Ducks	Oct. 17-Jan. 30		
Coots and moorhens	Same as for Other Ducks	25	25
Dark Geese:			
Lincoln & Clark Counties	Oct. 17-Jan. 29	3	6
Rest of State	Oct. 17-Jan. 30	3	6

	Season Dates	Bag	Limits Possession
<u>Nevada (cont.)</u>			
Light Geese:			
Lincoln & Clark Counties	Oct. 17-Jan. 29	10	20
Rest of State (7)	Oct. 17-Jan. 30	10	20
<u>New Mexico</u>			
Ducks (8)			
Scaup	Nov. 7-Jan. 31	2	4
Other Ducks	Oct. 19-Jan. 31		
Coots	Same as for Other Ducks	12	24
Moorhens and gallinules	Same as for Other Ducks	12	24
Dark Geese:			
North Zone	Sept. 26-Oct. 11 & Nov. 2-Jan. 31	3	6
South Zone	Oct. 17-Jan. 31	2	4
Light Geese:			
North Zone	Same as Dark Geese	1	2
South Zone	Same as Dark Geese	1	2
<u>Oregon</u>			
Ducks:			
Zone 1:		7	14
Columbia Basin Unit:			
Scaup	Nov. 7-Jan. 31	3	6
Other Ducks	Oct. 17-Oct. 25 & Oct. 28-Jan. 31		
Rest of Zone 1	Same as for Columbia Basin Unit		
Zone 2:			
Scaup	Oct. 10-Nov. 29 & Dec. 2-Jan. 5	3	6
Other Ducks	Oct. 10-Nov. 29 & Dec. 2-Jan. 24	3	6
Coots	Same as for Other Ducks	25	25
Geese:			
Northwest General Goose Zone:			
Dark Geese	Oct. 17-Oct. 25 & Nov. 5-Jan. 31	4	8
Small Canada Geese (2)		1	2
Light Geese	Same as for Dark Geese	6	12
Northwest Special Permit Zone (9):			
Dark Geese	Oct. 24-Nov. 8 & Nov. 21-Jan. 17 & Feb. 6-Feb. 28	4	8
Dusky Canada geese		4	8
Small Canada geese (2)		4	8
Light Geese	Same as for Dark Geese	4	8
Southwest General Zone:			
Dark Geese	Oct. 17-Nov. 29 & Dec. 12-Jan. 31	4	8
Light Geese	Same as for Dark Geese	6	12

	Season Dates	Bag	Limits	
				Possession
<u>Oregon (cont.)</u>				
South Coast Zone:				
Dark Geese	Oct. 3-Oct. 20 & Nov. 25-Jan. 31 & Feb. 20-Mar. 10	4 4 4	8 8 8	
Light Geese	Oct. 3-Oct. 20 & Nov. 25-Jan. 31	6 6	12 12	
Harney, Lake, and Malheur County Zone:				
Dark Geese	Oct. 10-Nov. 29 & Dec. 19-Jan. 31	4 4	8 8	
Small Canada geese		1	2	
White-fronted geese:				
Lake County		1	2	
Rest of Zone		4	8	
Light Geese	Same as Dark Geese	6	12	
Klamath County Zone:				
Dark Geese	Oct. 10-Nov. 29 & Dec. 19-Jan. 22 &	4 4	8 8	
Small Canada geese		1	2	
White-fronted geese (special season)	Feb. 20-Mar. 10	2	4	
Light Geese	Oct. 10-Nov. 29 & Dec. 19-Jan. 22 & Feb. 20-Mar. 10	4 4 4	8 8 8	
Eastern Zone:				
Dark Geese	Oct. 17-Oct. 25 & Nov. 7-Jan. 31	4 4	8 8	
Small Canada geese		1	2	
Light Geese	Same as Dark Geese	6	12	
Tillamook County (9):				
Dark Geese	Nov. 28-Feb. 28	2	4	
Light Geese	Nov. 28-Feb. 28	4	8	
Brant	Nov. 14-Nov. 29	2	4	
<u>Utah (10)</u>				
Ducks:		7	14	
Zone 1:				
Scaup	Oct. 3-Dec. 27	3	6	
Other Ducks	Oct. 3-Jan. 16			
Zone 2				
Coots	Same as for Zone 1			
Geese:	Same as for Other Ducks	25	25	
Light:				
North Goose Zone	Oct. 24-Jan. 16 & Feb. 18-Mar. 10	10 10	20 20	
Rest of State	Oct. 31-Jan. 31 & Feb. 27-Mar. 10	10 10	20 20	
Dark:				
North Goose Zone	Oct. 3-Jan. 16	3	6	
Rest of State	Oct. 3-Oct. 15 & Oct. 31-Jan. 31	3 3	6 6	

	Season Dates	Limits	
		Bag	Possession
<u>Washington</u>			
Ducks:		7	14
East Zone:			
Scaup	Nov. 7-Jan. 31	3	6
Other Ducks	Oct. 17-Oct 21 & Oct. 24-Jan. 31		
West Zone (11)	Same as the East Zone		
Coots	Same as for Other Ducks	25	25
Geese:			
Management Area 1 (12):		4	8
Light Geese	Oct 17-Jan. 31		
Dark Geese	Oct 17-Oct. 29 & Nov. 7-Jan. 31		
Management Area 2A (13)	Nov. 14-Nov. 25 & Nov. 28-Nov. 30 & Dec. 9-Jan. 31	4 4 4	8 8 8
Dusky Canada geese		1 per season	
Late-Season Canada Geese	Feb. 6-Mar. 10	4	8
Dusky Canada geese		1 per season	
Management Area 2B (13)	Oct. 17-Jan. 16	4	8
Dusky Canada geese		1 per season	
Management Areas 3 (12)	Oct. 17-Oct. 29 & Nov. 7-Jan. 31	4 4	8 8
Management Areas 4 & 5 (12)	Oct. 17-Oct. 21 & Oct. 24-Jan. 31	4 4	8 8
Brant (14):			
Skagit County	Jan. 16-Jan. 31	2	4
Pacific County	Jan. 9-Jan. 24	2	4
<u>Wyoming</u>			
Ducks:		7	14
Snake River Zone:			
Scaup	Sept. 26-Dec. 20	3	6
Other Ducks	Sept. 26-Jan. 8		
Balance of State Zone	Same as Snake River Zone		
Coots	Same as for Other Ducks	25	25
Dark Geese:	Sept. 26-Dec. 31	3	6

- (1) In Arizona, the daily limit may include no more than either 2 hen mallards or 2 Mexican-like ducks, or 1 of each; and not more than 4 hen mallards and Mexican-like ducks, in the aggregate, may be in possession.
- (2) In California and Oregon, small Canada geese are Cackling and Aleutian Canada geese.
- (3) In California, large Canada geese are Western and Lesser Canada geese.
- (4) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
- (5) In Idaho, that portion of Zone 5 within Power and Bingham Counties in GMU 68, the light goose season is October 22 to January 15 and February 20 to March 10.
- (6) In Montana, check State regulations for special seasons/exceptions in Freezout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
- (7) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties.
- (8) In New Mexico, the daily bag limit consists of no more than 7 mallards (of which only 2 may be hen mallards), 2 redheads, 2 scaup (when open), and 1 northern pintail.

- (9) In Oregon, the Northwest Special Permit Zone is closed to all goose hunting, except for designated areas. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
- (10) In Utah, the shooting hours are 8:00 a.m. to sunset on October 6 in Cache, Salt Lake, Davis, Weber, and Box Elder Counties.
- (11) In Washington, the daily bag limit in the West Zone may include no more than 4 scoters and 4 oldsquaws, with the possession limit twice the daily bag limit. The daily bag and possession limit, and the season limit, for harlequins is 1.
- (12) In Washington, in State Goose Area 4, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Areas 1, 3, and 5, hunting is everyday. See State regulations for details, including shooting hours.
- (13) In Washington, see State regulations for specific dates and conditions of permit hunts and closures for Canada geese.
- (14) In Washington, brant may be hunted in Skagit and Pacific Counties only; see State regulations for specific dates.

(f) Youth Waterfowl Hunting Days

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

Definition

Youth Hunters: Includes youths 15 years of age or younger.

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2009 Federal Register (74 FR 45032). Bag and possession limits will conform to those set for the regular season.

		Season Dates
<u>ATLANTIC FLYWAY</u>		
	* * * * *	
<u>Florida</u>	Ducks, mergansers, coots, moorhens, and geese	Feb. 6 & 7
	* * * * *	
<u>Maryland</u>	Ducks, coots, snow geese, Canada geese, sea ducks, and brant (10)	Nov. 7
<u>Massachusetts</u>	Ducks, mergansers, coots, and geese	Oct. 10 & 12
	* * * * *	
<u>North Carolina</u>	Ducks, mergansers, Canada geese (11), tundra swans (12), and coots	Feb. 6
	* * * * *	
<u>South Carolina</u>	Ducks, geese, mergansers, and coots	Feb. 6 & 7
	* * * * *	

	Season Dates	Limits	
		Bag	Possession
<u>Texas</u> (1):			
Zone A	Nov. 7-Feb. 7	3	6
Zone B	Nov. 27-Feb. 7	3	6
Zone C	Dec. 19-Jan. 24	2	4
* * * * *			

(1) Each person participating in the regular sandhill crane seasons must have a valid sandhill crane hunting permit and/or a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

* * * * *

5. Section 20.107 is revised to read as follows:

§20.107 Seasons, limits, and shooting hours for swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Hunting is by State permit only.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season Dates	Limits	
		Bag	Possession
<u>ATLANTIC FLYWAY</u>			
<u>North Carolina</u>	Nov. 14-Jan. 30	1 tundra swan per season	
<u>Virginia</u>	Dec. 1-Jan 30	1 tundra swan per season	
<u>CENTRAL FLYWAY</u> (1)			
<u>Montana</u>	Oct. 3-Jan. 7	1 tundra swan per season	
<u>North Dakota</u>	Oct. 3-Jan. 3	1 tundra swan per season	
<u>South Dakota</u>	Oct. 3-Dec. 20	1 tundra swan per permit	
<u>PACIFIC FLYWAY</u> (1)(2)			
<u>Montana</u> (3)	Oct. 10-Dec. 1	1 swan per season	
<u>Nevada</u> (4)(5)	Oct. 17-Jan. 3	2 swans per season	

	Season Dates	Limits	
		Bag	Possession
Utah (5)(6)	Oct. 3-Dec. 13	1 swan per season	

- (1) See State regulations for description of area open to swan hunting.
- (2) Any species of swan may be taken.
- (3) In Montana, all harvested swans must be reported by way of a bill measurement card within 3 days of harvest.
- (4) All harvested swans and tags must be checked or registered within 5 days of harvest.
- (5) Harvests of trumpeter swans are limited to 5 in Nevada and 10 in Utah. When it has been determined that the quota of trumpeter swans allotted to Nevada and Utah will have been filled, the season for taking of any swan species in the respective State will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.
- (6) In Utah, all harvested swans and tags must be checked or registered within 3 days of harvest.

6. Section 20.109 is amended by adding the entries for the following States in alphabetical order to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations. Area descriptions were published in the August 13, 2009 (74 FR 41008) and August 25, 2009 (74 FR 43008) Federal Registers.

Limits: The daily bag limit may include no more than 3 migratory game birds, singly or in the aggregate. The possession limit is twice the daily bag limit. These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Although many States permit falconry during the gun seasons, only extended falconry seasons are shown below. Please consult State regulations for details.

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 2009 Federal Register (73 FR 45032).

Extended Falconry Dates

ATLANTIC FLYWAY

Delaware

* * * * *

Ducks, mergansers, and coots Feb. 1-Mar. 6

Brant Feb. 1-Mar. 6

Proposed Rules

Federal Register

Vol. 74, No. 246

Thursday, December 24, 2009

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

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 090508897-91141-02]

RIN 0648-AX85

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Season and Retention Limit Adjustments

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 4, 2009, NMFS published a proposed rule to increase the Atlantic bluefin tuna (BFT) General category maximum daily retention limit; allow the General category season to remain open until the January subquota is reached; and increase the Harpoon category daily incidental retention limit. The proposed rule is intended to more thoroughly utilize available U.S. BFT quota, particularly for the General and Harpoon (commercial handgear) categories. In the proposed rule, NMFS announced the end of the comment period as December 21, 2009, which would allow an approximately 45-day comment period. In order to provide additional opportunities for the public and other interested parties to comment on the proposed rule, NMFS is extending the comment period for this action until March 31, 2010. Comments received by NMFS on the proposed rule will help NMFS determine whether and how to implement final management measures for the BFT General and Harpoon categories as described in the proposed action.

DATES: The deadline for comments on the BFT rule regarding the General and Harpoon categories has been extended from December 21, 2009, as published on November 4, 2009 (74 FR 57128), to March 31, 2010.

ADDRESSES: As published on November 4, 2009 (74 FR 57128), you may submit comments, identified by "0648-AX85", by any one of the following methods:

* **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

* **Fax:** 978-281-9340, Attn: Sarah McLaughlin

* **Mail:** Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930

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

NMFS will accept anonymous comments (enter "n/a" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Supporting documents including the draft Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) for this action are available from the Highly Migratory Species Management Division Web site at <http://www.nmfs.noaa.gov/sfa/hms> or by sending your request to Sarah McLaughlin at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the

Assistant Administrator for Fisheries, NOAA (AA). The provisions of the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) are implemented by regulations at 50 CFR part 635.

On November 4, 2009 (74 FR 57128), NMFS published the proposed rule regarding three potential actions for the BFT commercial handgear fisheries to more thoroughly utilize available U.S. BFT quota, while ending BFT overfishing, rebuilding the BFT stock by 2019, and minimizing bycatch and bycatch mortality to the extent practicable.

First, for the General category, NMFS would increase the maximum daily retention limit from three fish to five fish per vessel, such that NMFS could increase or decrease the daily retention limit of large medium and giant BFT (measuring 73 inches (185 cm) or greater) over a range from zero to a maximum of five per vessel via an inseason action based on the determination criteria and other relevant factors provided under § 635.27(a)(8).

Second, NMFS would allow the General category to remain open at the beginning of the calendar year until the January subquota is determined to be fully harvested. To effect this change, NMFS would adjust the BFT quota regulation that specifies the time period for which the first General category subquota is available, such that the period that begins January 1 would end upon the effective date of a closure notice that NMFS would file with the Office of the Federal Register when the quota apportioned to the period that begins January 1 is projected to be reached, or May 31, whichever comes first.

Third, for the Harpoon category, NMFS would increase the daily incidental retention limit of large medium BFT (measuring 73 inches to less than 81 inches (205 cm)) from two fish to four fish per vessel).

In the proposed rule, NMFS announced the end of the comment period as December 21, 2009. NMFS has received several comments requesting a 90-day extension of the comment period. NMFS has also received comment from fishery participants that final action should be taken on this proposed action as soon as possible to

allow any final actions selected to be implemented for the 2010 General and Harpoon category fisheries. NMFS has determined that it is reasonable to extend the comment period to allow additional opportunities for public comment, and is extending the comment period until March 31, 2010. This revised comment period end date should allow sufficient time for any

final actions selected to be effective prior to the June 1, 2010, resumption of the General category season and the start of the Harpoon category season. These comments will assist NMFS in determining final management measures to conserve and manage the BFT resource and fisheries, consistent with the Magnuson-Stevens Act, ATCA, and the 2006 Consolidated HMS FMP.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: December 18, 2009.

Jim Balsiger,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. E9-30567 Filed 12-21-09; 11:15 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 74, No. 246

Thursday, December 24, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Umatilla National Forest, Walla Walla Ranger District, OR; North End Sheep Allotment EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service proposes to continue to permit livestock (sheep) grazing on approximately 98,000 acres within the North End Allotment. This action will comply with the Rescission Act of 1995 requiring NEPA analysis for all grazing allotments.

The North End Allotment is approximately 132,000 acres in size and is located in Umatilla, Wallowa, and Union Counties, Oregon. The large size makes for a diverse allotment of mountain uplands and plateaus dissected by large canyons. Approximately 75% of the allotment is forested vegetation with the remaining lands consisting of grasslands. Most of the allotment has been grazed by domestic sheep since the late 1800's and records show that the Forest Service has issued permits since the 1920's for the allotment. Since the current AMP was approved in 1986, it does not incorporate the changes that have occurred since the signing of the Forest Plan (1990), as amended. Also, the Rescission Act of 1995 (Pub. L. 104-19, Section 504) requires the Forest Service to identify all allotments requiring NEPA analysis, and to prepare and adhere to a schedule for conducting such analysis. However, the Annual Operating Instructions (AOI)¹ for the allotment has been adjusted yearly to respond to these changes in

¹ A long term operating plan which is the implementing document for the decision made through the National Policy Act process that promotes progress toward desired future conditions.

management direction. The Forest Service proposes to continue to permit livestock grazing (sheep) on approximately 98,000 acres within the North End Allotment.

Development and implementation of these actions will be conducted in accordance with the National Forest Management Act, National Environmental Policy Act, Council on Environmental Quality regulations, Clean Water Act, Clean Air Act, Endangered Species Act, and with the Umatilla National Forest Land and Resource Management Plan and scientific recommendations of the Interior Columbia Basin Ecosystem Management Project.

DATES: Comments concerning the scope of the analysis must be received by January 25, 2010. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available to the public for review by June 2010. The Final EIS is scheduled to be completed by September 2010.

ADDRESSES: Send written comments to Mike Rassbach, District Ranger, Walla Walla Ranger District, 1415 W. Rose, Walla Walla, WA. Comments may also be sent via e-mail to comments-pacificnorthwest-umatilla-wallawalla@fs.fed.us, or via facsimile to 509-522-6000.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative appeal or judicial review.

FOR FURTHER INFORMATION CONTACT: Kimpton Cooper, Environmental Coordinator, Walla Walla Ranger District, 1415 W. Rose, Walla Walla, WA 99362. He can be reached by phone at (509) 522-6290 or by e-mail at kmcooper@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need is to comply with the Rescission Act of 1995 requiring NEPA analysis on the North End Allotment. Also, part of the allotment is near occupied Rocky Mountain bighorn sheep range. There is a potential risk of physical contact occurring between the domestic sheep and bighorn sheep. Contact between domestic sheep and bighorn sheep would likely be detrimental to the health of the bighorn sheep herd resulting in substantial population declines. There is a need to manage livestock stocking and distribution to reduce the likelihood of contact between domestic and bighorn sheep.

Proposed Action

The Forest Service proposes to continue to permit livestock grazing (sheep) on approximately 98,000 acres within the North End Allotment. Approximately 34,000 acres of the current allotment would be closed as part of this proposal. A maximum of 3,962 ewe/lamb pairs would be authorized within the normal grazing season from June 1 to October 9.

Possible Alternatives

Alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated during the scoping process. The agency will give notice of the full environmental analysis and decision-making process so interested and affected people may participate and contribute to the final decision.

Responsible Official

Walla Walla District Ranger.

Nature of Decision To Be Made

The responsible official will decide:

(1) Whether livestock grazing should occur, and if so, how much, when and where.

(2) What monitoring and mitigation measures should be taken or are needed.

Preliminary Issues

Preliminary issues identified include the potential effects of the proposed action on disease transmission to Wenaha bighorn sheep herd, First foods, a potential South Fork Walla Walla River Bighorn Sheep release site, and livestock management.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Dated: December 16, 2009.

Michael Rassbach,

District Ranger.

[FR Doc. E9-30566 Filed 12-23-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE**Forest Service****North Central Idaho Resource Advisory Committee**

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Central Idaho RAC will meet in Grangeville, Idaho. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110-343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to discuss potential projects for the new fiscal year.

DATES: The meeting will be held January 14, 2010, at 10 a.m. (PST).

ADDRESSES: The meeting will be held at Clearwater National Forest Supervisor's Office, 12730 Highway 12 in Orofino, Idaho. Written comments should be sent to Laura Smith at 104 Airport Road in Grangeville, Idaho 83530. Comments may also be sent via e-mail to lasmith@fs.fed.us or via facsimile to Laura at 208-983-4099.

FOR FURTHER INFORMATION CONTACT: Laura Smith, Designated Forest Official at 208-983-5143.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. A public forum will begin at 3:15 p.m. (PST). The

following business will be conducted: Discussion of projects for FY10 approval. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: December 3, 2009.

Rick Brazell,

Forest Supervisor.

[FR Doc. E9-30468 Filed 12-23-09; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE**Forest Service****Notice of New Fee Site; Federal Lands Recreation Enhancement Act (Title VII, Pub. L. 108-447)**

AGENCY: Mark Twain National Forest, Forest Service, USDA.

ACTION: Notice of new fee site.

SUMMARY: The Mark Twain National Forest is proposing to begin charging a \$50 fee for the overnight rental of Sinking Tower Cabin. Rentals of other cabins on other National Forests have shown that people appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of Sinking Tower Cabin. People are invited to comment on this proposal. This fee is only proposed and will be determined upon further analysis and public comment.

DATES: Send any comments about these fee proposals by April 2010 so comments can be compiled, analyzed and shared with a Recreation Resource Advisory Committee. Sinking Tower Cabin will become available for recreation rental June, 2010.

ADDRESSES: Forest Supervisor, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO 65401.

FOR FURTHER INFORMATION CONTACT: Kris Swanson, Recreation Fee Coordinator, 573-341-7416.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108-447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

The Mark Twain National Forest has no other cabin rentals. Rental of cabins on other National Forests has shown that people desire having this sort of

recreation experience. A market analysis indicates that the \$50/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to rent Sinking Tower Cabin will need to do so through the National Recreation Reservation Service, at <http://www.recreation.gov> or by calling 1-877-444-6777. The National Recreation Reservation Service charges a \$9 fee for on-line reservations and a \$10 fee for phone reservations.

Dated: December 17, 2009.

David C. Whittekiend,

Mark Twain National Forest Supervisor.

[FR Doc. E9-30562 Filed 12-23-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Proposed Information Collection; Comment Request; Guide for Preparing and Submitting White Papers to the Technology Innovation Program**

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: 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 Ashley Howell at (301) 975-8252 or Ashley.Howell@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, requests comments on the proposed *Guide for Preparing and Submitting White Papers to the Technology*

Innovation Program. The guide explains how interested parties can participate in helping to develop new areas for future competitions for the Technology Innovation Program (TIP) by offering ideas in the form of a white paper. These white papers will be used by TIP staff in an effort to create a pipeline of societal challenges suitable for future funding opportunities. Societal challenges are problems that are not being addressed or funded but that could be addressed by innovative technologies and high-risk, high-reward research. The creative thoughts put forth in these white papers will be used to leverage nationally-recognized science and technology reports, knowledge from NIST, other government agencies, scientific advisory bodies, industry organizations, and leading researchers from academic institutions.

TIP uses white papers to shape future competitions. The pertinent ideas, concepts and knowledge offered by stakeholders in these white papers combined with information from a variety of other sources, enable TIP to identify and address areas of critical national need and associated societal challenges suitable for TIP investment.

II. Method of Collection

Electronically via
tipwhitepaper@nist.gov.

III. Data

OMB Control Number: None.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: Federal government; State, local and tribal governments; Business or other for-profit organizations; Not-for-profit institutions; Individuals or households; and scientific advisory bodies.

Estimated Number of Respondents: 100.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annual Cost to Public: \$700.

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 18, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9-30555 Filed 12-23-09; 8:45 am]

BILLING CODE 3510-13-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled the AmeriCorps NCCC Service Project Application to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mrs. Kelly DeGraff (202) 606-6817. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565-2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

- (1) *By fax to:* (202) 395-6974, *Attention:* Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and
- (2) *Electronically by e-mail to:* smar@omb.eop.gov.

SUPPLEMENTARY INFORMATION: 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 Corporation, 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;

- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on October 16, 2009. This comment period ended December 16. No public comments were received from this Notice.

Description: The AmeriCorps NCCC (National Civilian Community Corps) is a full-time, residential, national service program that combines the best practices of civilian service with the best aspects of military service. The mission is to strengthen communities and develop leaders through team-based national and community service. Each year, hundreds of young adults serve as NCCC members. Based at campuses in communities in several states, teams take on projects throughout their regions. Members help communities meet needs in the areas of natural and other disasters, infrastructure improvement, environmental stewardship and conservation, energy conservation, and urban and rural development. Teams are available to help community and faith-based organizations, national nonprofits, schools, local municipalities, national and state parks, and Indian tribes. Members tutor students, construct and rehabilitate low-income housing, build and repair trails, help citizens prepare for and respond to natural and other disasters, lead and manage community volunteers, and address other local needs. Service projects typically last from six to eight weeks. Because members are trained in disaster services and wild land fire fighting, they can be reassigned on short notice to support disaster relief operations.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps NCCC Service project Application.

OMB Number: 3045-0010.

Agency Number: None.

Affected Public: Current/prospective AmeriCorps NCCC Project Sponsors.

Total Respondents: 1200 annually.

Frequency: Rolling application process.

Average Time per Response: Averages 7.5 hours.

Estimated Total Burden Hours: 9000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 17, 2009.

Mikel Herrington,

Acting Director, AmeriCorps National Civilian Community Corps.

[FR Doc. E9-30558 Filed 12-23-09; 8:45 am]

BILLING CODE 6050--SS-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Learn and Serve America Progress Report. These reports must be completed by all Learn and Serve America grantees in order to ensure appropriate Federal oversight, determine progress toward meeting program objectives and make decisions related to continuation funding.

Learn and Serve America provides grants to state education agencies,

higher education institutions, tribes, and U.S. Territories, national nonprofits and state commissions on nation and community service to implement service-learning programs. To ensure appropriate oversight of Federal funds, Learn and Serve America requires all grant recipients to submit Progress Reports describing grant activities and progress toward approved program objectives. Information received from the reports informs continuation funding decisions and how to target training and technical assistance.

Copies of the information collection requests can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 22, 2010.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Learn and Serve America; Attention Meredith Archer Hatch, Program Coordinator for Knowledge Management, Room 9613-C; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606-3477, Attention: Meredith Archer Hatch, Program Coordinator for Knowledge Management.

(4) Electronically through the Corporation's e-mail address system *mhatch@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 606-3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Meredith Archer Hatch, (202) 606-7513, or by e-mail at *mhatch@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

Learn and Serve America grantees provide performance information in their progress report. The information is collected electronically via the eGrants system.

Current Action

The Corporation seeks to renew the current information collection. The narratives section has been clarified by dividing narrative questions into distinct parts. The information collection will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on 5/31/10.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Progress Report.

OMB Number: 3045-0089.

Agency Number: None.

Affected Public: State and Local Government, Not-for-profit institutions.

Total Respondents: 175.

Frequency: Twice Annually.

Average Time per Response: Averages 2 hours.

Estimated Total Burden Hours: 700 (annual).

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 17, 2009.

Elson B. Nash,

Acting Director, Learn and Serve America.

[FR Doc. E9-30559 Filed 12-23-09; 8:45 am]

BILLING CODE 6050--SS-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 13641-000]

Pacific Gas and Electric Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 17, 2009.

On December 11, 2009, Pacific Gas and Electric Company filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Central Coast WaveConnect Project, multiple wave energy conversion devices with an installed capacity of up to 100-megawatthours. The requested project boundary comprises approximately 45 square miles of coastal waters, located off the coast of Santa Barbara County, California.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Applicant Contact: Mr. Steven E. Malnight; Vice President—Renewable Energy; Pacific Gas and Electric Company; P.O. Box 770000, MC- N13R-1362; San Francisco, CA 94177-0001; or Annette Faraglia, Esq.; Pacific Gas and Electric Company; Law Department; P.O. Box 7442, MC B30A-2479; San Francisco, CA 94120-7442.

FERC Contact: Kenneth Hogan, (202) 502-8434, or via e-mail at: Kenneth.hogan@ferc.gov.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov/docs-filing/ferconline.asp>) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov; call toll-free at (866) 208-3676; or, for TTY,

contact (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-13641) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,*Secretary.*

[FR Doc. E9-30579 Filed 12-23-09; 8:45 am]

BILLING CODE 6717-01-P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 12660-002]

TDX Power Services, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 17, 2009.

On November 3, 2009, TDX Power Services, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Chakachamna Hydroelectric Project (Chakachamna Project or project), located on Chakachamna Lake, a natural lake, and the Chakachatna and MacArthur rivers about 40 miles west of the Native Village of Tyonek and 82 miles west of Anchorage in the Kenai Peninsula Borough, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize the existing Chakachamna Lake and consist of the following: (1) A proposed 200-foot-long, 9-foot-high concrete flow-control weir at the natural lake outlet for the purpose of helping to control lake storage and downstream flow releases; (2) a proposed 26-foot-diameter submerged intake structure on Chakachamna Lake with a vertical shaft

for gate control, located about 0.5 mile west-southwest of the natural lake outlet; (3) a proposed 10.8-mile-long, 21-foot-diameter hard-rock tunnel extending southeast from the intake to the powerhouse; (4) a proposed underground cavern-type powerhouse about 60 feet wide by 200 feet long housing three vertical axis Francis units with a total installed capacity of 300 megawatts; (5) a proposed 1,000-foot-long tailrace tunnel connecting the powerhouse to the MacArthur River; (6) a proposed 21-foot-diameter, 13,800-foot-long tunnel housing separate juvenile and adult fish passage channels and an access road—the tunnel would extend generally east from Chakachamna Lake to the Chakachatna River at a location about 1.5 miles downstream of the flow-control weir; (7) a proposed pool-and-chute fishway at the flow-control weir to facilitate upstream fish passage into Chakachamna Lake; (8) two proposed, 42-mile-long, 230-kilovolt (kV) transmission lines extending from the powerhouse to the Beluga substation; (9) an existing approximately 10-mile-long access road extending west from Cook Inlet to a point near Shirleyville; (10) an existing 20-mile-long access road extending west-northwest from near Shirleyville to the "Straight Creek Crossing;" (11) a proposed 20-mile-long access road extending from the Straight Creek Crossing to the intake; (12) a proposed 15-mile-long access road extending from the 20-mile-long access road to the powerhouse; (13) a proposed buried, 25-kV power cable extending 22 miles from the powerhouse to the intake and a proposed buried, 25-kV power cable extending from the powerhouse to adjacent camp facilities for workers; and (14) appurtenant facilities. The project would have an estimated average annual generation of 1,330 gigawatt-hours.

Applicant Contact: Nicholas Goodman, Manager, TDX Power Services, LLC, 4300 B Street, Suite 402, Anchorage, AK 99503; Phone: (907) 278-2312; e-mail: ngoodman@tdxpower.com.

FERC Contact: Nick Jayjack; Phone: (202) 502-6073; e-mail: Nicholas.Jayjack@ferc.gov.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed

electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at <http://www.ferc.gov/filing-comments.asp>. More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-12660-002) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3372.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-30578 Filed 12-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1417-246]

Central Nebraska Public Power and Irrigation District; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 17, 2009.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type*: Shoreline Management Plan (SMP).
- b. *Project No.*: 1417-246.
- c. *Date Filed*: December 7, 2009.
- d. *Applicant*: Central Nebraska Public Power and Irrigation District.
- e. *Name of Project*: Kingsley Dam Project.
- f. *Location*: The project is located on the North Platte and Platte Rivers in Garden, Keith, Lincoln, Gosper, and Dawson Counties, Nebraska.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact*: Michael A. Drain, Central Nebraska Public Power and Irrigation District, 415 Lincoln Street, P.O. Box 740, Holdrege, NE 68949-0740, (308) 995-8601.
- i. *FERC Contact*: Any questions on this notice should be addressed to Rebecca Martin at (202) 502-6012, or by e-mail: Rebecca.martin@ferc.gov.
- j. *Deadline for filing comments and/or motions*: January 19, 2010.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P-1417-246) on any comments or motions filed.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Proposal*: Central Nebraska Public Power and Irrigation District filed, for Commission approval, an SMP for the Kingsley Dam Project. The SMP is a comprehensive plan to manage the multiple resources and uses of the project's shoreline in a manner that is consistent with license requirements and project purposes, protection of environmental resources, and to address the needs and interests of stakeholders.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3372 or e-mail FERCOnlineSupport@ferc.gov; for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to

take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Kimberly D. Bose,
Secretary.

[FR Doc. E9-30577 Filed 12-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

December 14, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-228-000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits Original Sheet No 90A et al. to FERC Gas Tariff, Fifth Revised Volume No 1.

Filed Date: 12/09/2009.

Accession Number: 20091209-0042.

Comment Date: 5 p.m. Eastern Time on Monday, December 21, 2009.

Docket Numbers: RP10-229-000.

Applicants: Petal Gas Storage, LLC.

Description: Petal Gas Storage, LLC submits Sixth Revised Sheet No. 0 et al. to FERC Gas Tariff, Original Volume No. 1, to be effective 1/9/10.

Filed Date: 12/09/2009.
Accession Number: 20091210-0134.
Comment Date: 5 p.m. Eastern Time on Monday, December 21, 2009.

Docket Numbers: RP10-230-000.
Applicants: Steckman Ridge, LP.
Description: Steckman Ridge, LP submits First Revised Sheet 2 et al. of its FERC Gas Tariff, Original Volume 1, to be effective 1/9/10.

Filed Date: 12/09/2009.
Accession Number: 20091210-0130.
Comment Date: 5 p.m. Eastern Time on Monday, December 21, 2009.

Docket Numbers: RP10-231-000.
Applicants: Carolina Gas Transmission Corporation.
Description: Carolina Gas Transmission Corporation submits First Revised Sheet 195 to part of CGT's FERC Gas Tariff, Original Volume 1.

Filed Date: 12/09/2009.
Accession Number: 20091210-0131.
Comment Date: 5 p.m. Eastern Time on Monday, December 21, 2009.

Docket Numbers: RP10-232-000.
Applicants: Ozark Gas Transmission, LLC.

Description: Ozark Gas Transmission, LLC submits Second Revised Sheet No. 1 et al. to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 12/09/2009.
Accession Number: 20091210-0132.
Comment Date: 5 p.m. Eastern Time on Monday, December 21, 2009.

Docket Numbers: RP10-233-000.
Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Third Revised Sheet 3 et al. of its FERC Gas Tariff, Third Revised Volume 1, to be effective 1/11/09.

Filed Date: 12/11/2009.
Accession Number: 20091211-0191.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 23, 2009.

Docket Numbers: RP10-234-000.
Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company submits Original Sheet 236 and 237 to its FERC Gas Tariff, Second Revised Volume 1.

Filed Date: 12/11/2009.
Accession Number: 20091211-0188.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 23, 2009.

Docket Numbers: RP10-235-000.
Applicants: NGO Transmission, Inc.
Description: NGO Transmission, Inc. submits Second Revised Sheet No. 170 to FERC Gas Tariff, Original Volume No. 1.

Filed Date: 12/11/2009.
Accession Number: 20091211-0189.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 23, 2009.

Docket Numbers: RP10-236-000.
Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company, LLC submits second amendment to a service agreement with Virginia Power Energy Marketing, Inc.

Filed Date: 12/11/2009.
Accession Number: 20091211-0190.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 23, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified *comment date*. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or

call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
 [FR Doc. E9-30586 Filed 12-23-09; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 17, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10-29-000.
Applicants: Astoria Energy LLC.
Description: Joint application for authorization under Section 203 of the Federal Power Act and Request for Expedited and Privileged Treatment re Astoria Energy LLC et al.

Filed Date: 12/10/2009.
Accession Number: 20091214-0145.
Comment Date: 5 p.m. Eastern Time on Thursday, December 31, 2009.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10-13-000.
Applicants: Stetson Wind II, LLC.
Description: EWG Self Certification Notice of Stetson Wind II, LLC.

Filed Date: 12/17/2009.
Accession Number: 20091217-5013.
Comment Date: 5 p.m. Eastern Time on Thursday, January 07, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-346-002.
Applicants: Calvert Cliffs Nuclear Power Plant LLC.

Description: Constellation Energy Nuclear Group, LLC submits revised sheets to replace the tariff sheets submitted with the November Notice Filing.

Filed Date: 12/15/2009.
Accession Number: 20091216-0056.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 05, 2010.

Docket Numbers: ER10-139-002.
Applicants: Atlantic Path 15, LLC.
Description: Atlantic Path 15, LLC submits Second Substitute Fifth Revised Sheet No. 16 to FERC Electric Tariff First Revised Volume No. 1.

Filed Date: 12/14/2009.
Accession Number: 20091215-0046.
Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-41-001.
Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation, South Dakota submits an executed Electric Service Agreement Emergency-Type Service with East River Electric Power Cooperative, Inc. etc.

Filed Date: 12/14/2009.

Accession Number: 20091215-0038.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-210-001.

Applicants: Viridian Energy PA LLC.

Description: Viridian Energy PA LLC submits the Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Filed Date: 12/16/2009.

Accession Number: 20091216-0122.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 06, 2010.

Docket Numbers: ER10-422-000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Large Generator Interconnection Agreement among Coso power Developers etc.

Filed Date: 12/15/2009.

Accession Number: 20091216-0053.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 05, 2010.

Docket Numbers: ER10-423-000.

Applicants: ISO New England Inc.; New England Power Pool.

Description: ISO New England Inc et al. submits transmittal letter describing a minor revision to the ISO Financial Assurance Policy.

Filed Date: 12/15/2009.

Accession Number: 20091216-0054.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 05, 2010.

Docket Numbers: ER10-424-000.

Applicants: New York Independent System Operator, Inc.

Description: Request of the New York Independent System Operator, Inc. for Additional Waivers of Open Access Time Information System Regulations.

Filed Date: 12/15/2009.

Accession Number: 20091215-5137.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 05, 2010.

Docket Numbers: ER10-427-000.

Applicants: EPCOR Merchant and Capital (US) Inc.

Description: EPCOR Merchant and Capital (US), Inc. submits a Notice of Cancellation to its market-based rate tariff.

Filed Date: 12/15/2009.

Accession Number: 20091216-0127.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 05, 2010.

Docket Numbers: ER10-428-000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits the Notice of Cancellation of Interchange Agreement.

Filed Date: 12/15/2009.

Accession Number: 20091216-0128.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 05, 2010.

Docket Numbers: ER10-429-000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits the Notice of Cancellation of Interchange Agreement.

Filed Date: 12/15/2009.

Accession Number: 20091216-0129.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 05, 2010.

Docket Numbers: ER10-430-000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits the Notice of Cancellation of Interchange Agreement.

Filed Date: 12/15/2009.

Accession Number: 20091216-0130.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 05, 2010.

Docket Numbers: ER10-431-000.

Applicants: Upper Peninsula Power Company.

Description: Upper Peninsula Power Co submits the Notice of Cancellation of Rate Schedule.

Filed Date: 12/16/2009.

Accession Number: 20091216-0131.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 06, 2010.

Docket Numbers: ER10-432-000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits the Interconnection Agreement for Electric Interconnection Services.

Filed Date: 12/16/2009.

Accession Number: 20091216-0132.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 06, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10-17-000.

Applicants: South Carolina Electric & Gas Company, South Carolina Generating Company, Inc.

Description: Application of South Carolina Electric & Gas Company and South Carolina Generating Company, Inc.

Filed Date: 12/16/2009.

Accession Number: 20091216-5112.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 06, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR09-9-001; RR08-6-005; RR07-14-005.

Applicants: North American Electric Reliability Corporation.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to October 15, 2009 Order on 2010 Business Plans and Budgets.

Filed Date: 12/11/2009.

Accession Number: 20091211-5182.

Comment Date: 5 p.m. Eastern Time on Monday, January 11, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or

call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-30582 Filed 12-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

December 16, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97-4257-014.

Applicants: Mid-Power Service Corporation.

Description: Mid-Power Service Corporation submits Amended and Restated Application for authorization to make wholesale sales of energy and capacity at negotiated market-based rates.

Filed Date: 12/14/2009.

Accession Number: 20091216-0023.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER98-564-012; ER09-328-002.

Applicants: TransCanada Power Marketing Ltd.; TransCanada Energy Sales Ltd.

Description: TransCanada Power Marketing Ltd. *et al.* submits application requesting that the Commission make a finding that they each qualify as a Category 1 Seller *et al.*

Filed Date: 12/11/2009.

Accession Number: 20091214-0132.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER01-48-016.

Applicants: Powerex Corp.

Description: Powerex Corp submits notice of change in status.

Filed Date: 12/11/2009.

Accession Number: 20091214-0141.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER05-757-004.

Applicants: Victoria International LTD.

Description: Victoria International LTD submits Second Substitute First Revised Sheet 1 *et al.* to FERC Electric Tariff, Original Volume 1.

Filed Date: 12/11/2009.

Accession Number: 20091216-0027.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER06-1071-001.

Applicants: Kuehne Chemical Company, Inc.

Description: Kuehne Chemical Company, Inc. submits the amended pages for the Amended Market Power Analysis.

Filed Date: 12/14/2009.

Accession Number: 20091216-0024.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER09-1114-002; ER09-1115-002.

Applicants: RRI Energy Services, Inc.; RRI Energy Solutions East, LLC.

Description: RRI Energy Services, Inc. *et al.* submits request that FERC confirm that each is a Category 1 Seller in the Southwest Power Pool and Northwest regions.

Filed Date: 12/14/2009.

Accession Number: 20091214-0138.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER09-1762-001.

Applicants: Westar Energy, Inc.

Description: Westar Energy submits its Full Requirements Electric Service Rate Schedule and Electric Service Agreement.

Filed Date: 12/11/2009.

Accession Number: 20091214-0005.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-44-001.

Applicants: Ameren Services Company.

Description: Illinois Power Company submits revised version of the Transmission Construction Agreement reflecting minor changes to the Agreement agreed to by Ameren Service and Prairie State.

Filed Date: 12/11/2009.

Accession Number: 20091214-0143.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-139-002.

Applicants: Atlantic Path 15, LLC.

Description: Atlantic Path 15, LLC submits Second Substitute Fifth Revised Sheet No. 16 to FERC Electric Tariff First Revised Volume No 1.

Filed Date: 12/14/2009.

Accession Number: 20091215-0046.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-226-001.

Applicants: Clean Currents, L.L.C.

Description: Clean Currents, LLC submits Petition for Acceptance of Rate Schedule, Waivers and Blanket Authority.

Filed Date: 12/11/2009.

Accession Number: 20091214-0004.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-236-003.

Applicants: Ohms Energy Company, LLC.

Description: OHMS Energy Company, LLC submits Third Amended Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 12/14/2009.

Accession Number: 20091215-0042.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-236-004.

Applicants: Ohms Energy Company, LLC.

Description: OHMS Energy Company, LLC submits Fourth Amended Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 12/14/2009.

Accession Number: 20091215-0039.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-41-001.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation, South Dakota submits an executed Electric Service Agreement Emergency-Type Service with East River Electric Power Cooperative, Inc. *et al.*

Filed Date: 12/14/2009.

Accession Number: 20091215-0038.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-409-000.

Applicants: Covanta Energy Marketing LLC.

Description: Covanta Energy Marketing LLC request acceptance of their initial FERC Electric Tariff, Original Volume 1 *et al.*

Filed Date: 12/11/2009.

Accession Number: 20091214-0136.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-410-000.

Applicants: Covanta Power LLC.

Description: Covanta Power, LLC submits acceptance of its initial FERC Electric Tariff, Original Volume 1 *et al.*

Filed Date: 12/11/2009.

Accession Number: 20091214-0135.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-414-000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Installation, Operation, Maintenance and Ownership of Certain Metering Facilities Agreement with Southern California Public Power Authority *et al.*

Filed Date: 12/11/2009.

Accession Number: 20091214-0134.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-415-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits an executed Meter Agent

Services Agreement between Kansas Power Pool etc.

Filed Date: 12/11/2009.

Accession Number: 20091214-0137.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-416-000.

Applicants: New York State Reliability Council, L.L.C.

Description: New York State Reliability Council, L.L.C.'s Submission to FERC Regarding the Revision of the Installed Capacity Requirement for the New York Control Area.

Filed Date: 12/14/2009.

Accession Number: 20091214-5145.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-417-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits executed Interconnection Service Agreements entered into among PJM et al.

Filed Date: 12/14/2009.

Accession Number: 20091215-0043.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-418-000.

Applicants: Deseret Generation & Transmission Co-op.

Description: Deseret Generation & Transportation Co-operative, Inc. submits its proposed Wholesale Power Contract Rate Schedule A 2009 Supplemental Rebate etc.

Filed Date: 12/14/2009.

Accession Number: 20091215-0041.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-419-000.

Applicants: ISO New England Inc. & New England Power Pool.

Description: ISO New England Inc. et al. submit revisions to the Forward Capacity Market rules etc.

Filed Date: 12/14/2009.

Accession Number: 20091215-0040.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-420-000.

Applicants: Crystal Lake Wind II, LLC.

Description: Crystal Lake Wind II, LLC submits Common Facilities Agreement between Crystal Lake Wind III, LLC et al. dated 12/10/09 designated as Electric Rate Schedule FERC No 1.

Filed Date: 12/14/2009.

Accession Number: 20091215-0036.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-421-000.

Applicants: Crystal Lake Wind, LLC.

Description: Crystal Lake Wind, LLC submits Amended and Restated Shared

Facilities Agreement between Crystal Lake Wind II, LLC et al.

Filed Date: 12/14/2009.

Accession Number: 20091215-0035.

Comment Date: 5 p.m. Eastern Time on Monday, January 04, 2010.

Docket Numbers: ER10-424-000.

Applicants: New York Independent System Operator, Inc.

Description: Request of the New York Independent System Operator, Inc. for Additional Waivers of Open Access Time Information System Regulations.

Filed Date: 12/15/2009.

Accession Number: 20091215-5137.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 05, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail

notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-30583 Filed 12-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

December 16, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-237-000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Tenth Revised Sheet 66B.35 of its FERC Gas Tariff, Fifth Revised Volume 1, to be effective 12/12/09.

Filed Date: 12/11/2009.

Accession Number: 20091214-0131.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 23, 2009.

Docket Numbers: RP10-238-000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits FERC Gas Tariff, Fifth Revised Volume 1 to Eleventh Revised Sheet 66B.35.

Filed Date: 12/14/2009.

Accession Number: 20091215-0034.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: RP10-239-000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America, LLC submits amendments to the Rate Schedules DSS and FTS Agreements with a negotiated rate exhibit with Wisconsin Electric Power Company.

Filed Date: 12/15/2009.

Accession Number: 20091216-0058.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: RP10-240-000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: Petition of CenterPoint Energy Gas Transmission Company for a limited waiver of tariff provisions.

Filed Date: 12/15/2009.

Accession Number: 20091215-5136.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-30585 Filed 12-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

December 16, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10-117-001.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits First Revised Sheet 590 et al to FERC Gas Tariff, Fifth Revised Volume 1 effective 12/1/09.

Filed Date: 12/11/2009.

Accession Number: 20091214-0130.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 23, 2009.

Docket Numbers: RP10-188-001.

Applicants: Arlington Storage Company, LLC.

Description: Arlington Storage Company submits First Revised Sheet No 4A to FERC Gas Tariff, First Revised Volume No. 1.

Filed Date: 12/09/2009.

Accession Number: 20091210-0133.

Comment Date: 5 p.m. Eastern Time on Monday, December 21, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9-30584 Filed 12-23-09; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Half-Day Closing

December 17, 2009.

Pursuant to Executive Order of President Barack Obama, all executive departments and other agencies of the Federal government shall be closed for the last half of the scheduled workday on Thursday, December 24, 2009, the day before Christmas Day.

In accordance with section 385.2007 of the Commission's Rules, 18 CFR 385.2007, filings and documents due to be filed on Thursday, December 24, 2009, will be accepted as timely on the next official business day.

Kimberly D. Bose,

Secretary.

[FR Doc. E9-30580 Filed 12-23-09; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8986-8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564-1399 or <http://www.epa.gov/compliance/nepa/>.

Weekly Receipt of Environmental Impact Statements
Filed 12/14/2009 Through 12/18/2009
Pursuant to 40 CFR 1506.9

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: <http://www.epa.gov/compliance/nepa/eisdata.html>. Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement

to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

EIS No. 20090438, Draft EIS, NPS, NY, Roosevelt-Vanderbilt National Historic Sites, General Management Plan, Implementation, Hyde Park, NY, Comment Period Ends: 02/22/2010, Contact: Marjorie Smith, 339-223-0131.

EIS No. 20090439, Final EIS, FHWA, ME, Aroostook County Transport Study, Route I-161 Connector, To Identify Transportation Corridors that will Improve Mobility and Efficiency within Northeastern Aroostook County and other portions of the U.S. and Canada, U.S. Army COE Section 404 Permit, Endangered Species Act, NPDES and Section 10 River and Harbors Act, Caribou, Aroostook County, ME, Wait Period Ends: 01/25/2010, Contact: Mark Hasselmann, 207-622-8355.

EIS No. 20090440, Final EIS, USFS, CO, Vail Ski Area's 2007 Improvement Project, Proposed On-Mountain Restaurant from the top of Vail Mountain to Mid Vail, Special-Use-Permit, Eagle/Holy Cross Ranger District, White River National Forest, Eagle County, CO, Wait Period Ends: 01/25/2010, Contact: Don Dressler, 970-945-3212.

EIS No. 20090441, Final Supplement, FHWA, TN, Shelby Avenue/Demonbreun Street (Gateway Boulevard Corridor, from I-65 North [I-24 West] to I-40 West in Downtown Nashville, To Address Transportation needs in the Study Area. Davidson County, TN, Wait Period Ends: 01/25/2010, Contact: Charles J. O'Neill, 615-781-5770.

EIS No. 20090442, Draft EIS, USACE, 00, Sabine-Neches Waterway Channel Improvement Project, Proposed Ocean Dredged Material Disposal Site Designation, Southeast Texas and Southwest Louisiana, Comment Period Ends: 02/10/2010, Contact: Janelle Stokes, 409-766-3039.

EIS No. 20090443, Final EIS, FHWA, DC, ADOPTION—Department of Homeland Security Headquarters at the St. Elizabeths West Campus, To Consolidate Federal Office Space on a Secure Site, Washington, DC, Contact: Jack VanDop, 703-404-6282. The U.S. Department of Transportation's, Federal Highway Administration (DOT/FHWA) has ADOPTED the U.S. General Services Administration FEIS #20080452, filed on 10/31/2008. DOT/FHWA was a Cooperating

Agency for the above project. Recirculation of the FEIS is not necessary under 40 CFR 1506.3(c).

EIS No. 20090444, Final EIS, USA, NM, White Sands Missile Range (WSMR), Development and Implementation of Range-Wide Mission and Major Capabilities, NM, Wait Period Ends: 01/25/2010, Contact: Jennifer Shore, 703-602-4238.

EIS No. 20090445, Draft EIS, USFS, ID, Boise National Forest Project, Proposed Amendments to the Land and Resource Management Plan, Wildlife Conservation Strategy (WCS) Phase 1: Forested Biological Community, Located within Portions of Ada, Boise, Elmore, Gem, and Valley Counties, ID, Comment Period Ends: 03/24/2010, Contact: Cyd Weiland, 208-373-4135.

EIS No. 20090446, Final EIS, USFS, VT, Jarbidge Ranger District Rangeland Management Project, Proposed Reauthorizing Grazing on 21 Existing Grazing Allotments, Humboldt Toiyabe National Forest, Elko County, NV, Wait Period Ends: 12/25/2009, Contact: Vernon Keller, 775-355-5356.

EIS No. 20090447, Final EIS, USACE, AL, Foley Land Cut Portion of the Gulf Intracoastal Waterway, Proposed Construction of Residential, Commercial and Marine Development, Gulf Shores and Orange Beach, Baldwin County, AL, Wait Period Ends: 01/25/2010, Contact: Linda Brown, 251-694-3786.

Amended Notices

EIS No. 20090424, Draft EIS, USN, AK, Gulf of Alaska Navy Training Activities, Proposal to Support and Conduct Current, Emerging, and Future Training Activities, Implementation, Gulf of Alaska, AK, Comment Period Ends: 01/25/2010, Contact: Amy Burt, 360-396-0924. Revision to FR Notice Published 12/11/2009: Correction to Contact Telephone Number.

EIS No. 20090433, Final EIS, USFS, CA, Lassen National Forest, Motorized Travel Management Plan, Implementation, Butte, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama Counties, CA, Wait Period Ends: 01/19/2010, Contact: Christopher O'Brien, 530-252-6698. Revision to FR Notice Published 12/18/2009: Correction to Contact Telephone Number.

EIS No. 20090435, Draft EIS, APHIS, 00, Glyphosate-Tolerant Alfalfa Events J101 and J163: Request for No regulated Status, Implementation, United States, Comment Period Ends: 02/16/2010, Contact: Cindy Eck, 301-

734-0667. Revision to FR Notice Published 12/18/2009: Correction to Contact Telephone Number.

Dated: December 21, 2009.

Pearl E. Young,

NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9-30588 Filed 12-23-09; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Notice

December 17, 2009.

TIME AND DATE: 10 a.m., Thursday, January 7, 2010.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor v. Cumberland Coal Resources, LP*, Docket Nos. PENN 2008-51-R, *et seq.* (Issues include whether an order issued to the operator under 30 CFR 75.363(a) (requiring that hazardous conditions be corrected or posted) should be amended to allege a violation of 30 CFR 75.360(b) (requiring that the person conducting a preshift examination identify hazardous conditions).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 434-9950/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. E9-30591 Filed 12-22-09; 11:15 am]

BILLING CODE 6735-01-P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be

submitted to the Office of Management and Budget (“OMB”) for review, as required by the Paperwork Reduction Act (“PRA”). The FTC is seeking public comments on its proposal to extend through May 31, 2013, the current PRA clearance for information collection requirements contained in its Contact Lens Rule. Those clearances expire on May 31, 2010.

DATES: Comments must be received on or before February 22, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form, by following the instructions in the Request for Comments to 60-Day Notice part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following Web link: (<https://public.commentworks.com/ftc/contactlensrulepra>) (and following the instructions on the web-based form). Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT:

Requests for copies of the collection of information and supporting documentation should be addressed to Karen Jagielski, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., NJ- 3212, Washington, DC 20580, (202) 326-2509.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. § 3502(3), 5 CFR § 1320.3 (c). Because the number of entities affected by the Commission’s requests will exceed ten, the Commission plans to seek OMB clearance under the PRA. As required by § 3506(c)(2)(A) of the PRA, the Commission is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the information collection requirements associated with the Commission’s regulations under the

Contact Lens Rule (“the Rule”), 16 CFR part 315.

The Rule was promulgated by the FTC pursuant to the Fairness to Contact Lens Consumers Act (“FCLCA”), Pub. L. 108-164 (December 6, 2003), which was enacted to enable consumers to purchase contact lenses from the seller of their choice. The Rule became effective on August 2, 2004. As mandated by the FCLCA, the Rule requires the release and verification of contact lens prescriptions and contains recordkeeping requirements applying to both prescribers and sellers of contact lenses.

Specifically, the Rule requires that prescribers provide a copy of the prescription to the consumer upon the completion of a contact lens fitting and verify or provide prescriptions to authorized third parties. The Rule also mandates that a contact lens seller may sell contact lenses only in accordance with a prescription that the seller either: (a) Has received from the patient or prescriber; or (b) has verified through direct communication with the prescriber. In addition, the Rule imposes recordkeeping requirements on contact lens prescribers and sellers. For example, the Rule requires prescribers to document in their patients’ records the medical reasons for setting a contact lens prescription expiration date of less than one year. The Rule requires contact lens sellers to maintain records for three years of all direct communications involved in obtaining verification of a contact lens prescription, as well as prescriptions, or copies thereof, which they receive directly from customers or prescribers.

The information retained under the Rule’s recordkeeping requirements is used by the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule’s requirements or to bring enforcement actions based on violations of the Rule.

Commission staff estimates the paperwork burden of the FCLCA and Rule based on its knowledge of the eye care industry. Staff believes there will be some burden on individual prescribers to provide contact lens prescriptions, although it involves merely writing a few items of information onto a slip of paper and handing it to the patient, or perhaps mailing or faxing it to a third party. In addition, there will be some recordkeeping burden on contact lens sellers—including retaining prescriptions or records of “direct

communications”—pertaining to each sale of contact lenses to consumers who received their original prescription from a third party prescriber.

Request for Comments to 60-Day Notice

The FTC invites comments on: (1) 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) 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 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. All comments should be filed as prescribed below, and must be received on or before February 22, 2010.

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .” as provided in Section 6(f) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please

¹The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following web link: (<https://public.commentworks.com/ftc/contactlensrulepra>) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the web link: (<https://public.commentworks.com/ftc/contactlensrulepra>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (<http://www.ftc.gov>) to read the Notice and the news release describing it.

A comment filed in paper form should include the "Contact Lens Rule: FTC File No. P054510" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtm>). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtm>).

Burden Statement

Estimated total annual hours burden: 850,000 hours (rounded to the nearest thousand).

Based upon staff knowledge of the industry, this figure is derived by adding approximately 567,000

disclosure hours for contact lens prescribers to approximately 283,000 recordkeeping hours for contact lens sellers, for a combined industry total of 850,000 hours. This is slightly lower than the estimates previously submitted to OMB (the similar figure was 950,000 hours in 2006); and is due to a drop in the estimated number of contact lens wearers from 36 million (2006) to 34 million (2008).

No provisions in the Rule have been amended since staff's prior submission to OMB. The Rules disclosure and recordkeeping requirements, therefore, remain the same. As noted above, the number of contact lens wearers in the United States is estimated to be approximately 34 million.² Therefore, assuming an annual contact lens exam for each contact lens wearer, 34 million people would receive a copy of their prescription each year under the Rule. At an estimated one minute per prescription, the annual time spent by prescribers complying with the disclosure requirement would be a maximum of 567,000 hours. [(34 million × 1 minute)/60 minutes = 566,667 hours]

As required by the FCLCA, the Rule also imposes two recordkeeping requirements. First, prescribers must document the specific medical reasons for setting a contact lens prescription expiration date shorter than the one year minimum established by the FCLCA. This burden is likely to be nil because the requirement applies only in cases when the prescriber invokes the medical judgment exception, which is expected to occur infrequently, and prescribers are likely to record this information in the ordinary course of business as part of their patients' medical records. The OMB regulation that implements the PRA defines "burden" to exclude any effort that would be expended regardless of a regulatory requirement. 5 CFR 1320.3(B)(3)(2).

Second, the Rule requires contact lens sellers to maintain certain documents relating to contact lens sales. As noted above, a seller may sell contact lenses only in accordance with a prescription that the seller either (a) has received from the patient or prescriber, or (b) has verified through direct communication with the prescriber. The FCLCA requires sellers to retain prescriptions and records of communications with

prescribers relating to prescription verification for three years.

Staff believes that the burden of complying with this requirement is low. Sellers who seek verification of contact lens prescriptions must retain one or two records for each contact lens sale: Either the relevant prescription itself, or the verification request and any response from the prescriber. Staff estimates that such recordkeeping will entail a maximum of five minutes per sale, including time spent preparing a file and actually filing the record(s).

Staff also believes that, based on its knowledge of the industry, this burden will fall primarily on mail order and Internet-based sellers of contact lenses, as they are the entities in the industry most reliant on obtaining or verifying contact lens prescriptions. Based on conversations with the industry, staff estimates that these entities currently account for approximately 10% of sales in the contact lens market³ and, by extension, that approximately 3.4 million consumers—10% of the 34 million contact lens wearers in the United States—purchase their lenses from them.

At an estimated five minutes per sale to each of 3.4 million consumers, contact lens sellers will spend a total of 283,300 burden hours complying with the recordkeeping requirement. [(3.4 million × 5 minutes)/60 minutes = 283,333.3 hours] This estimate likely overstates the actual burden, however, because it includes the time spent by sellers who already keep records pertaining to contact lens sales in the ordinary course of business. In addition, the estimate may overstate the time spent by sellers to the extent that records (e.g., verification requests) are generated and stored automatically and electronically, which staff understands is the case for some larger online sellers.

Estimated labor costs: \$32,317,001 (rounded to the nearest thousand).

Commission staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. Staff estimates, based on its knowledge of the industry, that optometrists account for approximately 75% of prescribers. Consequently, for simplicity, staff will focus on their average hourly wage in estimating prescribers' labor cost burden.

²See Contact Lenses, Frequently Asked Questions, November, 2009, available at (<http://www.allaboutvision.com/faq/contactlens.htm>). See also Nichols, J., "Annual Report: Contact Lenses 2008," Contact Lens Spectrum, Jan. 2009, available at (<http://www.clspectrum.com/article.aspx?article=102473>).

³The FTC's February 2005 study, "The Strength of Competition in the Rx Sale of Contact Lenses: An FTC Study," cites various data that, averaged together, suggests that approximately 10% of contact lens sales are by online and mail-order sellers. The report is available online at (<http://www.ftc.gov/reports/contactlens/050214contactlensrpt.pdf>).

According to Bureau of Labor Statistics from May 2008, salaried optometrists earn an average wage of \$50.58 per hour and general office clerical personnel earn an average of \$12.90 per hour.⁴

With these categories of personnel, respectively, likely to perform the brunt of the disclosure (for optometrists) and recordkeeping (for office clerks) aspects of the Rule, estimated total labor cost attributable to the Rule would be approximately \$32.8 million. $[(\$50.58 \times 566,666.7 \text{ hours}) + (\$12.90 \times 283,333.3 \text{ hours}) = \$32,317,001]$

The contact lens market is a multibillion dollar market; one recent survey estimates that contact lens sales totaled \$2.37 billion from Jan 1, 2006 to Dec 31, 2006.⁵ Thus, the total labor cost burden estimate of \$32.3 million represents approximately 1.5% of the overall market.

Estimated annual non-labor cost burden: \$0 or minimal.

Staff believes that the Rule's disclosure and recordkeeping requirements impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (e.g., prescription pads, patients' medical charts, facsimile machines and paper, telephones, and recordkeeping facilities such as filing cabinets or other storage).

Willard Tom,

General Counsel

[FR Doc. E9-30573 Filed 12-23-09; 8:45 am]

BILLING CODE: 6750-01-S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5280-N-50]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and

⁴Mean and median worker hourly wages for optometrists and general office clerks are drawn from the Bureau of Labor Statistics (BLS) Occupational Employment and Statistics Survey, May 2008, based on BLS-sampled data it collected over a 3-year period. See (<http://www.bls.gov/news.release/pdf/ocwage.pdf>) (Table 1).

⁵The Vision Council of America and Jobson Optical Research have conducted large scale continuous consumer research under the name VisionWatch, which reports on the vision care industry. The basis for this statistic is on file with the Federal Trade Commission.

surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: December 24, 2009.*

FOR FURTHER INFORMATION CONTACT:

Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 17, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9-30412 Filed 12-23-09; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 18, 2009, a proposed Consent Decree in *United States v. Newell Holdings Delaware, Inc. and Rock Springs Enterprises, Inc.*, Civil Action No. 5:07-cv-164, was lodged with the United States District Court for the Northern District of West Virginia. In a civil action filed on December 18, 2007, under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), the United States sought recovery of response costs from Newell Holdings Delaware, Inc. ("Newell Holdings") and Rock Springs Enterprises, Inc. ("Rock Springs") in connection with the Eighth and Plutus Streets Pottery Site in Chester, West Virginia ("the Site"). The proposed Consent Decree, lodged on December 18, 2009, resolves the liability of the defendant Newell Holdings for response costs incurred and to be

incurred by the United States in connection with the Site, and requires Newell Holdings to pay \$800,000 in response costs in accordance with the terms of the Decree. Defendant Rock Springs is not a party to the Consent Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, by e-mail to pubcommentees.enrd@usdoj.gov or regular mail to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044-7611, and refer to *United States v. Newell Holdings Delaware, Inc. and Rock Springs Enterprises, Inc.*, D.J. Ref. 90-11-3-09297.

The Consent Decree may be examined at the Office of the United States Attorney for the Northern District of West Virginia, U.S. Courthouse and Federal building, 1125 Chapline Street, Wheeling, WV 26003 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, http://www.usdoj.gov/enrd/consent_decree.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the address above.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9-30581 Filed 12-23-09; 8:45 am]

BILLING CODE 4410-15-P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before January 25, 2010. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83-1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205-7044.

SUPPLEMENTARY INFORMATION:

Title: Borrower's Program Certification.

SBA Form Number: 1366.

Frequency: On Occasion.

Description of Respondents: Request of Disaster Loans.

Responses: 12,078.

Annual Burden: 11,312.

Title: America's Recovery Capitol (ARC) Loan Program.

SBA Form Numbers: 2315, 2316 Part A, B, C.

Frequency: On Occasion.

Description of Respondents: Participants eligible for the ARC loan program.

Responses: 12,000.

Annual Burden: 7,070.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9-30569 Filed 12-23-09; 8:45 am]

BILLING CODE 8025-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-29095]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 18, 2009.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December, 2009. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 12, 2010, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

FOR FURTHER INFORMATION CONTACT:

Diane L. Titus at (202) 551-6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549-4041.

ING Clarion Real Estate Income Fund [File No. 811-21404]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 1, 2009, applicant transferred its assets to ING Clarion Global Real Estate Income Fund, based on net asset value. Expenses of approximately \$35,855 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on October 29, 2009, and amended on December 8, 2009.

Applicant's Address: 201 King of Prussia Rd., Radnor, PA 19087.

BGT Subsidiary Inc. [File No. 811-8949]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 28, 2001, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of \$28,000 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on January 7, 2009, and amended on December 1, 2009.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

BNN Subsidiary Inc. [File No. 811-7719]

BBT Subsidiary Inc. [File No. 811-7721]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 12, 1997, applicants made liquidating distributions to their shareholders, based on net asset value. Each applicant incurred \$28,000 in expenses in connection with its liquidation.

Filing Dates: The applications were filed on January 7, 2009 and amended on December 1, 2009.

Applicant's Address: 100 Bellevue Parkway, Wilmington, DE 19809.

Keystone America Hartwell Emerging Growth Fund, Inc. [File No. 811-1633]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about August 18, 1997, applicant transferred its assets to Evergreen Aggressive Growth Fund, a series of Evergreen Fund, based on net asset value. Expenses incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on September 3, 2009, and amended on November 30, 2009.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

Master Reserves Trust [File No. 811-2597]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about December 11, 1996, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on September 15, 2009, and amended on November 30, 2009.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

**Keystone Mid Cap Growth Fund (S-3)
[File No. 811-100]**

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about July 18, 1997, applicant transferred its assets to Keystone Strategic Growth Fund (K-2), based on net asset value. Expenses incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on August 19, 2009, and amended on November 30, 2009.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

B.B. Funds [File No. 811-7921]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 27, 2009, applicant transferred its assets to The GAMCO Westwood Funds, based on net asset value. Expenses of \$349,212 incurred in connection with the reorganization were paid by Teton Advisors, Inc., applicant's investment adviser.

Filing Dates: The application was filed on October 23, 2009, and amended on December 1, 2009.

Applicant's Address: One Corporate Center, Rye, NY 10580.

Prospect Street Income Shares Inc. [File No. 811-2365]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On July 16, 2008, applicant redeemed its auction rate cumulative preferred shares at a price equal to the liquidation preference of \$25,000 per share plus any accumulated and unpaid dividends. On July 18, 2008, applicant transferred its assets to Highland Credit Strategies Fund, based on net asset value. Expenses of approximately \$68,263 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on September 30, 2008, and amended on September 22, 2009.

Applicant's Address: NexBank Tower, 13455 Noel Rd., Suite 800, Dallas, TX 75240.

DWS Investment Portfolios [File No. 811-7774]**DWS International Equity Portfolio [File No. 811-6702]****Treasury Money Portfolio [File No. 811-6072]**

Summary: Each applicant, a master portfolio in a master/feeder structure, seeks an order declaring that it has ceased to be an investment company. On January 13, 2006, July 23, 2007 and

September 17, 2007, respectively, each applicant made an in kind distribution to its feeder fund, based on net asset value. Expenses of \$32,083, \$39,000 and \$39,000, respectively, incurred in connection with the liquidations were paid by Deutsche Investment Management Americas, Inc., investment adviser to each applicant.

Filing Date: The applications were filed on November 18, 2009.

Applicant's Address: 345 Park Ave., New York, NY 10154.

Paul Revere Variable Annuity Contract Accumulation Fund [File No. 811-01356]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant requests deregistration based on abandonment of registration. At the time of filing, applicant had less than 100 individual contract owners and was not making a public offering nor was it intending on making a public offering in the future and thus qualified for an exclusion from the definition of "investment company" in Section 3(c)(1) of the 1940 Act.

Filing Date: The application was filed on October 19, 2009.

Applicant's Address: 18 Chestnut Street, Worcester, MA 01608.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-30546 Filed 12-23-09; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE
COMMISSION****Sunshine Act Meeting Notice**

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 74 FR 66178, December 14, 2009.

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, December 17, 2009 at 2 p.m.

CHANGE IN THE MEETING: Additional Item.

The following item was added to the Thursday, December 17, 2009 Closed Meeting agenda:

[A] matter involving confidential, privileged, commercial, or financial information.

Commissioner Aguilar, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: December 18, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9-30601 Filed 12-22-09; 11:15 am]

BILLING CODE P

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-61170; File No. SR-OCC-2009-19]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Treasury Futures Traded by ELX Futures LP

December 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 20, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act² and Rule 19b-4(f)(4)³ thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise OCC's By-Laws and Rules to accommodate a proposed alternate settlement procedure for physically-settled Treasury Futures traded by ELX Futures L.P., an electronic futures market that is designated as a contract market by the Commodity Futures Trading Commission ("CFTC").

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s 1(b)(3)(A)(iii).

³ 17 CFR 240.19b 4(f)(4).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁴

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to revise OCC's By-Laws and Rules to accommodate a proposed alternate settlement procedure for physically-settled Treasury Futures traded by ELX Futures L.P., an electronic futures market that is designated as a contract market by the CFTC. Under the proposed alternate settlement procedure, Clearing Members that have been matched for delivery purposes would be allowed to agree between themselves on alternate procedures for completing settlement. Among other changes, OCC is proposing amendments to Chapter 13 of its Rules to specify the manner in which Clearing Members can elect to use such alternate settlement procedures for physically-settled Treasury Futures and to provide for the Clearing Members' indemnification of OCC against any losses resulting from the Clearing Members' use of the alternate settlement procedures. OCC is also proposing to amend its margin rules to provide that once OCC accepts notification from the Clearing Members of the use of alternate settlement procedures for physically-settled Treasury Futures pursuant to proposed Rule 1302B(k), the contracts to be settled under the alternate procedures would no longer be included in the margin calculations for the relevant accounts of these Clearing Members.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Act of 1934 because they are designed to promote the prompt and accurate clearance and settlement of transactions in options and other derivatives cleared by OCC, to remove impediments to and perfect the mechanism of a national system for the

prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. They accomplish this purpose by providing Clearing Members with an alternate method by which to fulfill their settlement obligations for Treasury Futures. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(4)⁶ promulgated thereunder because the proposal changes effects a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty 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-OCC-2009-19 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-OCC-2009-19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. 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-OCC-2009-19 and should be submitted on or before January 14, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-30541 Filed 12-23-09; 8:45 am]

BILLING CODE 8011-01-P

⁴ The Commission has modified parts of these statements.

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19-4(f)(4).

⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61178; File No. SR-NYSEArca-2009-90]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Relating to the Designation of NYSE Arca, Inc., as the NYSE's Alternative Trading Facility in an Emergency

December 16, 2009.

I. Introduction

On October 13, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Corporation") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposal to amend NYSE Arca Equities, Inc. Rule ("NYSE Arca Rule") 2.100, "Emergency Powers; Contingency Trading Facility," to allow NYSE Arca to act, in an emergency, as the alternative trading facility for the New York Stock Exchange LLC ("NYSE") or a national securities exchange otherwise designated by NYSE Arca as an affiliated entity (an "Affiliated Exchange").³ The proposed rule change was published for comment in the *Federal Register* on November 12, 2009.⁴ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

As described in greater detail in the Notice,⁵ NYSE Arca proposes to amend NYSE Arca Rule 2.100 to: (1) Delete obsolete rule text; and (2) authorize a qualified Corporation officer to declare an emergency condition with respect to trading on or through the systems and facilities of NYSE Arca.⁶ Under NYSE

Arca Rule 2.100, no emergency condition will be declared unless: (i) There exists a regional or national emergency that would prevent the NYSE Arca from operating normally; and (ii) such declaration is necessary so that the securities markets in general, and NYSE Arca's systems and facilities, in particular, may continue to operate in a manner consistent with the protection of investors and in pursuit of the public interest.⁷ For purposes of NYSE Arca Rule 2.100, an "emergency" is an emergency as defined in Section 12(k)(7) of the Act,⁸ and NYSE Arca Rule 2.100 is intended to be invoked only in such emergencies.⁹ NYSE Arca contemplates that the authority provided in NYSE Arca 2.100 could be exercised when, due to an emergency condition, the facilities of NYSE Arca's corporate parent, NYSE Euronext, that are located at 11 Wall Street are rendered inoperable.¹⁰ A qualified Corporation officer will make reasonable efforts to contact the Commission prior to taking action under NYSE Arca Rule 2.100.¹¹

In the event that an emergency condition is declared under NYSE Arca Rule 2.100(a) with respect to trading on or through the systems and facilities of an Affiliated Exchange, a qualified Corporation officer may designate NYSE Arca to receive and process bids and offers and to execute orders in Affiliated Exchange-listed securities for members, member organizations, and sponsored participants of the Affiliated Exchange ("Affiliated Participants") on behalf of such Affiliated Exchange.¹² Quotes or orders of Affiliated Exchange-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be reported to the Consolidated Quotation System or the Consolidated Tape as bids, offers, or executions, respectively, made on or

through the systems and facilities of the Affiliated Exchange.¹³

Affiliated Participants would be permitted to enter quotations and to execute orders on or through the systems and facilities of NYSE Arca regardless of whether they were ETP Holders or Sponsored Participants of NYSE Arca at the time the emergency condition was declared.¹⁴ Affiliated Participants registered as Designated Market Makers ("DMMs") on their Affiliated Exchange would be considered "Market Makers" pursuant to NYSE Arca Rule 7.23 for the purpose of trading Affiliated Exchange-listed securities on and through the systems and facilities of NYSE Arca.¹⁵

All trades in Affiliated Exchange-listed securities entered or executed on or through the systems and facilities of NYSE Arca would be subject to NYSE Arca Rules governing trading, and such rules would be considered rules of the Affiliated Exchange for the purposes of such transactions, except that: (1) The rules of the Affiliated Exchange governing member firm conduct, including membership requirements and net capital requirements, would continue to apply to its Affiliated Participants; and (2) the Affiliated Exchange's listing requirements for all listed securities would continue to apply.¹⁶

NYSE Arca would conduct surveillance of trading in Affiliated Exchange-listed securities on or through the systems and facilities of NYSE Arca on behalf of the Affiliated Exchange.¹⁷ Affiliated Participants would remain subject to the jurisdiction of their Affiliated Exchange for any disciplinary actions related to the trading of Affiliated Exchange-listed securities on or through the facilities of NYSE Arca.¹⁸

The authority granted pursuant to NYSE Arca Rule 2.100 would remain operative for up to 10 calendar days from the date that NYSE Arca invokes such authority, and NYSE Arca may terminate actions taken pursuant to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission today is approving a companion proposal filed by the NYSE that allows the NYSE to designate NYSE Arca as its alternative trading facility in the event of an emergency condition. See Securities Exchange Act Release No. 61177 (order approving File No. SR-NYSE-2009-105). Any other Affiliated Exchange that seeks to designate NYSE Arca as its alternative trading facility would be required to file a proposed rule change with the Commission before NYSE Arca could act as that Affiliated Exchange's alternative trading facility. Because no other Affiliated Exchange has filed such a proposal, the NYSE currently is the only Affiliated Exchange that may designate NYSE Arca as its alternative trading facility.

⁴ See Securities Exchange Act Release No. 60921 (November 3, 2009), 74 FR 58345 ("Notice").

⁵ See note 4, *supra*.

⁶ For purposes of NYSE Arca Rule 2.100, a "qualified Corporation officer" is the NYSE

Euronext Chief Executive Officer or his or her designee, or the NYSE Regulation, Inc. Chief Executive Officer or his or her designee. If these individuals are unable to act due to incapacitation, the most senior surviving officer of NYSE Euronext or NYSE Regulation, Inc. will be a "qualified Corporation officer" for purposes of NYSE Arca Rule 2.100. See NYSE Arca Rule 2.100(a)(3)(ii).

⁷ See NYSE Arca Rule 2.100(a)(2).

⁸ 15 U.S.C. 78l(k)(7). See NYSE Arca Rule 2.100(a)(3)(i).

⁹ See Notice, *supra* note 4, at note 5 and accompanying text.

¹⁰ *Id.*

¹¹ See NYSE Arca Rule 2.100(c)(1).

¹² See NYSE Arca Rule 2.100(a)(3)(iv) and (b)(1). As noted above, an Affiliated Exchange would need to file a proposed rule change with the Commission before NYSE Arca could serve as the alternative trading facility for such Affiliated Exchange.

Currently, the NYSE is the only exchange that has filed such a proposal with the Commission. See note 3, *supra*.

¹³ See NYSE Arca Rule 2.100(b)(2)(ii).

¹⁴ See NYSE Arca Rule 2.100(b)(3). NYSE Arca would, as needed, designate any Affiliated Participants that are not NYSE Arca ETP Holders as temporary members of NYSE Arca and permit Affiliated Participants that do not have sponsored access to NYSE Arca to obtain temporary access through an existing ETP Holder or an Affiliated Participant that is granted temporary membership under NYSE Arca Rule 2.100. See NYSE Arca Rule 2.100(b)(3)(i)(A) and (B). The temporary memberships or access would be valid only until regular trading resumes on or through the Affiliated Exchange's systems or facilities. See NYSE Arca Rule 2.100(b)(3)(ii).

¹⁵ See NYSE Arca Rule 2.100(b)(3)(i)(C).

¹⁶ See NYSE Arca Rule 2.100(b)(4).

¹⁷ See NYSE Arca Rule 2.100(b)(5)(i).

¹⁸ See NYSE Arca Rule 2.100(b)(5)(ii).

NYSE Arca Rule 2.100 at any time.¹⁹ NYSE Arca may request an extension of this initial 10-day period for a specified amount of time by filing a proposed rule change with the Commission pursuant to Section 19(b)(2) of the Act, and the Commission must approve the NYSE Arca's proposal before any such extension could take effect.²⁰

NYSE Arca notes that NYSE Arca, like other self-regulatory organizations ("SROs"), currently has the authority to halt trading in all stocks eligible for trading on NYSE Arca in the event of extraordinary market volatility.²¹ NYSE Arca believes that the NYSE currently is the only SRO that monitors for the thresholds (*i.e.*, specified declines in the Dow Jones Industrial Average IndexSM ("DJIA") from the previous day's close) used in these SRO trading halt rules. Accordingly, NYSE Arca proposes to establish a mechanism to calculate the DJIA thresholds in the event that trading on the NYSE becomes inoperable and NYSE Arca acts as the NYSE's alternative trading facility, as contemplated by NYSE Arca Rule 2.100.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²² In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,²³ which requires, in part, that the rules of a national securities exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is reasonably designed to permit the NYSE to continue to operate in the event of an emergency, as defined in Section 12(k)(7) of the Act, by allowing the NYSE's corporate affiliate,

NYSE Arca, to receive and process quotations in NYSE-listed securities and to execute orders in NYSE-listed securities on behalf of the NYSE in the event of an emergency condition.²⁴ A qualified Corporation officer would invoke the authority provided in NYSE Arca Rule 2.100 only in an emergency, as defined in Section 12(k)(7) of the Act.²⁵ NYSE Arca will make reasonable efforts to consult with the Commission prior to taking action under NYSE Arca Rule 2.100.²⁶ Any action taken under NYSE Arca Rule 2.100 would be operative for up to 10 calendar days from the date that NYSE Arca invokes its authority under the rule, and NYSE Arca may terminate action taken under the rule at any time.²⁷ To extend an action taken pursuant to NYSE Arca Rule 2.100 beyond the initial 10-calendar day period, NYSE Arca must file a proposed rule change with the Commission pursuant to Section 19(b)(2) under the Act, and the Commission would need to approve such an extension before it could take effect.²⁸ In addition, the Commission could, at any time, exercise its authority under Section 12(k)(2) of the Act²⁹ to terminate an action taken by NYSE Arca under NYSE Arca Rule 2.100.

NYSE Arca Rule 2.100 also addresses surveillance and the disciplinary procedures that would apply in the event that NYSE Arca acts as the NYSE's alternative trading facility, as provided in the rule. In particular, NYSE Arca will conduct surveillance of trading in NYSE-listed securities on

behalf of the NYSE.³⁰ NYSE members, member organizations, and sponsored participants will remain subject to the NYSE's jurisdiction for any disciplinary actions related to the trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca, and violations of NYSE Arca's rules will be referred to the NYSE for prosecution according to the NYSE's disciplinary rules.³¹

The Commission believes that NYSE Arca's proposal to delete obsolete language from NYSE Arca Rule 2.100 is consistent with the Act because it is designed to clarify the operation of NYSE Arca Rule 2.100. Finally, the Commission believes that NYSE Arca's proposal to establish a mechanism to calculate the DJIA thresholds in the event that trading on the NYSE becomes inoperable is consistent with the Act because it designed to help to maintain a fair and orderly market.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³² that the proposed rule change (File No. SR-NYSE Arca-2009-90) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-30543 Filed 12-23-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61183; File No. SR-CBOE-2009-087]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Establish a Pilot Program To Modify FLEX Exercise Settlement Values and Minimum Value Sizes

December 16, 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 3, 2009, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the

¹⁹ See NYSE Arca Rule 2.100(c)(2) and (3). NYSE Arca will provide adequate prior notice to ETP Holders, Sponsored Participants, and investors regarding its intention to terminate any action taken under the rule. See NYSE Arca Rule 2.100(c)(3).

²⁰ See NYSE Arca Rule 2.100(c)(2).

²¹ See NYSE Arca Rule 7.12.

²² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

²⁴ The Commission previously has approved proposals by other national securities exchanges to establish back-up trading arrangements. See, e.g., Securities Exchange Act Release Nos. 51717 (May 19, 2005), 70 FR 30160 (May 25, 2005) (File No. SR-CBOE-2004-59) (approving proposal by the Chicago Board Options Exchange, Incorporated to enter into back-up trading arrangements with other exchanges); 51926 (June 27, 2005), 70 FR 38232 (July 1, 2005) (File No. SR-Phlx-2004-65) (approving proposal by the Philadelphia Stock Exchange ("Phlx") to enter into back-up trading arrangements with other exchanges); 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998) (File No. SR-Phlx-98-25) (approving the trading of Dell options listed on the Phlx at the American Stock Exchange on a temporary basis); and 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989) (File Nos. SR-Amex-89-26; CBOE-89-21; PSE-89-28; and Phlx-89-52) (approving proposals to trade options listed on the Pacific Stock Exchange on other exchanges following an earthquake).

²⁵ See NYSE Arca Rule 2.100(a)(2) and (3)(i). See also note 10, *supra*, and accompanying text.

²⁶ See NYSE Arca Rule 2.100(c)(1).

²⁷ See NYSE Arca Rule 2.100(c)(2) and (3). NYSE Arca would provide adequate prior notice to ETP Holders, Sponsored Participants, and investors of its intention to terminate any action taken pursuant to NYSE Arca Rule 2.100. See NYSE Arca Rule 2.100(c)(3).

²⁸ See NYSE Arca Rule 2.100(c)(2).

²⁹ 15 U.S.C. 78l(k)(2).

³⁰ See NYSE Arca Rule 2.100(b)(5)(i).

³¹ See NYSE Arca Rule 2.100(b)(5)(ii).

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding permissible exercise settlement values and minimum value sizes for Flexible Exchange Options ("FLEX Options").³ The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to modify the permissible exercise settlement values and minimum value sizes for FLEX Options. These options are governed by Exchange Chapters XXIVA and XXIVB.

Exercise Settlement Values for FLEX Index Options. We are proposing to amend the permissible exercise settlement values for FLEX Index Options. Currently under Rules 24A.4 and 24B.4, FLEX Options may expire on any business day specified as to day, month and year, not to exceed a maximum term of fifteen years. In addition, the exercise settlement value for FLEX Index Options can be specified

³ FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17.

as the index value determined by reference to the reported level of the index as derived from the opening or closing prices of the component securities ("a.m. settlement" or "p.m. settlement," respectively) or as a specified average, provided that the average index value must conform to the averaging parameters established by the Exchange.⁴ However, only a.m. settlements are permitted if a FLEX Index Option expires on, or within two business days of, a third-Friday-of-the-month expiration ("Expiration Friday").⁵ We are proposing to eliminate this latter restriction on p.m. and specified average price settlements in FLEX Index Options on a pilot program basis.⁶

The proposal would become effective on a pilot program basis for a period of fourteen months. If the Exchange were to propose an extension of the program or should the Exchange propose to make the program permanent, then the Exchange would submit a filing proposing such amendments to the program. The Exchange notes that any positions established under the pilot would not be impacted by the expiration of the pilot. For example, a position in a PM-settled FLEX Index Option series that expires on Expiration Friday in January 2015 could be established during the 14-month pilot. If the pilot program were not extended, then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction.⁷

As part of the pilot program, the Exchange would also submit a pilot program report to the Commission at least two months prior to the expiration

⁴ See Rules 24A.4(b)(3) and 24B.4(b)(3); see also Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR-CBOE-92-17). The Exchange has determined to limit the averaging parameters to three alternatives: The average of the opening and closing index values; the average of the intra-day high and low index values; and the average of the opening, closing, and intra-day high and low index values. Any changes to the averaging parameters established by the Exchange would be announced to the membership via circular.

⁵ For example, under the current rules, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before Expiration Friday could have an a.m., p.m. or specified average settlement. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before Expiration Friday could only have an a.m. settlement.

⁶ No change is necessary or being requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

⁷ The Exchange intends to address this point in a circular to members should the Exchange receive approval of this proposal.

date of the program (the "annual report"). As described below, the annual report would contain an analysis of volume, open interest and trading patterns. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and share trading activity. The annual report would be provided to the Commission on a confidential basis.

Analysis of Volume and Open Interest. For each broad-based FLEX Index class overlying an Expiration Friday, PM-settled FLEX Index series, the annual report would contain the following volume and open interest data:

(1) Monthly volume aggregated for all Expiration Friday, PM-settled FLEX Index series trades;

(2) monthly volume for Expiration Friday, PM-settled FLEX Index series trades aggregated by expiration date;

(3) monthly volume for individual Expiration Friday, PM-settled FLEX Index series;

(4) month-end open interest aggregated for all Expiration Friday, PM-settled FLEX Index series;

(5) month-end open interest for Expiration Friday, PM-settled FLEX Index series aggregated by expiration date;

(6) month-end open interest for individual Expiration Friday, PM-settled FLEX Index series; and

(7) ratios of monthly aggregate volume and month-end open interest for Expiration Friday, PM-settled FLEX Index and all series of that class (including the Expiration Friday, PM-settled FLEX Index series).

In addition to the annual report, the Exchange would provide the Commission with interim reports of the information listed in Items (1) through (7) above periodically as required by the Commission while the pilot is in effect. These interim reports would also be provided on a confidential basis.

For each broad-based FLEX Index class overlying an Expiration Friday, PM-settled FLEX Index option, the annual report would also contain the information noted in Items (1) through (7) above for Expiration Friday, AM-settled FLEX Index series. In addition, for each broad-based Non-FLEX Index class overlying the same index as an Expiration Friday, PM-settled FLEX Index option, the annual report would also contain the information noted in Items (1) through (7) above for Expiration Friday Non-FLEX Index series. This data on Expiration Friday, AM-settled FLEX Index series and Expiration Friday Non-FLEX Index series would cover the period of the

annual report as well as a pre-pilot period to be determined by the Exchange and the Commission.

Analysis of FLEX Trading Patterns. The annual report would contain the following analysis of FLEX trading patterns:

(1) A time series analysis of open interest in Expiration Friday, PM-settled FLEX Index series; and

(2) an analysis of the distribution of Expiration Friday, PM-settled FLEX Index series trade sizes and of the number of trades that occur in each Expiration Friday, PM-settled FLEX Index series.

Analysis of Index Price Volatility and Share Trading Activity. For each broad-based index class overlying an Expiration Friday, PM-settled FLEX Index that has open interest in Expiration Friday, PM-settled FLEX Index series that exceed certain minimum parameters, the annual report would contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data would include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the CBOE Volatility Index (VIX), would be provided; and

(2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money Expiration Friday, PM-settled FLEX Index series. The data would include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods would be determined by the Exchange and the Commission.

Minimum Value Size Requirements for All FLEX Options. Second, we are proposing to eliminate the minimum value size requirements for FLEX Options. Currently under Rules 24A.4 and 24B.4, the minimum value size requirements are as follows:

• For opening transactions in any FLEX series in which there is no open interest at the time a FLEX Request for

Quotes (“RFQ”) or FLEX Order, as applicable, is submitted is (i) for FLEX Equity Options, the lesser of 250 contracts or the number of contracts overlying \$1 million in the underlying securities; and (ii) for FLEX Index Options, \$10 million Underlying Equivalent Value. For a pilot period ending February 28, 2010, the “250 contracts” component above has been reduced to “150 contracts.”

• For a transaction in any currently-opened FLEX series resulting from an RFQ or from trading against the electronic book (other than FLEX Quotes responsive to a FLEX Request for Quotes and FLEX Orders submitted to rest in the electronic book) is (i) for FLEX Equity Options, the lesser of 100 contracts or the number of contracts overlying \$1 million in the underlying securities in the case of opening transactions, and 25 contracts in the case of closing transactions; and (ii) for FLEX Index Options, \$1 million Underlying Equivalent Value in the case of both opening and closing transactions; or (iii) in either case the remaining underlying size or Underlying Equivalent Value on a closing transaction, whichever is less.

• The minimum value size for FLEX Quotes responsive to an RFQ and FLEX Orders (undecrement size) submitted to rest in the electronic book is 25 contracts in the case of FLEX Equity Options, and \$1 million Underlying Equivalent Value in the case of FLEX Index Options, or in either case the remaining underlying size or Underlying Equivalent Value on a closing transaction, whichever is less. In addition, with respect to FLEX Index Appointed Market-Makers, FLEX Quotes and FLEX Orders (undecrement size) must be for at least \$10 million Underlying Equivalent Value or the dollar amount indicated in the Request for Quote (if applicable), whichever is less.

We are proposing to eliminate these minimum value size requirements on a fourteen month pilot program basis. If the Exchange were to propose an extension or an expansion of the minimum value size pilot program, or should the Exchange propose to make the program permanent, the Exchange would submit, along with any filing proposing such amendments to the program, a pilot program report that would provide an analysis of the program covering the period during which the program was in effect. This minimum value size report would include: (i) Data and analysis on the open interest and trading volume in (a) FLEX Equity Options for which series were opened with a minimum opening

size of 0 to 249 contracts and less than \$1 million in underlying value; (b) FLEX Index Options for which series were opened with a minimum opening size of less than \$10 million in underlying equivalent value; and (ii) analysis on the types of investors that initiated opening FLEX Equity and Index Options transactions (*i.e.*, institutional, high net worth, or retail). The report would be submitted to the Commission at least two months prior to the expiration date of the pilot program and would be provided on a confidential basis.

The Exchange notes that any positions established under this pilot would not be impacted by the expiration of the pilot. For example, a 10-contract FLEX Equity Option opening position that overlies less than \$1 million in the underlying security and expires in January 2015 could be established during the 14-month pilot. If the pilot program were not extended, then the position could continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series.

Discussion. CBOE believes that expanding the exercise settlement values for FLEX Index Options and eliminating the minimum value size requirements for all FLEX Options on are [sic] important and necessary to the Exchange’s efforts to create a product and market that provides members and investors interested in FLEX-type options with an improved but comparable alternative to the over-the-counter (“OTC”) market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same restrictions. By making these changes, market participants would now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation (“OCC”) as issuer and guarantor of FLEX Options. The Exchange also believes the proposed changes to the FLEX rules are wholly consistent with recent comments by Timothy F. Geithner, Secretary of the Treasury, to the U.S. Senate. In particular, Secretary Geithner has stated that:

“Market efficiency and price transparency should be improved in derivatives markets by requiring the clearing of standardized contracts through regulated [central counterparties] and by moving the standardized part of these markets onto regulated exchanges and regulated transparent electronic trade execution systems for OTC derivatives and by requiring development of a system for timely reporting of trades and prompt dissemination of prices and other trade information. Furthermore, regulated financial institutions should be encouraged to make greater use of regulated exchange-traded derivatives. Competition between appropriately regulated OTC derivatives markets and regulated exchanges will make both sets of markets more efficient and thereby better serve end-users of derivatives.”⁸

CBOE notes that when the FLEX Option rules were initially proposed and approved almost sixteen years ago, the Exchange was uncertain what market impacts, if any, excessive FLEX positions would have on the market or on firms.⁹ To minimize the risk of adverse market effects, at the time the FLEX rules were first introduced the Exchange put in place certain position limit boundaries (which have been modified over time) and the requirement that the FLEX expiration date be no closer than three business days from any Non-FLEX Option Expiration Friday (which has been eliminated).¹⁰ Based on the Exchange’s experience in trading FLEX Options to date—specifically with respect to the diversity in FLEX Option trading, the relatively small percentage FLEX Options trading compared to overall trading on the Exchange, and the lack of market disruptions or problems caused by or on existing FLEX Option

expirations—CBOE no longer believes the restrictions on exercise settlement value are necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.¹¹ To the contrary, CBOE believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants’ ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements would continue to apply to FLEX Options in accordance with Rules 24A.7, 24A.8, 24B.7 and 24B.8. Additionally, all FLEX options remain subject to the position reporting

¹¹ In further support of its proposal, the Exchange also notes that the p.m. and specified average price settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, Expiration Friday. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates. The Exchange is also not aware of any market disruptions or problems caused by the use of customized options in the OTC markets that expire on or near Expiration Friday and have a p.m. or specified average exercise settlement value. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange (“NYSE”) at the close that are no longer relevant in today’s market. Today, however, the Exchange believes stock exchanges are much better able to handle volume. There are multiple primary listing and unlisted trading privilege (“UTP”) markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today order flow is predominantly electronic and the ability to smooth out openings and closings is greatly reduced (e.g., market-on-close procedures work just as well as openings). Also other markets, such as the NASDAQ Stock Exchange, do not have the same type of pre-opening imbalance disseminations as the NYSE, so many stocks are not subject to the same procedures on Expiration Friday. In addition, the Exchange believes that the NYSE has reduced the required time a specialist has to wait after disseminating a pre-opening indication. So, in this respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options (or certain average price settled options related to the closing price) that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange believes that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

requirements of Rule 4.13(a).¹² Moreover, the Exchange and member organizations each have the authority, pursuant to Rule 12.10, to impose additional margin as deemed advisable. CBOE believes these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

The Exchange likewise believes that the elimination of the minimum value size requirement would provide FLEX-participating members with greater flexibility in structuring the terms of FLEX Options that best comport with their and their customers’ particular needs. In this regard, the Exchange notes that the minimum value size requirement was also originally put in place over sixteen years ago to limit participation in FLEX Options to sophisticated, high net worth investors rather than retail investors. However, the Exchange believes the restriction is no longer necessary and is overly restrictive. Again, based on the Exchange’s experience to date, the minimum value size requirement is too large to accommodate the needs of members and their customers—who may be institutional, high net worth or retail—that currently participate in the OTC market. In this regard, the Exchange notes that it has recently received numerous requests from broker-dealers representing institutional, high net worth and retail investors indicating that the minimum value size requirement prevents them from bringing transactions that are already taking place in the OTC market to an exchange environment. Thus, Exchange believes that eliminating the minimum value size requirement would further broaden the base of investors that use FLEX Options to manage their trading and investment risk, including

¹² CBOE Rule 4.13(a) provides that “[i]n a manner and form prescribed by the Exchange, each member shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered.” For purposes of this Rule, the term “customer” in respect of any member includes “the member, any general or special partner of the member, any officer or director of the member, or any participant, as such, in any joint, group or syndicate account with the member or with any partner, officer or director thereof.” Rule 4.13(d).

⁸ See letter from Secretary Geithner to the Honorable Harry Reid, United States Senate (May 13, 2009), located at <http://www.financialstability.gov/docs/OTCletter.pdf>.

⁹ See Securities Exchange Act Release Nos. 31361 (October 27, 1992) 57 FR 52655 (November 4, 1992) (SR-CBOE-92-17) (notice of filing of proposed rule change relating to Flexible Exchange Options) and 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (Order approving SR-CBOE-92-17). At the time of the proposal, the Exchange also anticipated that there would be limited secondary trading in any FLEX Option series having a particular expiration date due to the diversity inherent in FLEX Options and that FLEX expiration concentrations should be rare. These observations appear to be accurate for the trading in FLEX Options to date.

¹⁰ When the expiration date restrictions were eliminated, the Exchange adopted the aforementioned restriction limiting exercise settlement values for FLEX Index Options that expire on, or within two business days of, an Expiration Friday to a.m. settlements. See Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR-CBOE-2008-115).

investors that currently trade in the OTC market for customized options, where similar size restrictions do not apply. The Exchange also believes that this may open up FLEX Options to more retail investors. The Exchange does not believe this raises any unique regulatory concerns because, as indicated above, existing safeguards—such as certain position limit, aggregation and exercise limit requirements, reporting requirements, and margin requirements—would continue to apply. In addition, the Exchange notes that FLEX Options are subject to the options disclosure document (“ODD”) requirements of Rule 9b–1¹³ under the Act.¹⁴ No broker or dealer can accept an order from a customer to purchase or sell an option contract relating to an options class that is the subject of a definitive ODD (including FLEX Options), or approve the customer’s account for the trading of such an option, unless the broker or dealer furnishes or has furnished to the customer a copy of the definitive ODD. The ODD contains a description, special features, and special risks of FLEX Options. Lastly, similar to any other options, FLEX Options are subject to member firm supervision and suitability requirements, such as in CBOE Rules 9.8 and 9.9.

In proposing these changes, CBOE is cognizant of the need for market participants to have substantial options transaction capacity and flexibility to hedge their substantial investment portfolios, on the one hand, and the potential for adverse effects that the exercise settlement value and minimum value size restrictions were originally designed to address, on the other. CBOE is also cognizant of the OTC market, in which similar restrictions on exercise settlement value and minimum size do not apply. In light of these considerations and Secretary Geithner’s recent comments on moving the standardized parts of OTC contracts onto regulated exchanges, CBOE believes these changes are appropriate and reasonable and would provide market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions; increased market transparency; and heightened contra-

party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

For the foregoing reasons, CBOE believes that the proposed revisions to the exercise settlement values and minimum value size requirements are reasonable and appropriate, would promote just and equitable principles of trade, and would facilitate transactions in securities while continuing to foster the public interest and investor protection.

2. Statutory Basis

By expanding permissible expiration dates for FLEX Options, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹⁵ in general and furthers the objectives of Section 6(b)(5) of the Act¹⁶ in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that the elimination of the p.m. settlement date restrictions for FLEX Index Options and the minimum size requirements for all FLEX Options in the manner proposed does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would provide members and investors with additional opportunities to trade customized options in an exchange environment and subject to exchange-based rules, and investors would benefit as a result.

B. Self-Regulatory Organization’s Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–CBOE–2009–087 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–087. 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

¹³ 17 CFR 240.9b–1.

¹⁴ 15 U.S.C. 78a et seq.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-CBOE-2009-087 and should be submitted on or before January 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-30545 Filed 12-23-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61179; File No. SR-NYSEAmex-2009-89]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rules 312- and 321-NYSE Amex Equities and Adopt New Rules 2262- and 2269-NYSE Amex Equities Filed by the Financial Industry Regulatory Authority, Inc.

December 16, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on December 14, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 312- and 321-NYSE Amex Equities and adopt new Rules 2262- and 2269-NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved

by the Securities and Exchange Commission (the "Commission"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to amend Rules 312-NYSE Amex Equities (Changes Within Member Organizations) and 321-NYSE Amex Equities (Formation or Acquisition of Subsidiaries) and adopt new Rules 2262-NYSE Amex Equities (Disclosure of Control Relationship with Issuer) and 2269-NYSE Amex Equities (Disclosure of Participation or Interest in Primary or Secondary Distribution) to correspond with rule changes filed by FINRA and approved by the Commission.

Background. On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934, as amended (the "Act"), the New York Stock Exchange LLC ("NYSE"), NYSE and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). The Exchange became a party to the Agreement effective December 15, 2008.⁴

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.⁵

Proposed Conforming Amendments to NYSE Rules. FINRA adopted NASD Rules 2240 (Disclosure of Control Relationship with Issuer) and 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) as consolidated FINRA Rules 2262 and 2269, respectively.⁶

Because the protection provided by the new FINRA Rules, as well as existing or proposed FINRA Rules and SEC Rules,⁷ is generally broader than that provided by FINRA Incorporated NYSE Rules 312(f) and 321.24, FINRA deleted those rules. Specifically, FINRA noted that, unlike FINRA Incorporated NYSE Rule 312(f)(2), consolidated FINRA Rules 2262 and 2269 would operate to protect customers without regard as to whether or not a member or member organization makes a recommendation on a security to a customer. In addition, FINRA noted that the requirements of FINRA Incorporated NYSE Rules 312(f)(1) and (3) are sufficiently addressed by consolidated FINRA Rules 2262 and 2269 and other rules. FINRA also noted that, unlike FINRA Incorporated NYSE Rule 321.24, consolidated FINRA Rules 2262 and 2269 require disclosure in transactions involving securities beyond those issued

(order approving the incorporation of certain NYSE Rules as "Common Rules"); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

⁵ FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE, while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, see FINRA Information Notice, March 12, 2008.

⁶ In its filing, FINRA also adopted NASD Rule 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as consolidated FINRA Rule 5260. See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009). NYSE Amex is not adopting this FINRA Rule as it is not applicable to trading on the Exchange.

⁷ According to FINRA, the requirements of consolidated FINRA Rules 2262 and 2269 are almost identical to SEA Rules 15c1-5 and 15c1-6, respectively. See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (footnotes 4-6).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR-NASD-2007-054)

by a subsidiary of the member organization.⁸

To harmonize the NYSE Amex Equities Rules with the approved FINRA Rules, the Exchange correspondingly proposes to delete Rules 312(f)– and 321.24–NYSE Amex Equities and replace them with proposed Rules 2262– and 2269–NYSE Amex Equities, which are substantially similar to the new FINRA Rules.⁹ As proposed, Rules 2262– and 2269–NYSE Amex Equities adopt the same language as FINRA Rules 2262 and 2269, except for substituting for or adding to, as needed, the term “member organization” for the term “member”, and making corresponding technical changes.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,¹⁰ in general, and further the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1)¹² of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rules.

⁸ See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009).

⁹ NYSE has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. See SR–NYSE–2009–125.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78k–1(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and Rule 19b–4(f)(6) thereunder.¹⁴ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.¹⁷

The proposed rule change is based upon the rules of another self-regulatory organization, and as such is not in any way novel or controversial. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b–4(f)(6).

¹⁵ 17 CFR 240.19b–4(f)(6).

¹⁶ 17 CFR 240.19b–4(f)(6)(iii).

¹⁷ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

bring uniformity to the Exchange's and FINRA's rules. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.¹⁸

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–NYSEAmex–2009–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,¹⁹ all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

¹⁸ 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).

¹⁹ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

Section, 100 F Street, NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE Amex's principal office and on its Internet Web site at <http://www.nyse.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAmex-2009-89 and should be submitted on or before January 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-30544 Filed 12-23-09; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61176; File No. SR-NYSE-2009-125]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rules 312 and 321 and Adopt New Rules 2262 and 2269 Filed by the Financial Industry Regulatory Authority, Inc.

December 16, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 14, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rules 312 and 321 and adopt new Rules 2262 and 2269 to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the

Securities and Exchange Commission (the "Commission"). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes is to amend NYSE Rules 312 (Changes Within Member Organizations) and 321 (Formation or Acquisition of Subsidiaries) and adopt new Rules 2262 (Disclosure of Control Relationship with Issuer) and 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution) to correspond with rule changes filed by FINRA and approved by the Commission.

Background. On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934, as amended (the "Act"), NYSE, NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). NYSE Amex LLC ("NYSE Amex") became a party to the Agreement effective December 15, 2008.⁴

⁴ See Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR-NASD-2007-054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); and 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement,

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.⁵

Proposed Conforming Amendments to NYSE Rules. FINRA adopted NASD Rules 2240 (Disclosure of Control Relationship with Issuer) and 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) as consolidated FINRA Rules 2262 and 2269, respectively.⁶

Because the protection provided by the new FINRA Rules, as well as existing or proposed FINRA Rules and SEC Rules,⁷ is generally broader than that provided by FINRA Incorporated NYSE Rules 312(f) and 321.24, FINRA deleted those rules. Specifically, FINRA noted that, unlike FINRA Incorporated NYSE Rule 312(f)(2), consolidated FINRA Rules 2262 and 2269 would operate to protect customers without regard as to whether or not a member or member organization makes a recommendation on a security to a customer. In addition, FINRA noted that the requirements of FINRA Incorporated NYSE Rules 312(f)(1) and (3) are sufficiently addressed by consolidated FINRA Rules 2262 and 2269 and other rules. FINRA also noted that, unlike FINRA Incorporated NYSE Rule 321.24, consolidated FINRA Rules 2262 and 2269 require disclosure in transactions involving securities beyond those issued

adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

⁵ FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, see FINRA Information Notice, March 12, 2008.

⁶ In its filing, FINRA also adopted NASD Rule 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as consolidated FINRA Rule 5260. See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009). NYSE is not adopting this FINRA Rule as it is not applicable to trading on the Exchange.

⁷ According to FINRA, the requirements of consolidated FINRA Rules 2262 and 2269 are almost identical to SEA Rules 15c1-5 and 15c1-6, respectively. See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (footnotes 4-6).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

by a subsidiary of the member organization.⁸

To harmonize the NYSE Rules with the approved FINRA Rules, the Exchange correspondingly proposes to delete NYSE Rules 312(f) and 321.24 and replace them with proposed NYSE Rules 2262 and 2269, which are substantially similar to the new FINRA Rules.⁹ As proposed, NYSE Rules 2262 and 2269 adopt the same language as FINRA Rules 2262 and 2269, except for substituting for or adding to, as needed, the term “member organization” for the term “member”, and making corresponding technical changes.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act,¹⁰ in general, and further the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule changes also support the principles of Section 11A(a)(1)¹² of the Act in that they seek to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets.

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rules, such changes are technical in nature and do not change the substance of the proposed NYSE Rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.¹⁷

The proposed rule change is based upon the rules of another self-regulatory organization, and as such is not in any way novel or controversial. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will bring uniformity to the Exchange's and FINRA's rules. Accordingly, the Commission hereby grants the

Exchange's request and designates the proposal operative upon filing.¹⁸

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-NYSE-2009-125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-125. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,¹⁹ all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

¹⁸ 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).

¹⁹ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/>.

⁸ See Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009).

⁹ NYSE Amex has submitted a companion rule filing amending its rules in accordance with FINRA's rule changes. See SR-NYSE-Amex-2009-89.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78k-1(a)(1).

copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2009-125 and should be submitted on or before January 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-30542 Filed 12-23-09; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35335]

Freedom Rail Management, LLC— Acquisition of Control Exemption— Columbia & Reading Railway Co.

Freedom Rail Management, LLC (FRM), a noncarrier, has filed a verified notice of exemption to acquire control of Columbia & Reading Railway Co. (CORY), a class III rail carrier. Pursuant to a Membership Interest Purchase Agreement between FRM and Railway Management, Inc. (RMI),¹ FRM seeks to purchase a 51 percent membership interest in CORY.² FRM currently controls Claremont Concord Railroad (CCRR), a Class III rail carrier. CCRR owns 2 miles of rail line in Claremont, NH, and leases 2 miles of rail line in Lebanon, NH, from the New Hampshire Department of Transportation.

The transaction is expected to be consummated on or after January 10, 2010, the effective date of the exemption.

FRM states that: (i) The railroads will not connect with each other; (ii) the acquisition of control is not part of a series of anticipated transactions that would connect the railroads with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory

obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 35335 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jeffrey O. Moreno, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: December 18, 2009.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. E9-30602 Filed 12-23-09; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Draft Environmental Impact Statement: Northwest I-75/I- 575 Corridor, Cobb and Cherokee Counties, GA (Atlanta Metropolitan Area)

AGENCY: Federal Highway
Administration (FHWA), USDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the interested parties (public, agencies and tribal governments) that a supplemental draft environmental impact statement (SDEIS) will be prepared for proposed highway improvements on Interstate 75 and Interstate 575 (I-75/I-575) in Cobb and Cherokee Counties, Georgia. The length of the proposed project is 30.70 miles.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Barry, Federal Highway Administration, 61 Forsyth Street, Suite 17T100, Atlanta, Georgia, Telephone: 404-562-3630, E-mail: rodney.barry@fhwa.dot.gov.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Georgia Department of Transportation (GDOT) will prepare a SDEIS to consider environmental impacts of proposed transportation improvements to I-75 and I-575 in the Atlanta metropolitan area. These improvements are collectively referred to as the Northwest Corridor project and are located within the project area, which extends northwesterly along I-75 in Cobb County from I-285 through Marietta, Kennesaw and into Acworth. Within the project area, I-575 extends from I-75 northeasterly into Cherokee County.

A notice of intent announcing the preparation of an environmental impact statement was published in the **Federal Register** on March 9, 2004. FHWA and GDOT issued the Alternative Analysis/Draft Environmental Impact Statement (AA/DEIS) in May 2007.

The AA/DEIS evaluated four build alternatives, three design options and two operational options. The build alternatives included the high-occupancy vehicles (HOV) and truck only lanes (TOL) Alternative, the HOV/TOL/Transportation System Management (TSM) Alternative, the HOV/TOL/Bus Rapid Transit (BRT) Alternative, and the HOV/TOL/Reduced BRT Alternative. The SDEIS will evaluate a proposal that would consist of a two-lane reversible managed alternative and improvements to operations will be analyzed in the SDEIS.

An agency meeting will be held during the development of the SDEIS. Numerous opportunities for public input will be provided. The Northwest Corridor project Web site will be updated to include the SDEIS and there will be outreach to local and state-wide media. Letters describing the new alternative and soliciting comments will be sent to the public, private entities, Federal, State and local agencies. Formal public hearings will take place along the corridor. Public notice will be given announcing the time and place of the public hearings. The SDEIS will be available for public and agency review prior to the public hearings. Comments and questions should be directed to FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Georgia's approved clearinghouse review procedures apply to this program.)

²⁰ 17 CFR 200.30-3(a)(12).

¹ RMI is a noncarrier that currently holds a 100% ownership interest in CORY.

² CORY owns 2.5 miles of rail line in Lancaster County, PA.

Issued on December 17, 2009.

William Farr,

Assistant Division Administrator, Atlanta, Georgia.

[FR Doc. E9-30561 Filed 12-23-09; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief from the requirements of Title 49 CFR Part 236, as detailed below.

Union Pacific Railroad Company

[Docket Number FRA-2009-0117]

The Union Pacific Railroad (UP) seeks relief from the requirements of the Rules, Standards, and Instructions, Title 49 CFR Part 236. Specifically, UP seeks relief from the requirements of Subpart A, Rules and Instructions: All Systems, Section 236.109 Time releases, timing relays and timing devices; regarding performance of timing duration test on timers with variable settings at an interval of not less than once every 12 months. UP seeks to extend periodic testing requirements of non-adjustable timers from at least once every 12 months to every 4 years after initial testing has been completed at all interlockings, control points, and other signal locations controlled by microprocessor-based equipment. This request for relief proposes to use alternative locking test procedures at signal locations with microprocessor-based equipment after an initial base line time duration test is performed. The following proposed alternative timer tests will be performed every 4 years after initial testing or program change:

- Verification of the Cyclic Redundancy Check/Check Sum/Universal Control Number of the existing location specific application logic to the previously tested version (baseline testing).
- Testing the duration of any timers with variable settings.

Alternative test descriptions and procedures for timers with variable settings in microprocessor-based

equipment would be documented in Carriers Signal Maintenance Standards.

Applicant's justification for relief: The requirement for not less than once every 12 months testing interval at microprocessor controlled signal locations places an unnecessary burden on the carrier and provides no real safety benefit as the application program logic (and timer values) once installed does not change.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA-2009-0117) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

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 (65 FR 19477) or at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on December 16, 2009.

Grady C. Cothen, Jr.

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9-30277 Filed 12-23-09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 18, 2009.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before January 25, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-0984.

Type of Review: Revision of a currently approved collection.

Title: Low-Income Housing Credit.

Form: 8586.

Description: The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of construction or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 68,517 hours.

Clearance Officer: R. Joseph Durbala, (202) 622-3634, Internal Revenue Service, 1111 Constitution Avenue, NW., Room 6129, Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed, (202) 395-7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. E9-30571 Filed 12-23-09; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0704]

Agency Information Collection (VA/DOD Joint Disability Evaluation Board Claim) 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 25, 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. 2900-0704" 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. 2900-0704."

SUPPLEMENTARY INFORMATION:

Title: VA/DOD Joint Disability Evaluation Board Claim, VA Form 21-0819.

OMB Control Number: 2900-0704.

Type of Review: Revision of a currently approved collection.

Abstract: As a result of President Bush's Interagency Task Force on Returning Global War on Terror Heroes, VA and the Department of Defense (DOD) have agreed to develop a joint process in which Global War on Terror (GWOT) service members are evaluated to assign disability ratings, which will be used to determine military retention, level of disability for retirement, and VA disability compensation. VA Form 21-0819 will be used to gather the

necessary information to determine the service member's eligibility for participation in a joint DOD/VA Disability Evaluation Board and VA compensation after separation from service.

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 52841-52842.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 14,000.

Dated: December 18, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9-30575 Filed 12-23-09; 8:45 am]

BILLING CODE 8320-01-P



Federal Register

**Thursday,
December 24, 2009**

Part II

Department of Defense

Office of the Secretary

**Science and Technology Reinvention
Laboratory Personnel Management
Demonstration Project, Department of the
Army, Army Research, Development and
Engineering Command, Natick Soldier
Research, Development and Engineering
Center (NSRDEC); Notice**

DEPARTMENT OF DEFENSE**Office of the Secretary****Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Natick Soldier Research, Development and Engineering Center (NSRDEC)**

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy), (DUSD (CPP)), Department of Defense (DoD).

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: Section 342(b) of Public Law 103–337, as amended, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense (DoD) laboratories designated as Science and Technology Reinvention Laboratories (STRLs). The above-cited legislation authorizes DoD to conduct demonstration projects to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. Section 1107 of Public Law 110–181 as amended by section 1109 of Public Law 110–417 requires the Secretary of Defense to execute a process and plan to employ the Department’s personnel management demonstration project authorities found in title 5 United States Code (U.S.C.) 4703 at the STRLs enumerated in 5 U.S.C. 9902(c)(2) as re-designated in section 1105 of Public Law 111–84 and 73 **Federal Register** (FR) 73248 to enhance the performance of these laboratories. The NSRDEC is listed as one of the designated STRLs.

DATES: Implementation of this demonstration project will begin no earlier than February 1, 2010.

FOR FURTHER INFORMATION CONTACT: NSRDEC: Ms. Karen Sullivan, Natick Soldier Research, Development and Engineering Center, (RDNS–BOW), Kansas Street, Natick, MA 01760, (508) 233–4479.

DoD: Ms. Betty A. Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144

SUPPLEMENTARY INFORMATION:**1. Background**

Since 1966, many studies of Department of Defense (DoD) laboratories have been conducted on laboratory quality and personnel. Almost all of these studies have recommended improvements in civilian

personnel policy, organization, and management. Pursuant to the authority provided in section 342(b) of Public Law 103–337, as amended, a number of DoD STRL personnel demonstration projects were approved. These projects are “generally similar in nature” to the Department of Navy’s “China Lake” Personnel Demonstration Project. The terminology, “generally similar in nature,” does not imply an emulation of various features, but rather implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

This demonstration project involves: (1) Two appointment authorities (permanent and modified term); (2) extended probationary period for newly hired engineering and science employees; (3) pay banding; (4) streamlined delegated examining; (5) modified reduction-in-force (RIF) procedures; (6) simplified job classification; (7) a pay-for-performance based appraisal system; (8) academic degree and certificate training; (9) sabbaticals; and (10) a Voluntary Emeritus Corps.

2. Overview

DoD published notice in 73 FR 73248, December 2, 2008, that pursuant to subsection 1107(c) of Public Law 110–181 the three STRLs listed in 5 U.S.C. 9902(c)(2) as re-designated in section 1105 of Public Law 111–84 not having personnel demonstration projects may adopt any of the flexibilities of the other laboratories listed in subsection 9902(c)(2) as re-designated in section 1105 of Public Law 111–84 and further provided notice of the proposed adoption of an existing STRL demonstration project by two centers under the United States (U.S.) Army Research, Development and Engineering Command (RDECOM): Edgewood Chemical Biological Center (ECBC) and NSRDEC. The notice indicated that these two centers intended to adopt the STRL Personnel Management Demonstration project designed by the U.S. Army Communications-Electronics Command, Research, Development, and Engineering organizations (a reorganization changed this designation to the U. S. Army Communications-Electronics Research, Development and Engineering Center (CERDEC)). Relative to NSRDEC’s intent to adopt the CERDEC demonstration project, DoD received written comments from 5 individuals, including a union official, during the public comment period which ended on January 2, 2009. In addition, one individual provided

comments after the close of the comment period. All comments were carefully considered. The comments received after the close of the comment period are not included in the summary below, but were discussed with the individual who provided the comments.

The following summary addresses the pertinent comments received, provides responses, and notes resultant changes to the original CERDEC project plan published in 66 FR 54872, October 30, 2001. Several commenters addressed more than one topic and each topic was counted separately. Thus, the total number of comments exceeds the number of individuals cited above.

A. Miscellaneous

Four miscellaneous comments were received.

Comments: Two commenters provided favorable comments on the expected benefits to NSRDEC as a result of the demonstration project and on the value of pay banding to retain and reward high performers. Two other comments reflected the need to make revisions and other adjustments in the document to reflect NSRDEC and its workforce and to make other updates for legal and regulatory changes that have occurred.

Response: A number of changes were made to include NSRDEC as the name of the organization, its organizational and workforce information, approval authorities, and technical modifications to conform to changes in the law and governing regulations. In addition, some sections have been reformatted for clarity and to improve readability. Throughout the document changes have been made to clarify and provide consistent use of pay terminology. Minor revisions have been made to Appendix C, Performance Elements, to be consistent with the descriptions currently in use by CERDEC.

B. Pay Bands

Two comments were received concerning pay bands.

Comments: One commenter advised that reconsideration be given to initial placement of all GS–14 engineers and scientists to the Engineering and Scientist (E&S) (DB) Pay Band IV and requested clarification of how any subsequent conversions for GS–14 E&S positions will be handled. Another comment suggested that the number of Pay Band V positions be expanded to permit a certain number or percent at each STRL since the current limited number has already been allocated to other organizations which would preclude NSRDEC from using this flexibility.

Response: We have carefully considered these comments. With regard to placement of GS-14 E&S, language has been changed in III.A.1. and added in III.A.2. to reflect that upon conversion NSRDEC employees in the E&S family at grade GS-14 will be assigned to Pay Band IV.

In response to the second comment, the use of Pay Band V has proven to be beneficial in recruiting and retaining highly-qualified senior scientific technical managers in those STRL personnel demonstration projects that have such positions. The limited number of such positions makes it difficult to meet the requirements of all the STRLs who wish to use this flexibility. The DoD is currently reviewing all Pay Band V positions. No change is proposed in the number of Pay Band V positions pending the completion of the DoD review.

C. Pay for Performance

Five comments were received related to the pay-for-performance system.

Comments: One commenter expressed concern that performance and pay related decisions of supervisors could be personality-driven and that employees did not have sufficient trust in their supervisors to increase the authority of supervisors to make pay-related decisions. Another commenter expressed concern that pay for performance will undermine organizational performance. The commenter has not been able to identify performance management experts that support rating/ranking of employees. The commenter emphasized the importance of assuring that performance objectives provide a consistent level of challenge and urged adding a level of employee oversight for balance. Another commenter considered that the proposed system is no less subjective than the present system. Finally, another commenter was concerned that adoption of the demonstration project pay-for-performance system would adversely affect mobilized reservists and guardsmen.

Response: As cited by the commenter, a recent Merit Systems Protection Board survey suggests that, across the Federal government, a number of survey respondents lack trust that their supervisors will treat them fairly. Workforce support is crucial to the success of the demonstration project, and a concerted effort will be made to build trust and confidence in the demonstration project. On-going communication with the workforce is eliciting their opinions. A cross-section of employees participate in a Workforce Advisory Group and are actively

involved in identifying training needs and developing operating procedures. Training in the pay-for-performance system and other aspects of the demonstration project will be mandatory for all supervisors. The use of a structured reconciliation process to determine performance payouts will facilitate enhancing fairness and consistency. The process provides for raters to conduct a review, comparing preliminary scores and building consensus to achieve consistent ratings across the pay pool. Finally, perceived fairness of the appraisal process has been identified as an area for evaluation and will be included in surveys of the workforce and focus group discussions with employees. An annual report with a thorough review and analysis of the pay-for-performance cycle will be published to assist in providing greater transparency. Active outreach combined with the structured reconciliation process and transparency will help to build the trust necessary for successful implementation.

Improving organizational effectiveness is the driving goal supporting implementation of the laboratory personnel demonstration project. The Office of Personnel Management (OPM), in its independent evaluation of STRL personnel demonstration projects, found a limited but positive impact of implementation of a demonstration project on laboratory effectiveness. All STRL demonstration projects include a pay-for-performance system as a means to achieve improved organizational effectiveness. Though there are difficulties with performance reviews, such reviews are a mainstream practice, commonplace within the private, non-profit and public sectors. Performance appraisal is specifically required by 5 U.S.C. chapter 43. Demonstration projects build on this requirement by increasing the link between pay and performance. Survey results indicate that, after implementation of a demonstration project, many more respondents agree that pay raises depend on performance. The pay-for-performance system is an integral component of a demonstration project's more flexible and responsive human resources system. The design of the NSRDEC pay-for-performance system will increase and improve communication between the supervisor and the rater during the rating cycle, provide for alignment of performance objectives with organizational goals and objectives, and use features such as a workforce survey to gauge the effectiveness and level of support for pay for performance.

There is a need to assure an appropriate level of challenge in performance objectives across the NSRDEC organization. In the current system, preparing performance objectives has traditionally been a matter between the rater and the employee. Some efforts have been made to review objectives within an individual directorate and training has been provided on what is a "good" objective. The demonstration project will serve to improve consistency across the organization. All supervisors will have mandatory pay-for-performance training that will include writing performance objectives. The NSRDEC Workforce Advisory Group has taken a key interest in improving performance objectives and will help to develop sample performance objectives. The sample objectives will be linked to occupational family and pay band. At the start of the first performance cycle, the raters within a pay pool and the pay pool manager will review and provide feedback on performance objectives. The pay pool manager will review the objectives and weights assigned to employees within the pay pool to verify consistency and appropriateness. These efforts should significantly improve consistency and equity in performance expectations within NSRDEC.

Some level of subjectivity is inherent in performance appraisal systems. Additional features of the pay-for-performance system will serve to facilitate understanding of performance expectations and to limit bias and favoritism. Improved communication throughout the rating cycle serves to help build a common understanding of performance expectations and to make progress toward achieving those expectations. This, plus the structured, thorough review process, improves the likelihood for consistency and equity in the ratings. Major design features of the rating system are intended to overcome perceptions of favoritism and limited differentiation among ratings. The automated "Performance Evaluation Tool" helps assure that objectives are in place on a timely basis, accomplishments are recorded, and communication related to performance is on-going. The pay-for-performance system uses standard performance elements and performance benchmarks to evaluate employee performance that supports the mission, allows managers to make meaningful performance distinctions, considers current pay in making performance-based pay decisions and provides information to employees about the results of the appraisal process and pay decisions. At

the end of the rating period, employees provide their accomplishments. Following the initial scoring of each employee, raters in an organizational unit along with their next level of supervision meet to ensure consistency and equity of the ratings. Through discussion and consensus building, consistent and equitable ratings are determined based on similar level of performance, level of work and level of base pay. This improves upon the current performance appraisal system where there are only brief performance standards described for the fully successful level and rating is typically done by a supervisor with review and approval by a senior rater.

Finally, adoption of the demonstration project and its pay-for-performance system must meet the requirements of the *Uniformed Services Employment and Reemployment Rights Act*. Operating procedures will provide a mechanism for mobilized employees to receive a presumed performance rating of record that will permit base pay increases and/or bonuses. As is done under other pay-for-performance systems, operating procedures will require use of the most recent or average rating or record over a specified period, use of modality ratings or other mechanism to assure that mobilized employees who are unable to be rated receive the base pay increases that could have been received except for the mobilization.

D. Pay Pool Funding

Two comments were received related to pay pool funding.

Comments: A commenter recommended revising the pay pool percentage factor to be a minimum of 2.0 percent for base pay funding and 1 percent for bonus. Another commenter recommended that locality pay not be included in the pay pool funding.

Response: The recommendation to set a minimum of 2 percent for the base and 1 percent for the bonus has been accepted. The general pay increase (including locality pay) is not included in the pay pool funding.

E. Extraordinary Achievement Award

Two comments were received related to the Extraordinary Achievement Recognition.

Comments: One commenter suggested that the Extraordinary Achievement Recognition language be moved to a separate section since it is considered after and separate from the pay pool payout process. The same commenter also proposed that the Extraordinary Achievement Recognition language be revised to allow for bonus as an

alternative to granting a base pay increase since capped employees would be precluded from receiving this recognition.

Response: While an Extraordinary Achievement Recognition is considered after the pay pool payout process, it is not entirely separate from the process itself. Following the performance evaluation process, the pay pool manager is the agent who requests permission from the Personnel Management Board to grant a base pay increase higher than the one generated by the compensation formula for that employee. However, senior management is in agreement that a separate paragraph would clarify the intent and process for the Extraordinary Achievement Recognition and has moved the provision to a separate paragraph in III.C.9. "Base Pay Increases and Bonuses".

As to the second comment, language has been added to the new section at III.C.9., referenced above, allowing for the option to grant either a base pay increase and/or a bonus as an Extraordinary Achievement Recognition. This permits employees whose base pay is at the maximum of their pay band to receive this recognition.

F. Pay

Three comments were received related to pay setting.

Comments: One commenter suggested relieving pay compression by providing additional waivers to permit full locality payment, changing supervisory/team leader pay adjustments and pay differentials to provide up to 10 percent for team leaders, and providing a pay increase of up to a defined amount when a person moves to a position of greater responsibility (reassignment) within the same pay band.

Response: There is concern that individuals whose base pay is at the higher end of the GS-15 base pay range do not receive their full locality pay. This situation also occurs within the demonstration project since both DB IV and DE IV are linked to a range of GS base pay with a cap equivalent to the GS-15, step 10, base pay rate. However, increasing the maximum base pay for GS-15 equivalent pay bands will create a compensation imbalance with individuals in Scientific and Professional and Senior Executive Service positions. This locality cap issue is being examined at higher levels; therefore no change is proposed.

The suggestion to increase the maximum for team leader base pay adjustments and differentials from 5 percent to 10 percent was considered.

However, the decision was made to retain a distinction in the amount of adjustment or differential that could be provided for team leaders versus supervisors.

Finally consideration was given to permitting a base pay increase upon reassignment. Since broad pay bands include positions of varying complexity and responsibility, a base pay increase would provide incentive to encourage employees to accept positions of greater responsibility in the same pay band. Therefore, language has been added at III.F.5. to address this issue and to define "reassignment" in III.E.2. A reassignment may be effected without a change in base pay. However, a base pay increase may be granted where a reassignment significantly increases the complexity, responsibility, authority or for other compelling reasons. Such an increase is subject to the specific rules established by the Personnel Management Board.

G. Awards

One comment was received related to incentive awards.

Comment: One commenter suggested use of an employee oversight board as a means to achieve consistency across the NSRDEC in the use of incentive awards.

Response: Awards (such as the traditional 5 U.S.C. special act, on-the-spot, and time-off) are not linked to the pay-for-performance system and will continue as a means to reward individuals and groups for their achievements and as an incentive for superior performance. Review and assessment of the use of these awards will continue following current practice.

H. Promotion

Comment: One comment was received related to the minimum performance score required for promotion eligibility.

Response: One commenter suggested lowering the minimum performance score required for eligibility for promotion. The FR requires a performance score of 30 or higher for promotion eligibility. But, scores of 10 and higher are acceptable, with scores of 21 and higher earning a performance payout. Setting a minimum score of 30 for promotion sets the requirement higher than the score for a performance payout and may discourage the use of scores in the 21 to 29 range. Accordingly, a score of 21 is set as the minimum requirement for promotion.

I. Period

One comment was received related to probationary periods.

Comment: One commenter advised that a recent court decision limited the intent of the extended probationary period.

Response: The extended probationary period applies to newly hired engineers and scientists. Its purpose is to allow the supervisor a sufficient period of time to fully evaluate an employee's performance and conduct. The extended probationary period of up to three years allows supervisors sufficient time to properly, objectively and completely evaluate an employee's performance and conduct. Probationary employees whose conduct and/or performance is unsatisfactory may be terminated in accordance with the procedures in 5 Code of Federal Regulations (CFR) part 315. However, a recent court decision has extended adverse action procedural and substantive protections to individuals defined as employees without regard to whether the individuals are serving a probationary period. To permit termination during the probationary period without using adverse action procedures, waivers have been added under IX. Required Waivers to Law and Regulation to allow for up to a three-year probationary period and to remove from the definition of employee, except for those with veterans' preference, those serving a probationary period under an initial appointment who do not have veterans' preference

J. Reduction in Force

One comment was received related to reduction in force.

Comment: One commenter expressed concern that the implementation of a laboratory demonstration project for NSRDEC would result in separate competitive areas for employees who work at various installations co-located with NSRDEC at the Natick Soldier Systems Center (NSSC).

Response: The implementation of a demonstration project at NSRDEC will not affect the determination of separate competitive areas for the distinct organizations located at NSSC. To the extent that the organizations located at NSSC are distinct organizations with separate command structures, there would be separate competitive areas in the event of a RIF in one of these organizations.

K. Conversion

One comment was received related to conversion of interns into the demonstration project.

Comment: One commenter recommended that conversion of interns into the demonstration project occur

when the employees reach their full performance level for their GS position.

Response: Interns typically receive several career promotions prior to reaching their full performance level. Average base pay for performance payouts may not provide increases as substantial as career promotions under the GS. Delaying conversion into the demonstration project pay bands until an intern reaches full performance level will assure that the intern's base pay is commensurate with the full performance level base pay. Therefore, the language at II.E. has been revised to reflect that interns will not convert into demonstration pay bands until they reach their full performance level.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this **Federal Register** shall be available for use by all STRLs listed in section 9902(c)(2) of title 5, United States Code, if they wish to adopt them in accordance with DoD Instruction 1400.37; pages 73248 to 73252 of volume 73, **Federal Register**; and the fulfilling of any collective bargaining obligations.

Dated: December 17, 2009.

Patricia Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

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- Appendix D: Intervention Model

I. Executive Summary

This project adopts with some modifications the STRL personnel management demonstration project, designed by the U.S. Army Communications-Electronics Command (CECOM), Research, Development and Engineering (RDE) organizations, with participation and review by the Department of the Army (DA) and DoD to the U.S. Army RDECOM, NSRDEC. After implementation of the CECOM RDE demonstration project, CECOM reorganized. Its laboratory, the Communications-Electronics Research, Development, and Engineering Center (CERDEC), was realigned under RDECOM. At the same time, the NSRDEC was also realigned under RDECOM. The NSRDEC includes the NSRDEC organization at the Natick Soldier Systems Center site, NSRDEC employees matrixed to Program/Project/Product Management Offices (e.g., PM-Force Sustainment Systems, and PM-Clothing and Individual Equipment) as well as NSRDEC employees with duty stations at other sites.

The NSRDEC, located at Natick Soldier Systems Center (SSC) in Natick, Massachusetts, conducts research, technology development, testing and integration aimed at maximizing the individual soldier's survivability, sustainability, mobility, combat effectiveness and quality of life by treating the soldier as a system. The NSRDEC major product lines are: rations, clothing, equipment, shelters, airdrop systems, and soldier systems support items. The core capabilities of the NSRDEC are centered on the technologies required by the soldier and soldier support systems, to include biotechnology, anthropometry, biomechanics, consumer research, textiles, fibers and materials, food science, aerodynamics, and modeling and simulation. Integration of these technologies remains the primary focus for modernizing the future soldier, as well as Warrior Systems. The NSRDEC goal is simple: "Provide America's soldiers with the best equipment in the world." To achieve this goal, the NSRDEC organization must be able to hire, retain and continually motivate enthusiastic, innovative, and highly-educated scientists and engineers, supported by skilled business management and administrative

professionals as well as a skilled administrative and technical support staff.

The goal of the project is to enhance the quality and professionalism of the NSRDEC workforce through improvements in the efficiency and effectiveness of the human resource system. The project interventions will strive to achieve the best workforce for the mission, adjust the workforce for change, and improve workforce satisfaction. This demonstration project extends the CERDEC demonstration project to NSRDEC. The CERDEC project was built on the concepts, and uses much of the same language, as the demonstration projects developed by the Army Research Laboratory (ARL), the Aviation and Missile Research, Development, and Engineering Center (AMRDEC), the Navy's "China Lake," and the National Institute of Standards and Technology (NIST). The results of the project will be evaluated within 5 years of implementation.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. Federal laboratories need more efficient, cost effective, and timely processes and methods to acquire and retain a highly creative, productive, educated, and trained workforce. This project, in its entirety, attempts to improve employees' opportunities and provide managers, at the lowest practical level, the authority, control, and flexibility needed to achieve the highest quality organization and hold them accountable for the proper exercise of this authority within the framework of an improved personnel management system.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The provisions of this project plan will not be modified, or extended to individuals or groups of employees not included in the project plan without the approval of the ODUSD(CPP). The provisions of DoDI 1400.37, are to be followed for any modifications, adoptions, or changes to this demonstration project plan.

B. Problems With the Present System

The current Civil Service General Schedule (GS) system has existed in essentially the same form since the 1920's. Work is classified into one of fifteen overlapping pay ranges that correspond with the fifteen grades. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself.

The performance management model that has existed since the passage of the Civil Service Reform Act has come under extreme criticism. Employees frequently report there is inadequate communication of performance expectations and feedback on performance. There are perceived inaccuracies in performance ratings with general agreement that the ratings are inflated and often unevenly distributed by grade, occupation and geographic location.

The need to change the current hiring system is essential as NSRDEC must be able to recruit and retain scientific, engineering, acquisition, skilled technical, and other professional, administrative and support employees. The NSRDEC must be able to compete with the private sector for the best talent and be able to make job offers in a timely manner with the attendant bonuses and incentives to attract high quality employees.

Finally, current limitations on training, retraining and otherwise developing employees make it difficult to correct skill imbalances and to prepare current employees for new lines of work to meet changing missions and emerging technologies.

C. Changes Required/Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy "China Lake" and NIST demonstration projects have produced impressive statistics on increased job satisfaction and quality of employees versus that for the Federal workforce in general. This project will demonstrate that a human resource system tailored to the mission and needs of the NSRDEC workforce will facilitate:

- (1) Increased quality in the workforce and resultant products,
- (2) Increased timeliness of key personnel processes,

(3) Increased retention of "excellent performers,"

(4) Increased success in recruitment of personnel with critical skills,

(5) Increased management authority and accountability,

(6) Increased satisfaction of customers, and

(7) Increased workforce satisfaction with the personnel management system.

An evaluation model was developed for the Director of Defense, Research and Engineering (DDR&E) in conjunction with STRLs, service representatives, and OPM. The model will measure the effectiveness of this demonstration project, as modified in this plan, and will be used to measure the results of specific personnel system changes.

D. Participating Organizations

NSRDEC is comprised of the NSRDEC at the Natick Soldier System Center, Natick, Massachusetts, NSRDEC employees matrixed to Program Management offices, and NSRDEC employees geographically dispersed at the locations shown in Appendix A. It should be noted that some sites currently employ fewer than 10 people and that the sites may change should NSRDEC reorganize or realign. Successor organizations will continue coverage in the demonstration project.

E. Participating Employees and Union Representation

This demonstration project will cover approximately 700 NSRDEC civilian employees under title 5 U.S.C. in the occupations listed in Appendix B. The project plan does not cover members of the Senior Executive Service (SES), Scientific and Professional (ST) employees, Federal Wage System (FWS) employees, employees presently covered by the Defense Civilian Intelligence Personnel System (DCIPS), DA and Army Command centrally funded interns and students employed under the Student Career Experience Program (SCEP). Employees on temporary appointments will not be covered by the demonstration project.

Department of Army, Army Command centrally funded, and local interns (hired prior to implementation of the project) will not be converted to the demonstration project until they reach their full performance level. They will also continue to follow the Total Army Performance Evaluation System (TAPES) performance appraisal system. Local interns hired after implementation of the project will be covered by all terms of the demonstration project.

The National Association of Government Employees (NAGE) Local

R1–34 represents the majority of NSRDEC employees. Of those employees assigned to NSRDEC, approximately 85 percent are represented by NAGE. NSRDEC has maintained on-going communication with the Union regarding its intent to pursue approval for a laboratory personnel demonstration project. NSRDEC is continuing to inform the Union, and its Executive Vice President is participating as a member of the Workforce Advisory Group. Negotiations will begin after publication of this **Federal Register**. NSRDEC will continue to fulfill its obligation to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. 4703(f) and 7117.

F. Project Design

NSRDEC has been a DoD STRL since June 1995. This status authorized NSRDEC to participate in all of the STRL initiatives, to include the authority to carry out personnel demonstration projects. NAGE Local R1–34 actively participated in the development of an earlier personnel demonstration project (PDP). However, as a result of DoD development of a best practices model and the design and implementation of the National Security Personnel System (NSPS), the proposal was not acted upon. Subsequently, in 2005 the NSRDEC submitted a request to adopt the CERDEC demonstration project. The CERDEC demonstration project was the most recently approved demonstration project, used an inclusive approach for its design, and benefitted from the experiences of prior STRL demonstration projects. After the enactment of the National Defense Authorization Act for Fiscal Year 2008 provided for full implementation of the personnel demonstration project, the DoD announced NSRDEC's intent to adopt the CERDEC demonstration project in 73 FR 73248, December 2, 2008.

G. Personnel Management Board

NSRDEC has created a Personnel Management Board to oversee and monitor the fair, equitable, and consistent implementation of the provisions of the demonstration project to include establishment of internal controls and accountability. Members of the board are senior leaders appointed by the NSRDEC Director. As needed, ad hoc members will serve in an advisory capacity to the Board.

The board will execute the following:

(1) Determine the composition of the pay-for-performance pay pools in accordance with the guidelines of this proposal and internal procedures;

(2) Review operation of pay pools and provide guidance to pay pool managers;

(3) Oversee disputes in pay pool issues;

(4) Formulate and execute the civilian pay budget;

(5) Manage the awards pools;

(6) Determine hiring and promotion base pay as well as exceptions to pay-for-performance base pay increases;

(7) Conduct classification review and oversight, monitoring and adjusting classification practices and deciding board classification issues;

(8) Approve major changes in position structure;

(9) Address issues associated with multiple pay systems during the demonstration project;

(10) Establish Standard Performance Elements and Benchmarks;

(11) Assess the need for changes to demonstration project procedures and policies;

(12) Review requests for Supervisory/Team Leader Base Pay Adjustments and provide recommendations to the appropriate Center Director;

(13) Ensure in-house budget discipline;

(14) Manage the number of employees by occupational family and pay band;

(15) Develop policies and procedures for administering Developmental Opportunity Programs;

(16) Ensure that all employees are treated in a fair and equitable manner in accordance with the policies, regulations and guidelines covering this demonstration project; and,

(17) Monitor the evaluation of the project.

III. Personnel System Changes

A. Pay Banding

The design of the pay banding system takes advantage of the many reviews performed by DA and DoD. The design has the benefit of being preceded by exhaustive studies of pay banding systems currently practiced in the Federal sector, to include those practiced by the Navy's "China Lake" experiment and NIST. The pay banding system will replace the current GS structure. Currently the fifteen grades of the GS are used to classify positions and, therefore, to set base pay. The GS covers all white-collar work—administrative, technical, clerical and professional. Changes in this rigid structure are required to allow flexibility in hiring, developing, retaining, and motivating the workforce.

1. Occupational Families

Occupations with similar characteristics will be grouped together

into one of three occupational families with pay band levels designed to facilitate pay progression. Each occupational family will be composed of pay bands corresponding to recognized advancement and career progression expected within the occupations. These pay bands will replace individual grades and will not be the same for each occupational family. Each occupational family will be divided into three to five pay bands with each pay band covering the same pay range now covered by one or more GS grades. Employees track into an occupational family based on their current series as provided in Appendix B. Upon conversion into the demonstration project, NSRDEC employees are initially assigned to the highest band in which their grade fits. For example, a Management Analyst GS-343-12 in the Business and Technical Family is assigned to Pay Band III as illustrated in Figure 1. The upper and lower pay rate for base pay of each band is defined by the GS rate for the grade and step as indicated in Figure 1 except for Pay Band V of the Engineering and Science occupational family (refer to III.A.3.). Comparison to the GS grades was used in setting the upper and lower base pay dollar limits of the pay band levels. However, once employees are moved into the demonstration project, GS grades will no longer apply. The current occupations have been examined, and their characteristics and distribution have served as guidelines in the development of the following three occupational families:

E&S (Pay Plan DB): This occupational family includes technical professional positions, such as engineers, physicists, chemists, mathematicians, operations research analysts and computer scientists. Specific course work or educational degrees are required for these occupations. Five bands have been established for the E&S occupational family:

(1) Band I is a student trainee track covering GS-1, step 1 through GS-4, step 10.

(2) Band II is a developmental track covering GS-5, step 1 through GS-11, step 10.

(3) Band III * is a full-performance technical track covering GS-12, step 1 through GS-14, step 10. Some first-level supervisory positions may also be included in this band.

(4) Band IV * includes both senior technical positions along with supervisors-managers covering GS-14, step 1 through GS-15, step 10.

(5) Band V is a senior scientific-technical manager. The pay range is as

follows: minimum base pay is 120 percent of minimum base pay of GS-15; maximum base pay is Level IV of the Executive Schedule (EX IV); and maximum adjusted base pay (adjusted base pay is the base rate plus locality or staffing supplement, as appropriate) is Level III of the Executive Schedule (EX III).

* Bands III and IV overlap at the end and start points. These two bands have been designed following a feature used by the Navy's "China Lake" project. Upon conversion into the demonstration project, NSRDEC employees in the E&S family currently at grade GS-14 are assigned to Band IV.

Business & Technical (B&T) (Pay Plan DE): This occupational family includes such positions as program acquisition specialists, equipment specialists, engineering and electronics technicians, finance, accounting, administrative, and

management analysis. Employees in these positions may or may not require specific course work or educational degrees. Four bands have been established for the B&T occupational family:

- (1) Band I is a student trainee track covering GS-1, step 1 through GS-4, step 10.
- (2) Band II is a developmental track covering GS-5, step 1 through GS-11, step 10.
- (3) Band III is a full performance track covering GS-12, step 1 through GS-13, step 10.
- (4) Band IV is a senior technical/manager track covering GS-14, step 1 through GS-15, step 10.

General Support (GEN) (Pay Plan DK): This occupational family is composed of positions for which specific course work or educational degree is not required. Clerical work usually involves the processing and maintenance of records.

Assistant work requires knowledge of methods and procedures within a specific administrative area. This family includes such positions as secretaries, office automation clerks, and budget/program/computer assistants. Three bands have been established for the GEN occupational family:

- (1) Band I includes entry-level positions covering GS-1, step 1 through GS-4, step 10.
- (2) Band II includes full-performance positions covering GS-5, step 1 through GS-8, step 10.
- (3) Band III includes senior technicians/assistants/secretaries covering GS-9 step 1 through step 10.

2. Pay Band Design

The pay bands for the occupational families and how they relate to the current GS framework are shown in Figure 1.

FIGURE 1—PAY BAND CHART

Occupational family	Equivalent GS grades				
	I	II	III	IV	V
E&S	GS-01—GS-04	GS-05—GS-11	GS-12—GS-14	GS-14—GS-15	>GS-15
Business & Technical	GS-01—GS-04	GS-05—GS-11	GS-12—GS-13	GS-14—GS-15	
General Support	GS-01—GS-04	GS-05—GS-08	GS-9		

Employees will be converted into the occupational family and pay band that corresponds to their GS/GM series and grade. The Engineering and Science occupational family has an overlapping pay band. GS-14 Engineers and Scientists will convert into Pay Band IV. Each employee converted to the demonstration project is assured, upon conversion, an initial place in the system without loss of pay. New hires will ordinarily be placed at the lowest base pay rate in a pay band. Exceptional qualifications, specific organizational requirements, or other compelling reasons may lead to a higher entrance base pay within a band. As the rates of the GS are increased due to the annual general pay increases, the upper and lower base pay rates of the pay bands will also increase. Since pay progression through the bands depends directly on performance, there will be no scheduled Within-Grade Increases (WIGIs) or Quality Step Increases (QSIs) for employees once the pay banding system is in place. Special rate schedules will no longer be applicable to demonstration project employees. Special provisions have been included to ensure no loss of pay upon conversion. (See III. E.9, Staffing Supplements).

3. Pay Band V

The pay banding plan expands the pay banding concept used at "China Lake" and NIST by creating Pay Band V for the Engineering and Science occupational family. This pay band is designed for Senior Scientific Technical Managers (SSTM). The current definitions of Senior Executive Service (SES) and Scientific and Professional (ST) positions do not fully meet the needs of the NSRDEC.

The SES designation is appropriate for executive level managerial positions whose classification exceeds GS-15. The primary competencies of SES positions relate to supervisory and managerial responsibilities. Positions classified as ST are designed for bench research scientists and engineers. These positions require a very high level of technical expertise and have little or no supervisory responsibilities.

The NSRDEC has positions that may warrant classification above grade GS-15 because of their technical expertise requirements. These positions have characteristics of both SES and ST classifications. Most of these positions are responsible for supervising other GS-15 positions, including lower level supervisors, and non-supervisory engineers and scientists, and in some

cases ST positions. The supervisory and managerial requirements exceed those appropriate for ST positions.

Management considers the primary requirement for these positions to be knowledge of and expertise in the specific scientific and technology areas related to the mission of their organizations, rather than the executive leadership qualifications that are characteristic of the SES. Historically, incumbents of these positions have been recognized within the community as scientific and engineering leaders who possess strong managerial and supervisory abilities. Therefore, although some of these employees have scientific credentials that might compare favorably with ST criteria, classification of these positions as STs is not an option because the managerial and supervisory responsibilities cannot be ignored.

Pay Band V will apply to a new category of positions designated as Senior Scientific Technical Managers (SSTM). Positions so designated will include those requiring scientific/engineering technical expertise and full managerial and supervisory authority. Their scientific/engineering technical expertise and responsibilities warrant classification above the GS-15 level.

Current GS-15 positions will convert into the demonstration project at Pay Band IV. After conversion these positions will be reviewed against established criteria to determine if the positions should be reclassified to Pay Band V. Other positions possibly meeting criteria for designation as SSTM will be reviewed on a case-by-case basis. The pay range for SSTM positions is: minimum base pay is 120 percent of minimum base pay of GS-15; maximum base pay is Level IV of the Executive Schedule (EX IV); and maximum adjusted base pay is Level III of the Executive Schedule (EX III).

Vacant SSTM positions will be filled competitively to ensure that selectees are preeminent technical leaders in specialty fields who also possess substantial managerial and supervisory abilities. Panels will be created to assist in filling SSTM positions. Panel members typically will be SES members, ST employees and later those designated as SSTMs. In addition, General Officers and recognized technical experts from outside the NSRDEC may also serve as appropriate. The panel will apply criteria developed from the OPM Research Grade Evaluation Guide for positions exceeding the GS-15 level and other OPM guidance related to positions exceeding the GS-15 level. The purpose of the panel is to ensure impartiality, breadth of technical expertise and a rigorous and demanding review.

SSTM positions will be subject to limitations imposed by DoD. SSTM positions will be established only in a STRL that employs scientists, engineers, or both. Incumbents of these positions will work primarily in their professional technical capacity on research and development and secondarily will perform managerial or supervisory duties.

The final component of Pay Band V is the management of all Pay Band V assets. Specifically, this authority will be exercised at the DA level, and includes the following: authority to classify, create, or abolish positions within the limitations imposed by DoD; recruit and reassign employees in this pay band; set pay and appraise performance under this project's pay-for-performance system.

B. Classification

1. Occupational Series

The present GS classification system has over 400 occupational series, which are divided into 23 occupational groupings. NSRDEC currently has positions in approximately 65 occupational series that fall into 14

occupational groupings. All positions listed in Appendix B will be in the classification structure. Provisions will be made for including other occupations in response to changing missions.

2. Classification Standards and Position Descriptions

NSRDEC will use CERDEC's fully automated classification system modeled after the Navy's "China Lake" and ARL automated systems. ARL developed a web-based automated classification system that can create standardized, classified position descriptions under the new pay banding system in a matter of minutes. The present system of OPM classification standards will be used for the identification of proper series and occupational titles of positions within the demonstration project. Current OPM position classification standards will not be used to grade positions in this project. However, the grading criteria in those standards will be used as a framework to develop new and simplified standards for the purpose of pay band determinations. The objective is to record the essential criteria for each pay band within each occupational family by stating the characteristics of the work, the responsibilities of the position, and the competencies required. New position descriptions will replace the current DA job descriptions. The classification standard for each pay band will serve as an important component in the new position description, which will also include position-specific information, and provide data element information pertinent to the job. The computer-assisted process will produce information necessary for position descriptions. The new descriptions will be easier to prepare, minimize the amount of writing time and make the position description a more useful and accurate tool for other personnel management functions.

Specialty work codes (narrative descriptions) will be used to further differentiate types of work and the competencies required for particular positions within an occupational family and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption and non-exemption determinations will be consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless they meet the criteria for exemption. The duties and responsibilities outlined in the

classification standards for each pay band will be compared to the FLSA criteria. As a general rule, the FLSA status can be matched to occupational family and pay band as indicated in Figure 2. For example, positions classified in Pay Band I of the E&S occupational family are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers whose primary duty meets the definitions outlined in the OPM GS Supervisory Guide. Therefore, supervisors/managers in any of the pay bands who meet the foregoing criteria are exempt from the FLSA. Supervisors with classification authority will make the determinations on a case-by-case basis by comparing assigned duties and responsibilities to the classification standards for each pay band and the 5 CFR part 551 FLSA criteria. Additionally, the advice and assistance of the Civilian Personnel Advisory Center, Northeast Region, Civilian Human Resources Agency Center (CPAC/CHRA) will be obtained in making determinations. The benchmark position descriptions will not be the sole basis for the determination. Basis for exemption will be documented and attached to each position description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the CPAC/CHRA.

FIGURE 2—FLSA STATUS
[Pay bands]

Occupational family	I	II	III	IV	V
E&S	N	N/E	E	E	E
B&T	N	N/E	E	E	
GEN	N	N	E		

N—Non-Exempt from FLSA; E—Exempt from FLSA.
N/E—Exemption status determined on a case-by-case basis.

Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

4. Classification Authority

The NSRDEC Director will have delegated classification authority and may, in turn, re-delegate this authority to appropriate levels. Position descriptions will be developed to assist managers in exercising delegated position classification authority. Managers will identify the occupational

family, job series, functional code, specialty work code, pay band level, and the appropriate acquisition codes. Personnel specialists will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. These decisions will be documented on the position description.

5. Classification Appeals

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of occupational family, occupational series, position title, and pay band of his/her position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, either verbally or in writing. If the employee is not satisfied with the supervisory response, he/she may then appeal to the DoD appellate level. Appeal decisions rendered by DoD will be final and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. Classification appeals are not accepted on positions which exceed the equivalent of a GS-15 level. Time periods for cases processed under 5 CFR part 511 apply.

An employee may not appeal the accuracy of the position description, the demonstration project classification criteria, or the pay-setting criteria; the assignment of occupational series to the occupational family; the propriety of a pay schedule; or matters grievable under an administrative or negotiated grievance procedure, or an alternative dispute resolution procedure.

The evaluations of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the CPAC/CHRA providing personnel service and will include copies of appropriate demonstration project criteria.

C. Pay for Performance

1. Overview

The purpose of the pay-for-performance system is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the NSRDEC workforce. It is essential for the development of a highly productive workforce and to provide management at the lowest practical level, the authority, control, and flexibility needed to achieve a quality organization and meet mission requirements. Pay for performance allows for more employee involvement

in the assessment process, strives to increase communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for pay changes by linking pay and performance.

The pay-for-performance system uses annual performance payouts that are based on the employee's total performance score rather than within-grade increases, quality step increases, promotions from one grade to another where both grades are now in the same pay band (i.e., there are no within-band promotions) and performance awards. The normal rating period will be one year. The minimum rating period will be 120 days. Pay-for-performance payouts can be in the form of increases to base pay and/or in the form of bonuses that are not added to base pay but rather are given as a lump sum bonus. Other awards such as special acts, time-off awards, etc., will be retained separately from the pay-for-performance payouts.

The system will have the flexibility to be modified, if necessary, as more experience is gained under the project.

2. Performance Objectives

Performance objectives define a target level of activity, expressed as a tangible, measurable objective, against which actual achievement can be compared. These objectives will specifically identify what is expected of the employee during the rating period and will typically consist of three to ten results-oriented statements. The employee and his/her supervisor will jointly develop the employee's performance objectives at the beginning of the rating period. These are to be reflective of the employee's duties/responsibilities and pay band along with the mission/organizational goals and priorities. Objectives will be reviewed annually and revised upon changes in pay reflecting increased responsibilities commensurate with pay increases. Use of generic one-size-fits-all objectives will be avoided, as performance objectives are meant to define an individual's specific responsibilities and expected accomplishments. In contrast, performance elements as described in the next paragraph will identify generic performance characteristics, against which the accomplishment of objectives will be measured. As a part of this demonstration project, training focused on overall organizational objectives and the development of performance objectives will be held for both supervisors and employees.

Performance objectives may be jointly modified, changed or deleted as appropriate during the rating cycle. As a general rule, performance objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload shifts occur.

3. Performance Elements

Performance elements define generic performance characteristics that will be used to evaluate the employee's success in accomplishing his/her performance objectives. The use of generic characteristics for scoring purposes helps to ensure comparable scores are assigned while accommodating diverse individual objectives. This pay-for-performance system will utilize those performance elements provided in Appendix C. All elements are critical. A critical performance element is defined as an attribute of job performance that is of sufficient importance that performance below the minimally acceptable level requires remedial action and may be the basis for removing an employee from his/her position. Non-critical elements will not be used. Each of the performance elements will be assigned a weight, which reflects its importance in accomplishing an individual's performance objectives. A minimum weight is set for each performance element. The sum of the weights for all of the elements must equal 100.

A single set of performance elements will be used for evaluating the annual performance of all NSRDEC personnel covered by this plan. This set of performance elements may evolve over time, based on experience gained during each rating cycle. This evolution is essential to capture the critical characteristics the organization encourages in its workforce toward meeting individual and organizational objectives. This is particularly true in an environment where technology and work processes are changing at an increasingly rapid pace. The Personnel Management Board will annually review the set of performance elements and set them for the entire organization before the beginning of the rating period. The following is an initial set of performance elements along with their minimum weight:

(1) Technical Competence (Minimum Weight: 15%)

(2) Interpersonal Skills (Minimum Weight: 10%)

(3) Management of Time and Resources (Minimum Weight: 15%)

(4) Customer Satisfaction (Minimum Weight: 10%)

(5) Team/Project Leadership (Minimum Weight: 15%)

(6) Supervision/Equal Employment Opportunity (EEO) (Minimum Weight: 25%)

All employees will be rated against the first four performance elements. Team/Project Leadership is mandatory for team leaders (within this document, team leader refers to non-supervisory team leaders as determined by the OPM GS Leader Grade Evaluation Guide). Supervision/EEO is mandatory for all managers/supervisors. At the beginning of the rating period, pay pool managers will review the objectives and weights assigned to employees within the pay pool, to verify consistency and appropriateness.

4. Performance Feedback and Formal Ratings

The most effective means of communication is person-to-person discussion between supervisors and employees of requirements, performance goals and desired results. Employees and supervisors alike are expected to actively participate in these discussions for optimum clarity regarding expectations and identify potential obstacles to meeting goals. In addition, employees should explain (to the extent possible) what they need from their supervisor to support goal accomplishment. The timing of these discussions will vary based on the nature of work performed, but will occur at least at the mid-point and end of the rating period. The supervisor and employee will discuss job performance and accomplishments in relation to the performance objectives and elements. At least one review, normally the mid-point review, will be documented as a formal progress review. More frequent, task specific, discussions may be appropriate in some organizations. In cases where work is accomplished by a team, team discussions regarding goals and expectations will be appropriate.

The employee will provide a list of his/her accomplishments to the supervisor at both the mid-point and end of the rating period. An employee may elect to provide self-ratings on the performance elements and/or solicit input from team members, customers, peers, supervisors in other units, subordinates, and other sources which will permit the supervisor to fully evaluate accomplishments during the rating period.

At the end of the rating period, following a review of the employee's accomplishments, the supervisor will rate each of the performance elements

by assigning a score between 0 and 50. Benchmark performance standards have been developed that describe the level of performance associated with a score. Using these benchmarks, the supervisor decides where (at any point on a scale of 0 to 50) the performance of the employee fits and assigns an appropriate score. It should be noted that these scores are not discussed with the employee or considered final until all scores are reconciled and approved by the pay pool manager. The element scores will then be multiplied by the element-weighting factor to determine the weighted score expressed to two decimal points. The weighted scores for each element will then be totaled to determine the employee's overall appraisal score and rounded to a whole number as follows: if the digit to the right of the decimal is between five and nine, it should be rounded to the next higher whole number; if the digit to the right of the decimal is between one and four, it should be dropped.

A total score of 10 or above will result in a rating of acceptable. A total score of 9 or below will result in a rating of unacceptable, and requires the employee be placed on a Performance Improvement Plan (PIP) immediately or following a temporary assignment. A score of 9 or below in a single element will also result in a rating of unacceptable, and requires the employee be placed on a PIP. A new rating of record will be issued if the employee's performance improves to an acceptable level at the conclusion of the PIP.

5. Unacceptable Performance

Informal employee performance reviews will be a continuous process so that corrective action, to include placing an employee on a PIP, may be taken at any time during the rating cycle. Whenever a supervisor recognizes an employee's performance on one or more performance elements is unacceptable, the supervisor should immediately inform the employee. Efforts will be made to identify the possible reasons for the unacceptable performance. An employee who is on a PIP is not eligible to receive the general pay increase (refer to III.C.13).

As an informal first step, the supervisor and employee may explore a temporary assignment to another unit in the organization. This recognizes that conflicts sometimes occur between a supervisor and an employee, or that an employee may be assigned to a position for which he/she is not suited. The supervisor is under no obligation to explore this option prior to taking more formal action. If the temporary

assignment is not possible or has not worked out, and the employee continues to perform at an unacceptable level or has received an unacceptable rating, written notification outlining the unacceptable performance will be provided to the employee. At this point an opportunity to improve will be structured in a PIP. The supervisor will identify the items/actions that need to be corrected or improved, outline required time frames (no less than 30 days) for such improvement, and provide the employee with any available assistance as appropriate. Progress will be monitored during the PIP, and all counseling sessions will be documented.

If the employee's performance is acceptable at the conclusion of the PIP, no further action is necessary. If a PIP ends prior to the end of the annual performance cycle and the employee's performance improves to an acceptable level, the employee is appraised again at the end of the annual performance cycle.

If the employee fails to improve during the PIP, the employee will be given notice of proposed appropriate action. This action can include removal from the Federal service, placement in a lower pay band with a corresponding reduction in pay (demotion), reduction in pay within the same pay band, or change in position or occupational family. For the most part, employees with an unacceptable rating will not be permitted to remain at their current base pay and may be reduced in pay band. Reductions in base pay within the same pay band or changes to a lower pay band will be accomplished with a minimum of a 5 percent decrease in an employee's base pay.

Note: Nothing in this subsection will preclude action under 5 U.S.C. chapter 75, when appropriate.

All relevant documentation concerning a reduction in pay or removal based on unacceptable performance will be preserved and made available for review by the affected employee or a designated representative. As a minimum, the record will consist of a copy of the notice of proposed personnel action, the employee's written reply, if provided, or a summary when the employee makes an oral reply. Additionally, the record will contain the written notice of decision and the reasons therefore along with any supporting material (including documentation regarding the opportunity afforded the employee to demonstrate improved performance).

If the employee's performance deteriorates to an unacceptable level, in

any element, within two years from the beginning of a PIP, follow-on actions may be initiated with no additional opportunity to improve. If an employee's performance is at an acceptable level for two years from the beginning of the PIP, and performance once again declines to an unacceptable level, the employee will be given an additional opportunity to improve, before management proposes follow-on actions.

6. Reconciliation Process

Following the initial scoring of each employee by the rater, the rating officials in an organizational unit, along with their next level of supervision, will meet to ensure consistency and equity of the ratings. In this step, each employee's performance objectives, accomplishments, preliminary scores and pay are compared. Through discussion and consensus building, consistent and equitable ratings are reached. Managers will not prescribe a distribution of total scores. The pay pool manager will then chair a final review with the rating officials who report directly to him or her to validate these ratings and resolve any scoring issues. If consensus cannot be reached in this process, the pay pool manager makes all final decisions. After this reconciliation process is complete, scores are finalized. Payouts proceed according to each employee's final score and adjusted base pay. Upon approval of this plan, implementing procedures and regulations will provide details on this process to employees and supervisors.

7. Pay Pools

NSRDEC employees will be placed into pay pools. Pay pools are combinations of organizational elements (e.g., Directorates, Divisions, and Teams) that are defined for the purpose of determining performance payouts under the pay-for-performance system. The guidelines in the next paragraph are provided for determining pay pools. These guidelines will normally be followed. However, the NSRDEC Director may deviate from the guidelines if there is a compelling need

to do so and will document the rationale in writing.

The NSRDEC Director will establish pay pools. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Supervisory personnel will be placed in a pay pool separate from subordinate non-supervisory personnel. Team leaders classified by the GS Leader Grade Evaluation Guide will be included in a supervisory pay pool. Those team leaders who have project responsibility but who do not actually lead other workers will be included in a non-supervisory pay pool. Neither the pay pool manager nor supervisors within a pay pool will recommend or set their own individual pay. Decisions regarding the amount of the performance payout are based on the established formal payout calculations.

Funds within a pay pool available for performance payouts are calculated from anticipated pay increases under the existing system and divided into two components, base pay and bonus. The funds within a pay pool used for base pay increases are those that would have been available from within-grade increases, quality step increases and promotions (excluding the costs of promotions still provided under the banding system). This amount will be defined based on historical data and will be set at no less than two percent of total adjusted base pay annually. The funds available to be used for bonus payouts are funded separately within the constraints of the organization's overall award budget. This amount will be defined based on historical data and will be set at no less than one percent of total adjusted base pay annually. The sum of these two factors is referred to as the pay pool percentage factor. The Personnel Management Board will annually review the pay pool funding and recommend adjustments to the Director to ensure cost discipline over the life of the demonstration project. Cost discipline is assured within each pay pool by limiting the total base pay

increase to the funds available, based on what would have been available in the GS system from within-grade increases, quality step increases and within-band promotions. The Director may reallocate the amount of funds assigned to each pay pool as necessary to ensure equity and to meet unusual circumstances.

8. Performance Payout Determination

The performance payout an employee will receive is based on the total performance score from the pay-for-performance assessment process. An employee will receive a performance payout as a percentage of adjusted base pay. This percentage is based on the number of shares that equates to their final appraisal score. Shares will be awarded on a continuum as follows:

- Score = Shares
- 50 = 3
- 40 = 2
- 30 = 1
- 21 = .1
- 10-20 = 0
- ≤9 = 0 (Performance Improvement Plan required)

fractional shares will be awarded for scores that fall in between these scores. For example, a score of 38 will equate to 1.8 shares, and a score of 44 will equate to 2.4 shares.

The value of a share cannot be exactly determined until the rating and reconciliation process is completed and all scores are finalized. The share value is expressed as a percentage. The formula that computes the value of each share uses base pay rates and is based on: (1) The sum of the base pay of all the employees in the pay pool times the pay pool percentage factor; (2) the employee's base pay; (3) the number of shares awarded to each employee in the pay pool; and (4) the total number of shares awarded in the pay pool. This formula assures that each employee within the pool receives a share amount equal to all others in the same pool who are at the same rate of base pay and receiving the same score. The formula is shown in figure 3.

Figure 3. Formula

$$\text{Share value} = \frac{\text{Sum of base pay of employees in pool} * \text{pay pool percentage factor}}{\text{Sum of (base pay} * \text{shares earned) for each employee}}$$

An individual payout is calculated by first multiplying the shares earned by the share value and multiplying that product by base pay. An adjustment is then made to account for locality pay or staffing supplement.

A pay pool manager is accountable for staying within pay pool limits. The pay pool manager makes final decisions on base pay increases and/or bonuses to individuals based on rater recommendation, the final score, the

pay pool funds available, and the employee's pay.

9. Base Pay Increases and Bonuses

The amount of money available for performance payouts is divided into two

components, base pay increases and bonuses. The base pay and bonus funds are based on the pay pool funding formula established annually. Once the individual performance amounts have been determined, the next step is to determine what portion of each payout will be in the form of a base pay increase as opposed to a bonus payment. The payouts made to employees from the pay pool may be a mix of base pay and bonus, such that all of the allocated funds are disbursed as intended. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be limited or capped. Certain employees will not be able to receive the projected base pay increase due to base pay caps. Base pay is capped when an employee reaches the maximum rate of base pay in an assigned pay band, when the mid-point rule applies (see below) or when the Significant Accomplishment/Contribution rule applies (see below). Also, for employees receiving retained rates above the applicable pay band maximum, the entire performance payout will be in the form of a bonus payment.

When capped, the total payout an employee receives will be in the form of a bonus versus the combination of base pay and bonus. Bonuses are cash payments and are not part of the base pay for any purpose (e.g., lump sum payments of annual leave on separation, life insurance, and retirement). The maximum base pay rate under this demonstration project will be the unadjusted base pay rate of GS-15/Step 10, except for employees in Pay Band V of the E&S occupational family. In this case, the pay range is as noted in III.A.3

If the organization determines it is appropriate, it may re-allocate a portion (up to the maximum possible amount) of the unexpended base pay funds for capped employees to uncapped employees. This re-allocation will be determined by the pay pool manager. Any dollar increase in an employee's projected base pay increase will be offset, dollar for dollar, by an accompanying reduction in the employee's projected bonus payment. Thus, the employee's total performance payout is unchanged.

In addition a pay pool manager may request approval from the Personnel Management Board for use of an Extraordinary Achievement Recognition. Such recognition grants a base pay increase and/or bonus to an employee that is higher than the one generated by the compensation formula for that employee. Any base pay increase granted may not cause the

employee to exceed the maximum rate of pay in the assigned pay band. Examples that might warrant consideration are extraordinary achievements or accelerated compensation for a local intern. The funds available for Extraordinary Achievement Recognition are separately funded within the constraints of the organization's budget.

10. Mid-Point Rule

To provide added performance incentives as an employee progresses through a pay band, a mid-point rule will be used to determine base pay increases. The mid-point rule dictates that any employee must receive a score of 30 or higher for his/her base pay to cross the mid-point of the base pay range for his/her pay band. Also, once an employee's base pay exceeds the mid-point, the employee must receive a score of 30 or higher to receive any additional base pay increases. Any amount of an employee's performance payout, not paid in the form of a base pay increase because of the mid-point rule, will be paid as a bonus. This rule effectively raises the standard of performance expected of an employee once the mid-point of a band is crossed. This applies to all employees in every occupational family and pay band.

11. Significant Accomplishment/Contribution Rule

The purpose of this rule is to maintain cost discipline while ensuring that employee payouts are in consonance with accomplishments and levels of responsibility. The rule will apply only to employees in E&S Pay Band III whose base pay falls within the top 15 percent of the band. For employees meeting these criteria, the following provisions will apply:

If an employee's score falls in the top third of scores received in his/her pay pool, he/she will receive the full allowable base pay increase portion of the performance payout. The balance of the payout will be paid as a lump sum bonus.

If an employee's score falls in the middle third of scores received in his/her pay pool, the base pay increase portion will not exceed one percent of base pay. The balance of the payout will be paid as a lump sum bonus.

If an employee's appraisal score falls in the bottom third of scores received in his/her pay pool, the full payout will be paid as a lump sum bonus.

12. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the

performance award budget will be reserved for special acts and other categories as they occur. Awards may include, but are not limited to, special acts, patents, suggestions, on-the-spot, and time-off. The funds available to be used for traditional 5 U.S.C. awards are separately funded within the constraints of the organization's budget.

While not directly linked to the pay-for-performance system, this additional flexibility is important to encourage outstanding accomplishments and innovation in accomplishing the diverse mission of the NSRDEC. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards. Under the demonstration project, a team may elect to distribute such awards among themselves.

Thus, a team leader or supervisor may allocate a sum of money to a team for outstanding performance, and the team may decide the individual distribution of the total dollars among themselves. The Commanding General, RDECOM will have the authority to grant special act awards to covered employees of up to \$10,000 IAW the criteria of AR 672-20, Incentive Awards. This authority may be delegated to the Director, NSRDEC.

13. General Pay Increase

Employees, who are on a PIP at the time pay determinations are made, do not receive performance payouts or the annual general pay increase. An employee who receives an unacceptable rating of record will not receive any portion of the general pay increase or RIF service credit until such time as his/her performance improves to the acceptable level and remains acceptable for at least 90 days. When the employee has performed acceptably for at least 90 days, the general pay increase will not be retroactive but will be granted at the beginning of the next pay period after the supervisor authorizes its payment.

These actions may result in a base pay that is identified in a lower pay band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303). This situation (a reduction in band level with no reduction in pay) will not be considered an adverse action, nor will band retention provisions apply.

14. Reverse Feedback

Employee feedback to supervisors is considered essential for the success of the pay-for-performance system. A feedback instrument for subordinates to anonymously evaluate the effectiveness of their supervisors is being developed

and shall be implemented as part of the demonstration project. Supervisors and their managers will be provided the results of that feedback in a format that does not identify individual raters or ratings. The data will be aggregated into a summary and used to establish both personal and organizational performance development goals. The use of this type of instrument will help focus attention on desired leadership behaviors, structure the feedback in a constructive manner, and offset the power imbalance that often prevents supervisors from getting useful feedback from their employees.

15. Grievances

An employee may grieve the performance rating/score received under the pay-for-performance system. Non-bargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure that does not permit grievances over performance ratings, must file under administrative grievance procedures. Bargaining unit employees whose negotiated grievance procedures cover performance rating grievances must file under those negotiated procedures.

16. Adverse Actions

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752 remain unchanged.

D. Hiring Authority

1. Qualifications

The qualifications required for placement into a position in a pay band within an occupational family will be determined using the OPM Operating Manual for Qualification Standards for GS Positions. Since the pay bands are anchored to the GS grade levels, the minimum qualification requirements for a position will be the requirements corresponding to the lowest GS grade incorporated into that pay band. For example, for a position in the E&S occupational family Pay Band II, individuals must meet the basic requirements for a GS-5 as specified in the OPM Qualification Standard for Professional and Scientific Positions.

Selective factors may be established for a position in accordance with the OPM Qualification Standards Operating Manual, when determined to be critical to successful job performance. These factors will become part of the minimum requirements for the position, and applicants must meet them in order to be eligible. If used, selective factors will be stated as part of the qualification

requirements in vacancy announcements and recruiting bulletins.

2. Delegated Examining

Competitive service positions will be filled through Merit Staffing and through direct-hire authority or under Delegated Examining. Recent legislative changes provide for delegation of direct-hire authority for shortage category positions under the Defense Acquisition Workforce Improvement Act (DAWIA) at certain levels as well as direct-hire authority for qualified candidates with an advanced degree to scientific and engineering positions within STRLs. Where delegated to the laboratory level, direct-hire authority will be exercised in accordance with the requirements of the delegation of authority. The "Rule of Three" will be eliminated. When there are no more than 15 qualified applicants and no preference eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking will be required only when the number of qualified candidates exceeds 15 or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans' preference will be observed in the selection process and when rating and ranking are required. If the candidates are rated and ranked, a random number selection method will be used to determine which applicants will be referred when scores are tied after the rating process. Veterans will be referred ahead of non-veterans with the same score.

3. Legal Authority

For actions taken under the auspices of the demonstration project, the legal authority, Public Law 103-337, as amended, will be used. For all other actions, the nature of action codes and legal authority codes prescribed by OPM, DoD, or DA will continue to be used.

4. Revisions to Term Appointments

NSRDEC conducts a variety of projects that range from three to six years. The current four-year limitation on term appointments often forces the termination of term employees prior to completion of projects they were hired to support. This disrupts the research and development process and affects the organization's ability to accomplish the mission and serve its customers.

NSRDEC will continue to have career and career-conditional appointments and temporary appointments not to exceed one year. These appointments will use existing authorities and entitlements. Under the demonstration

project, NSRDEC will have the added authority to hire individuals under a modified term appointment. These appointments will be used to fill positions for a period of more than one year, but not more than a total of five years when the need for an employee's services is not permanent. The modified term appointments differ from term employment as described in 5 CFR part 316 in that they may be made for a period not to exceed five, rather than four years. The Director is authorized to extend a term appointment one additional year.

Employees hired under the modified term appointment authority are in a non-permanent status, but may be eligible for conversion to career-conditional appointments. To be converted, the employee must (1) Have been selected for the term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the term position may be eligible for conversion to a career-conditional appointment at a later date; (2) have served two years of continuous service in the term position; (3) be selected under Merit Promotion procedures for the permanent position; and (4) be performing at the acceptable level of performance with a current score of 30 or greater.

Employees serving under regular term appointments at the time of conversion to the demonstration project will be converted to the new modified term appointments provided they were hired for their current positions under competitive procedures. These employees will be eligible for conversion to career-conditional appointments if they (1) Have served two years of continuous service in the term position; (2) are selected under Merit Promotion procedures for the permanent position; and (3) are performing at the acceptable level of performance with a current score of 30 or greater (or equivalent if not yet rated under the demonstration project). Time served in term positions prior to conversion to the modified term appointment is creditable, provided the service was continuous. Employees serving under regular or modified term appointments under this plan will be covered by the plan's pay-for-performance system.

5. Extended Probationary Period

The current one-year probationary period will be extended to three years for all newly hired permanent career-conditional employees in the E&S occupational family. The purpose of extending the probationary period is to allow supervisors an adequate period of

time to fully evaluate an employee's ability to complete a cycle of work and to fully assess an employee's contribution and conduct. The three-year probationary period will apply only to new hires subject to a probationary period.

If a probationary employee's performance is determined to be satisfactory at a point prior to the end of the three-year probationary period, a supervisor has the option of ending the probationary period at an earlier date, but not before the employee has completed one year of continuous service. If the probationary period is terminated before the end of the three-year period, the immediate supervisor will provide written reasons for his/her decision to the next level of supervision for concurrence prior to implementing the action.

Aside from extending the time period for all newly hired permanent career-conditional employees in the E&S occupational family, all other features of the current probationary period are retained including the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee. Any employee appointed prior to the implementation date will not be affected.

6. Termination of Probationary Employees

Probationary employees may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment, and for conditions arising before employment. When a supervisor decides to terminate an employee during the probationary period because his/her work performance or conduct is unacceptable, the supervisor shall terminate the employee's services by written notification stating the reasons for termination and the effective date of the action. The information in the notice shall, at a minimum, consist of the supervisor's conclusions as to the inadequacies of the employee's performance or conduct, or those conditions arising before employment that support the termination.

7. Supervisory Probationary Periods

Supervisory probationary periods will be made consistent with 5 CFR part 315. Employees who have successfully completed the initial probationary period will be required to complete an additional one-year probationary period for initial appointment to a supervisory position. If, during this probationary period, the decision is made to return

the employee to a non-supervisory position for reasons related to supervisory performance, the employee will be returned to a comparable position of no lower pay than the position from which promoted or reassigned.

8. Volunteer Emeritus Corps

Under the demonstration project, the Director will have the authority to offer retired or separated employees voluntary positions. The Director may redelegate this authority. Voluntary Emeritus Corps assignments are not considered employment by the Federal government (except for purposes of injury compensation). Thus, such assignments do not affect an employee's entitlement to buyouts or severance payments based on an earlier separation from Federal service.

The Voluntary Emeritus Corps will ensure continued quality services while reducing the overall salary line by allowing higher paid employees to accept retirement incentives with the opportunity to retain a presence in the NSRDEC community. The program will be beneficial during manpower reductions, as employees accept retirement and return to provide a continuing source of corporate knowledge and valuable on-the-job training or mentoring to less experienced employees.

To be accepted into the Volunteer Emeritus Corps, a volunteer must be recommended by an NSRDEC manager to the NSRDEC Director or delegated authority. Not everyone who applies is entitled to an emeritus position. The responsible official will document acceptance or rejection of the applicant. For acceptance, documentation must be retained throughout the assignment. For rejection, documentation will be maintained for two years.

To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while serving in a voluntary capacity. Retired or separated Federal employees may accept an emeritus position without a break or mandatory waiting period.

Voluntary Emeritus Corps volunteers will not be permitted to monitor contracts on behalf of the Government or to participate on any contracts or solicitations where a conflict of interest exists. The volunteers may be required to submit a financial disclosure form annually. The same rules that currently apply to source selection members will apply to volunteers.

An agreement will be established among the volunteer, the responsible official, and the Civilian Personnel

Advisory Center (CPAC). The agreement must be finalized before the assumption of duties and shall include:

(1) A statement that the voluntary assignment does not constitute an appointment in the Civil Service, is without compensation, and the volunteer waives any claims against the Government based on the voluntary assignment;

(2) A statement that the volunteer will be considered a Federal employee only for the purpose of injury compensation;

(3) The volunteer's work schedule;

(4) Length of agreement (defined by length of project or time defined by weeks, months, or years);

(5) Support provided by the organization (travel, administrative support, office space, and supplies);

(6) A statement of duties;

(7) A statement providing that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a volunteer;

(8) A provision allowing either party to void the agreement with two working days written notice;

(9) The level of security access required by the volunteer (any security clearance required by the position will be managed by the employing organization);

(10) A provision that any publication(s) resulting from his/her work will be submitted to the Director for review and approval;

(11) A statement that he/she accepts accountability for loss or damage to Government property occasioned by his/her negligence or willful action;

(12) A statement that his/her activities on the premises will conform to the regulations and requirements of the organization;

(13) A statement that he/she will not release any sensitive or proprietary information without the written approval of the employing organization and further agrees to execute additional non-disclosure agreements as appropriate, if required, by the nature of the anticipated services; and,

(14) A statement that he/she agrees to disclose any inventions made in the course of work performed at the NSRDEC. The Director has the option to obtain title to any such invention on behalf of the U.S. Government. Should the Director elect not to take title, the NSRDEC shall at a minimum retain a non-exclusive, irrevocable, paid-up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government.

Exceptions to the provisions in this procedure may be granted by the Director on a case-by-case basis.

E. Internal Placement

1. Promotion

A promotion is the movement of an employee to a higher pay band in the same occupational family or to another pay band in a different occupational family, wherein the band in the new family has a higher maximum base pay than the band from which the employee is moving. The move from one band to another must result in an increase in the employee's base pay to be considered a promotion. Positions with known promotion potential to a specific band within an occupational family will be identified when they are filled. Not all positions in an occupational family will have promotion potential to the same band. Movement from one occupational family to another will depend upon individual competencies, qualifications and the needs of the organization. Supervisors may consider promoting employees at any time, since promotions are not tied to the pay-for-performance system. Progression within a pay band is based upon performance base pay increases; as such, these actions are not considered promotions and are not subject to the provisions of this section. Except as specified below, promotions will be processed under competitive procedures in accordance with Merit System Principles and requirements of the local Merit Promotion Plan.

To be promoted competitively or non-competitively from one band to the next, an employee must meet the minimum qualifications for the job and have a current performance rating of "acceptable" with a score of 21 or better, or equivalent under a different performance appraisal system. If an employee does not have a current performance rating, the employee will be treated the same as an employee with an "acceptable" rating as long as there is no documented evidence of unacceptable performance.

2. Reassignment

A reassignment is the movement of an employee from one position to a different position within the same occupational family and pay band or to another occupational family and pay band wherein the band in the new family has the same maximum base pay. The employee must meet the qualifications requirements for the occupational family and pay band.

3. Demotion or Placement in a Lower Pay Band

A demotion is the placement of an employee into a lower pay band within the same occupational family or placement into a pay band in a different occupational family with a lower maximum base pay. Demotions may be for cause (performance or conduct) or for reasons other than cause (e.g., erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements, at the employee's request, or placement actions resulting from RIF procedures).

4. Simplified Assignment Process

Today's environment of downsizing and workforce fluctuations mandates that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with no change in base pay, within broad descriptions, consistent with the needs of the organization and the individual's qualifications and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a technical expert could be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

5. Details

Under this plan employees may be detailed to a position in the same band (requiring a different level of expertise and qualifications) or lower pay band (or its equivalent in a different occupational family) for up to one year. Details may be implemented through an official personnel action to cover the one-year period. Details to a position in a higher pay band up to 180 days will be made non-competitively. Beyond 180 days requires competitive procedures.

6. Exceptions to Competitive Procedures

The following actions are excepted from competitive procedures:

(1) Re-promotion to a position which is in the same pay band or GS equivalent and occupational family as the employee previously held on a

permanent basis within the competitive service.

(2) Promotion, reassignment, demotion, transfer or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

(3) A position change permitted by reduction-in-force procedures.

(4) Promotion without current competition when the employee was appointed through competitive procedures to a position with a documented career ladder.

(5) A temporary promotion, or detail to a position in a higher pay band, of 180 days or less.

(6) A promotion due to the reclassification of positions based on accretion (addition) of duties.

(7) A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

(8) Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

(9) Impact of person in the job and Factor IV process (application of the Research Grade Evaluation Guide, Equipment Development Grade Evaluation Guide, Part III, or similar guides) promotions.

F. Pay Setting

1. General

Pay administration policies will be established by the Personnel Management Board. These policies will be exempt from Army Regulations or RDECOM pay fixing policies, but will conform to basic governmental pay fixing policy. Employees whose performance is acceptable will receive the full annual general pay increase and the full locality pay. NSRDEC may make full use of recruitment, retention and relocation payments as provided for by OPM. Pay band and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in section IX, the waiver section of this plan. The Director may also grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

2. Pay and Compensation Ceilings

An employee's total monetary compensation paid in a calendar year may not exceed the base pay of Level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530 subpart B. In addition, each pay band

will have its own pay ceiling, just as grades do in the current system. Base pay rates for the various pay bands will be directly keyed to the GS rates, except as noted in III.A.3. for the Pay Band V of the E&S occupational family. Other than where a retained rate applies, base pay will be limited to the maximum base pay payable for each pay band.

3. Pay Setting for Appointment

Upon initial appointment, the individual's pay may be set at the lowest base pay in the band or anywhere within the band level consistent with the special qualifications of the individual and the unique requirements of the position. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed. Guidance on pay setting for new hires will be established by the Personnel Management Board.

Highest Previous Rate (HPR) will be considered in placement actions authorized under rules similar to the HPR rules in 5 CFR 531.221. Use of HPR will be at the supervisor's discretion, but if used, HPR is subject to policies established by the Personnel Management Board.

4. Pay Setting for Promotion

The minimum base pay increase upon promotion to a higher pay band will be six percent or the minimum base pay rate of the new pay band, whichever is greater. The maximum amount of the pay increase will not exceed \$10,000, or other such amount as established by the Personnel Management Board. The maximum base pay increase for promotion may be exceeded when necessary to allow for the minimum base pay increase. For employees assigned to occupational categories and geographic areas covered by special rates, the minimum base pay rate in the pay band to which promoted is the minimum base pay for the corresponding special rate or locality rate, whichever is greater. For employees covered by a staffing supplement, the demonstration staffing adjusted pay is considered base pay for promotion calculations. When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established by the Personnel Management Board. In no case may those adjustments increase the base pay for the position of record

beyond the applicable pay range maximum base pay rate.

5. Pay Setting for Reassignment

A reassignment may be effected without a change in base pay. However, a base pay increase may be granted where a reassignment significantly increases the complexity, responsibility, authority or for other compelling reasons. Such an increase is subject to the specific guidelines established by the Personnel Management Board.

6. Pay Setting for Demotion or Placement in a Lower Pay Band

Employees demoted for cause (performance or conduct) are not entitled to pay retention and will receive a minimum of a five percent decrease in base pay. Employees demoted for reasons other than cause (e.g., erosion of duties, reclassification of duties to a lower pay band, application under competitive announcements or at the employee's request, or placement actions resulting from RIF procedures) may be entitled to pay retention in accordance with the provisions of 5 U.S.C. 5363 and 5 CFR part 536, except as waived or modified in section IX of this plan.

Employees who receive an unacceptable rating or who are on a PIP at the time pay determinations are made, do not receive performance payouts or the general pay increase. This action may result in base pay that is identified in a lower pay band. This occurs because the minimum rate of base pay in a pay band increases as the result of the general pay increase (5 U.S.C. 5303). This situation (a reduction-in-band level with no reduction in pay) will not be considered an adverse performance based action, nor will band retention provisions apply.

7. Supervisory and Team Leader Pay Adjustments

Supervisory and team leader pay adjustments may be approved by the Director based on the recommendation of the Personnel Management Board to compensate employees with supervisory or team leader responsibilities. Only employees in supervisory or team leader positions as defined by the OPM GS Supervisory Guide or GS Leader Grade Evaluation Guide may be considered for the pay adjustment. These pay adjustments are funded separately from performance pay pools. These pay adjustments are increases to base pay, ranging up to ten percent of that pay rate for supervisors and up to five percent of that pay rate for team leaders. Pay adjustments are subject to the

constraint that the adjustment may not cause the employee's base pay to exceed the pay band maximum base pay. Criteria to be considered in determining the pay increase percentage include:

- (1) needs of the organization to attract, retain, and motivate high-quality supervisors/team leaders;
- (2) budgetary constraints;
- (3) years and quality of related experience;
- (4) relevant training;
- (5) performance appraisals and experience as a supervisor/team leader;
- (6) organizational level of position; and
- (7) impact on the organization. The pay adjustment will not apply to employees in Pay Band V of the E&S occupational family.

After the date of conversion into the demonstration project, a pay adjustment may be considered under the following conditions:

- (1) New hires into supervisory/team leader positions will have their initial rate of base pay set at the supervisor's discretion within the pay range of the applicable pay band. This rate of pay may include a pay adjustment determined by using the ranges and criteria outlined above.
- (2) A career employee selected for a supervisory/team leader position that is within the employee's current pay band may also be considered for a base pay adjustment. If a supervisor/team leader is already authorized a base pay adjustment and is subsequently selected for another supervisor/team leader position within the same pay band, then the base pay adjustment will be re-determined.

Upon initial conversion into the demonstration project into the same or substantially similar position, supervisors/team leaders will be converted at their existing base rate of pay and will not be eligible for a base pay adjustment.

The supervisor/team leader pay adjustment will be reviewed annually, with possible increases or decreases based on the appraisal scores for the performance element, Team/Project Leadership or Supervision/EEO. The initial dollar amount of a base pay adjustment will be removed when the employee voluntarily leaves the position. The cancellation of the adjustment under these circumstances is not an adverse action and is not subject to appeal. If an employee is removed from a supervisory/team leader position for personal cause (performance or conduct), the base pay adjustment will be removed under adverse action procedures. However, if an employee is removed from a non-probationary

supervisory/team leader position for conditions other than voluntary or for personal cause, then grade and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in section IX.

8. Supervisory/Team Leader Pay Differentials

Supervisory and team leader pay differentials may be used by the Director to provide an incentive and reward supervisors and team leaders as defined by the OPM GS Supervisory Guide and GS Leader Grade Evaluation Guide. Pay differentials are not funded from performance pay pools. A pay differential is a cash incentive that may range up to ten percent of base pay for supervisors and up to five percent of base pay for team leaders. It is paid on a pay period basis with a specified not-to-exceed (NTE) of one year or less and is not included as part of the base pay. Criteria to be considered in determining the amount of the pay differential are the same as those identified for Supervisory/Team Leader Pay Adjustments. The pay differential will not apply to employees in Pay Band V of the E&S occupational family.

The pay differential may be considered, either during conversion into or after initiation of the demonstration project, if the supervisor/team leader has subordinate employees in the same pay band. The differential must be terminated if the employee is removed from a supervisory/team leader position, regardless of cause.

After initiation of the demonstration project, all personnel actions involving a supervisory/team leader differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the Director. The termination or reduction of the differential is not an adverse action and is not subject to appeal.

9. Staffing Supplements

Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted base pay rate for the banded GS grades to which assigned is a special rate that exceeds the maximum adjusted base pay for the banded grades (i.e., the maximum GS locality rate for the banded grades). The staffing supplement is added to the base pay, much like locality rates are added to base pay. For

employees being converted into the demonstration project, total pay immediately after conversion will be the same as immediately before (excluding the impact of any WGI buy-in), but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total pay.

The staffing supplement is calculated as follows. Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted base pay rate (the higher of special rate or locality rate) by the staffing factor. The staffing factor will be determined by dividing the maximum special rate for the banded grades by the GS unadjusted rate corresponding to that special rate (step 10 of the GS rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base pay rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base pay rate plus the staffing supplement. This amount will equal the employee's former GS adjusted base pay rate. Simplified, the formula is this:

$$\text{Staffing factor} = \frac{\text{Maximum special rate for the banded grades}}{\text{GS unadjusted rate corresponding to that special rate}}$$

$$\text{Demonstration base pay rate} = \frac{\text{Former GS adjusted base pay rate (specialty or locality rate)}}{\text{Staffing factor}}$$

$$\text{Staffing supplement} = \text{Demonstration base pay rate} * (\text{staffing factor} - 1)$$

$$\text{Pay upon conversion} = \text{Demonstration base pay rate} + \text{staffing supplement (sum will equal existing rate)}$$

If an employee is in a band where the maximum GS adjusted base pay rate for the banded grades is a locality rate, when the employee enters into the demonstration project, the demonstration base pay rate is derived by dividing the employee's former GS adjusted base pay rate (the higher of locality rate or special rate) by the applicable locality pay factor. The employee's demonstration locality-adjusted base pay rate will equal the employee's former GS adjusted base pay rate. Any GS or special rate schedule adjustment will require computing the staffing supplement again. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the

need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied. Upon geographic movement, an employee who receives the staffing supplement will have the supplement recomputed. Any resulting reduction in pay will not be considered an adverse action or a basis for pay retention.

Application of the staffing supplement is normally intended to maintain pay comparability for GS employees entering the demonstration project. However, the staffing supplement formulas must be compatible with non-Government employees entering the demonstration and also be adaptable to the special circumstances of employees already in the demonstration project. The

following principles will govern the modifications necessary to the staffing supplement calculations to apply the staffing supplement to circumstances other than a GS employee entering the demonstration project. No adjustment under these provisions will provide an increase greater than that provided by the special salary rate table. An increase provided under this authority is not an equivalent increase, as defined by 5 CFR 531.403. These principles are stated with the understanding that the necessary conditions exist that require the application of a staffing supplement:

(1) If a non-Government employee is hired into the demonstration, then the employee's adjusted base pay will be used for the term, "former GS adjusted

base pay rate” to calculate the demonstration base pay rate.

(2) If a current employee is covered by a new or modified special salary rate table, then the employee’s current demonstration base pay rate is used to calculate the staffing supplement percentage. The employee’s new demonstration adjusted base pay rate is the sum of the current demonstration base pay rate and the calculated staffing supplement.

(3) If a current employee is in an occupational category that is covered by a special salary rate table and subsequently, the occupational category becomes covered by a different special salary rate table with a higher value, then the following steps must be applied to calculate a new demonstration base pay rate:

Step 1. To obtain a relevance factor, divide the staffing factor that will become applicable to the employee by the staffing factor that would have applied to the employee.

Step 2. Multiply the relevance factor resulting from step 1 by the employee’s current demonstration adjusted base pay rate to determine a new demonstration adjusted base pay rate.

Step 3. Divide the result from step 2 by the applicable staffing factor to derive a new demonstration base pay rate. This new demonstration base pay rate will be used to calculate the staffing supplement and the new demonstration adjusted base pay.

(4) If, after the establishment of a new or adjusted special salary rate table, an employee enters the demonstration (whether converted/hired from GS or another pay system, or hired from outside Government) prior to this intervention, then the employee’s adjusted base pay is used for the term “former GS adjusted base pay rate” to calculate the demonstration base pay rate. This principle prevents double compensation due to the single event of a new or adjusted special salary rate table.

(5) If an employee is in an occupational category covered by a new or modified special salary rate table, and the pay band to which assigned is not entitled to a staffing supplement, then the employee’s adjusted base pay may be reviewed and adjusted to accommodate the rate increase provided by the special salary rate table. The review may result in a one-time base pay increase if the employee’s adjusted base pay equals or is less than the highest special salary grade and step that exceeds the comparable locality grade and step. Demonstration project operating procedures will identify the officials responsible to make such

reviews and determinations. The applicable staffing supplement will be calculated by determining the percentage difference between the highest step 10 special salary rate and the comparable step 10 locality rate and applying this percentage to the demonstration base pay rate.

An established base pay rate plus the staffing supplement will be considered adjusted base pay for the same purposes as a locality rate under 5 CFR 531.610, i.e., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute worker’s compensation payments and lump-sum payments for accrued and accumulated annual leave.

G. Employee Development

1. Expanded Developmental Opportunity Program

The Expanded Developmental Opportunity Program will be available to all demonstration project employees. Expanded developmental opportunities complement existing developmental opportunities such as long-term training, rotational job assignments, developmental assignments to Army Materiel Command/Army/DoD, and self-directed study via correspondence courses and local colleges and universities. Each developmental opportunity must result in a product, service, report or study that will benefit the NSRDEC or customer organization as well as increase the employee’s individual effectiveness. The developmental opportunity period will not result in loss of (or reduction) in base pay, leave to which the employee is otherwise entitled, or credit for service time. The positions of employees on expanded developmental opportunities may be back-filled (*i.e.*, with temporarily assigned, detailed or promoted employees or with term employees). However, that position or its equivalent must be made available to the employee upon return from the developmental period. The Personnel Management Board will provide written guidance for employees on application procedures and develop a process that will be used to review and evaluate applicants for development opportunities.

a. *Sabbaticals*. The NSRDEC Director has the authority to grant paid or unpaid sabbaticals to all career employees. The purpose of a sabbatical will be to permit an employee to engage in study or uncompensated work experience that will benefit the organization and contribute to the employee’s development and effectiveness. Each sabbatical must result in a product,

service, report, or study that will benefit the NSRDEC mission as well as increase the employee’s individual effectiveness. Various learning or developmental experiences may be considered, such as advanced academic teaching; research; self-directed or guided study; and on-the-job work experience with public, private, commercial, or private non-profit organizations.

One paid sabbatical of up to twelve months in duration or one unpaid sabbatical of up to six months in a calendar year may be granted to an employee in any seven-year period. Employees will be eligible to request a sabbatical after completion of seven years of Federal service. Employees approved for a paid sabbatical must sign a service obligation agreement to continue in service in the NSRDEC for a period of three times the length of the sabbatical. If an employee voluntarily leaves NSRDEC before the service obligation is completed he/she is liable for repayment of expenses incurred by NSRDEC that are associated with training during the sabbatical. Expenses do not include salary costs. The NSRDEC Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

Specific procedures will be developed for processing sabbatical applications upon implementation of the demonstration project.

b. *Critical Skills Training (Training for Degrees)*. The NSRDEC Director has the authority to approve academic degree training consistent with 5 U.S.C. 4107. Training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training is also a critical tool for recruiting and retaining employees with or requiring critical skills. Academic degree training will ensure continuous acquisition of advanced specialized knowledge essential to the organization, and enhance our ability to recruit and retain personnel critical to the present and future requirements of the organization. Degree or certificate payment may not be authorized where it would result in a tax liability for the employee without the employee’s express and written consent. Any variance from this policy must be rigorously determined and documented. Guidelines will be developed to ensure competitive approval of degree or certificate payment and that such decisions are fully documented. Employees approved for degree training must sign a service obligation agreement to continue in service in NSRDEC for a period of three times the length of the

training period. If an employee voluntarily leaves the NSRDEC before the service obligation is completed, he/she is liable for repayment of expenses incurred by NSRDEC related to the critical skills training. Expenses do not include salary costs. The NSRDEC Director has the authority to waive this requirement. Criteria for such waivers will be addressed in the operating procedures.

H. Reduction-in-Force (RIF) Procedures

RIF procedures will be used when an employee faces separation or downgrading due to lack of work, shortage of funds, reorganization, insufficient personnel ceiling, the exercise of re-employment or restoration rights, or furlough for more than 30 calendar days or more than 22 discontinuous days. The procedures in 5 CFR part 351 will be followed with slight modifications pertaining to the competitive areas, assignment rights, and the calculation of adjusted service computation date and grade/pay band retention. Modified term appointment employees are in Tenure Group III for RIF purposes. RIF procedures are not required when separating these employees when their appointments expire.

1. Competitive Areas

Separate competitive areas for RIF purposes will be established at each geographic location. Separate RIF competitive areas for demonstration and non-demonstration project employees will be established at each geographic location. Bumps and retreats will occur only within the same competitive area and only to positions for which the employee meets all qualification standards including medical and/or physical qualifications.

Within each competitive area, competitive levels will be established based on the occupational family, pay band and series which are similar enough in duties and qualifications that employees can perform the duties and responsibilities of any other position in the competitive level upon assignment to it, without any loss of productivity beyond what is normally expected.

2. Assignment Rights

An employee may displace another employee by bump or retreat to one band below the employee's existing band. A preference eligible with a compensable service-connected disability of 30 percent or more may retreat to positions two bands (or equivalent to five grades) below his/her current band.

3. Crediting Performance in Reductions in Force (RIF)

Reductions in force are accomplished using the existing procedures with the retention factors of: Tenure, veterans' preference and length of service as adjusted by performance ratings, in that order. However, the additional RIF service credit for performance will be based on the last three total performance scores during the preceding four years and will be applied as follows:

Total Performance Scores = Years of Service Credit

48–50 = 10

45–47 = 9

42–44 = 8

39–41 = 7

36–38 = 6

33–35 = 5

30–32 = 4

27–29 = 3

24–26 = 2

20–23 = 1

A score of below 20 adds no credit for RIF retention. (Note: The additional years of service credit are added, not averaged. Ratings given under non-demonstration systems will be converted to the demonstration-rating scheme and provided the equivalent rating credit.)

Employees who have been rated under different patterns of summary rating levels will receive RIF appraisal credit based on the following:

If there are any ratings to be credited for the RIF given under a rating system, which includes one or more levels above fully successful (Level 3), employee will receive:

10 years for Level 5

7 years for Level 4

3 years for Level 3

If an employee comes from a system with no levels above Fully Successful (Level 3), they will receive credit based on the demonstration project's modal score for the employee's competitive area.

In some cases, an employee may not have three ratings of record. If an employee has fewer than three annual ratings of record, then for each missing rating, an average of the scores received for the past four years will be used. When the score is calculated to be a decimal, it should be rounded to the next higher whole number using the method described in paragraph III.C.4. For an employee who has no ratings of record, all credit will be based on the repeated use of a single modal rating from the most recently completed appraisal period on record.

An employee who has received a written decision that his/her performance is unacceptable has no

bump or retreat rights. An employee who has been demoted for unacceptable performance, and as of the date of the issuance of the RIF notice has not received a performance rating in the position to which demoted, will receive the same additional retention service credit granted for a Level 3 rating of record. An employee who has received an acceptable rating following a PIP will have that rating considered as the current rating of record.

An employee with a current unacceptable rating of record has assignment rights only to a position held by another employee who has an unacceptable rating of record.

4. Pay Band and Pay Retention

Pay band and pay retention will follow current law and regulations at 5 U.S.C. 5362, 5363, and 5 CFR part 536, except as waived or modified in section IX of this plan.

IV. Implementation Training

Critical to the success of the demonstration project is the training developed to promote understanding of the broad concepts and finer details needed to implement and successfully execute this project. Pay banding, a new job classification and performance management system all represent significant cultural change to the organization. Training will be tailored to address employee concerns and encourage comprehensive understanding of the demonstration project. Training will be required both prior to implementation and at various times during the life of the demonstration project.

A training program will begin prior to implementation and will include modules tailored for employees, supervisors, senior managers, and administrative staff. Typical modules are:

- (1) An overview of the demonstration project personnel system;
- (2) How employees are converted into and out of the system;
- (3) Pay banding;
- (4) The pay-for-performance system;
- (5) Defining performance objectives;
- (6) How to assign weights;
- (7) Assessing performance—giving feedback;
- (8) New position descriptions;
- (9) Demonstration project administration and formal evaluation.

Various types of training are being considered including videos, on-line tutorials, and train-the-trainer concepts.

V. Conversion

A. Conversion to the Demonstration Project

Conversion from current GS/GM grade and pay into the new pay band system will be accomplished during implementation of the demonstration project. Initial entry into the demonstration project will be accomplished through a full employee-protection approach that ensures each employee an initial place in the appropriate pay band without loss of pay on conversion.

Employees serving under regular term appointments at the time of the implementation of the demonstration project will be converted to the modified term appointment if all requirements in III.D.4. (Revisions to Term Appointments) have been satisfied. Position announcements, etc., will not be required for these term appointments.

Employees who enter the demonstration project later by lateral transfer, reassignment or realignment will be subject to the same pay conversion rules. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

Employees who are covered by special salary rates prior to entering the demonstration project will no longer be considered a special rate employee under the demonstration project. Special conversion rules apply to special salary rate employees, which are described in III.F.9. (Staffing Supplements). These employees will be eligible for full locality pay or a staffing supplement. The adjusted base pay of these employees will not change. Rather, the employees will receive a new adjusted base pay rate computed under the staffing supplement rules in section III. F.9. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in adjusted base pay.

Employees who are on temporary promotions at the time of conversion will be converted to a pay band commensurate with the grade of the position to which temporarily promoted. At the conclusion of the temporary promotion, the employee will revert to the grade or pay band that corresponds to the position of record. When a temporary promotion is terminated, pay will be determined based on the position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules

established by the Personnel Management Board. In no case may those adjustments increase the pay for the position of record beyond the applicable pay band maximum base pay. The only exception will be if the original competitive promotion announcement stipulated that the promotion could be made permanent; in these cases, actions to make the temporary promotion permanent will be considered, and if implemented, will be subject to all existing priority placement programs.

During the first twelve months following conversion, employees will receive base pay increases for non-competitive promotion equivalents when the grade level of the promotion is encompassed within the same pay band, the employee's performance warrants the promotion and promotions would have otherwise occurred during that period. Employees who receive an in-level promotion at the time of conversion will not receive a prorated step increase equivalent as defined below.

Under the GS pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step they have completed up until the effective date of conversion. As under the current system, supervisors will be able to withhold these partial step increases if the employee's performance is below an acceptable level of competence.

Rules governing WGIs will continue in effect until conversion. Adjustments to the employee's base pay for WGI equity will be computed as of the effective date of conversion. WGI equity will be acknowledged by increasing base pay by a prorated share based upon the number of weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI times the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. Employees at step 10, or receiving retained rates, on the day of implementation will not be eligible for WGI equity adjustments since they are already at or above the top of the step scale. Employees serving on retained grade will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate.

Employees who enter the demonstration project after initial implementation by lateral transfer, reassignment, or realignment will be

subject to the same pay conversion rules as above. Specifically, adjustments to the employee's base pay for a step increase and a non-competitive career ladder promotion will be computed as a prorated share of the current value of the step or promotion increase based upon the number of full weeks an employee has completed toward the next higher step or grade at the time the employee moves into the project.

B. Conversion Out of the Demonstration Project

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project pay band to a GS-equivalent grade and the employee's project rate of pay to the GS-equivalent rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.*, promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

(1) The employee's adjusted base pay under the demonstration project (including any locality payment or staffing supplement) is compared with step 4 rates in the highest applicable GS rate range. (For this purpose, a GS rate range includes a rate in the:

- (a) GS base schedule;
- (b) Locality rate schedule for the locality pay area in which the position is located; or
- (c) Appropriate special rate schedule for the employee's occupational series, as applicable.)

If the series is a two-grade interval series, only odd-numbered grades are considered below GS-11.

(2) If the employee's adjusted base pay under the demonstration project equals or exceeds the applicable step 4 adjusted base pay rate of the highest GS grade in the band, the employee is converted to that grade.

(3) If the employee's adjusted base pay under the demonstration project is lower than the applicable step 4 adjusted base pay rate of the highest grade, the adjusted base pay under the demonstration project is compared with the step 4 adjusted base pay rate of the second highest grade in the employee's pay band. If the employee's adjusted base pay under the demonstration project equals or exceeds the step 4 adjusted base pay rate of the second highest grade, the employee is converted to that grade.

(4) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted base pay under the demonstration project rate equals or exceeds the applicable step 4 adjusted base pay rate of the grade. The employee is then converted at that grade. If the employee's adjusted base pay is below the step 4 adjusted base pay rate of the lowest grade in the band, the employee is converted to the lowest grade.

(5) Exception: If the employee's adjusted base pay under the demonstration project exceeds the maximum adjusted base pay rate of the grade assigned under the above-described step 4 rule but fits in the adjusted base pay rate range for the next higher applicable grade (i.e., between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(6) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or lateral transfer into the project, unless since that time the employee has undergone a reduction in band.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rates of pay to GS rates of pay in accordance with the following rules:

(1) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(2) An employee's adjusted base pay under the demonstration project (i.e. including any locality payment or

staffing supplement) is converted to a GS adjusted base pay rate on the highest applicable GS rate range for the converted GS grade. For this purpose, a GS rate range includes a rate range in:

- (a) The GS base schedule,
- (b) An applicable locality rate schedule, or
- (c) An applicable special rate schedule.

(3) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted base pay under the demonstration project is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay would be the GS base rate corresponding to the converted GS locality rate (i.e., same step position).

(4) If the highest applicable GS rate range is a special rate range, the employee's adjusted base pay under the demonstration project is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of base pay will be the GS rate corresponding to the converted special rate (i.e., same step position).

(5) E&S Pay Band V Employees: An employee in Pay Band V of the E&S occupational family will convert out of the demonstration project at the GS-15 level. Procedures will be developed to ensure that employees entering Pay Band V understand that if they leave the demonstration project and their adjusted base pay under the project exceeds the highest applicable GS-15, Step 10 rate, there is no entitlement to retained pay. Their GS equivalent rate will be deemed to be the rate for GS-15, Step 10. For those Pay Band V employees paid below the adjusted GS-15, Step 10 rate, the converted rates will be set in accordance with paragraph 2.

(6) Employees with Pay Retention: If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her band level. Demonstration project operating procedures will outline the methodology for determining the GS-equivalent pay rate for an employee retaining a rate under the demonstration project.

3. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase)

under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

C. Personnel Administration

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded and Merit System Principles will be maintained. Servicing CPACs will continue to process personnel-related actions and provide consultative and other appropriate services.

D. Automation

The NSRDEC will continue to use the Defense Civilian Personnel Data System (DCPDS) for the processing of personnel-related data. Payroll servicing will continue from the respective payroll offices.

An automated tool will be used to support computation of performance-related pay increases and awards and other personnel processes and systems associated with this project.

E. Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the new system is working. DoDI 1400.37, July 28, 2009, provides instructions for adopting other STRL flexibilities, making minor changes to an existing demonstration project, and requesting new initiatives.

VI. Project Duration

Public Law 103-337 removed any mandatory expiration date for this demonstration. NSRDEC, DA and DoD will ensure this project is evaluated for the first five years after implementation in accordance with 5 U.S.C. 4703. Modifications to the original evaluation plan or any new evaluation will ensure the project is evaluated for its effectiveness, its impact on mission and any potential adverse impact on any employee groups. Major changes and modifications to the interventions would be made if formative evaluation data warranted and will be published in the **Federal Register** to the extent required. At the five-year point, the demonstration will be reexamined for permanent implementation, modification and additional testing, or termination of the entire demonstration project.

VII. Evaluation Plan

A. Overview

Chapter 47 of 5 U.S.C. requires that an evaluation be performed to measure the effectiveness of the demonstration project and its impact on improving public management. A comprehensive evaluation plan for the entire demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (i.e. organizational effectiveness, mission accomplishment, and customer satisfaction).

B. Evaluation Model

Appendix D shows an intervention model for the evaluation of the demonstration project. The model is designated to evaluate two levels of organizational performance: intermediate and ultimate outcomes. The intermediate outcomes are defined as the results from specific personnel system changes and the associated waivers of law and regulation expected to improve human resource (HR) management (i.e. cost, quality, timeliness). The ultimate outcomes are determined through improved organizational performance, mission accomplishment, and customer satisfaction. Although it is not possible to establish a direct causal link between changes in the HR management system and organizational effectiveness, it is hypothesized that the new HR system will contribute to improved organizational effectiveness.

Organizational performance measures established by the organization will be used to evaluate the impact of a new HR system on the ultimate outcomes. The evaluation of the new HR system for any given organization will take into account the influence of three factors on organizational performance: context, degree of implementation, and support of implementation. The context factor refers to the impact which intervening variables (i.e., downsizing, changes in mission, or the economy) can have on the effectiveness of the program. The degree of implementation considers the extent to which the:

- (1) HR changes are given a fair trial period;
- (2) Changes are implemented; and
- (3) Changes conform to the HR interventions as planned.

The support of implementation factor accounts for the impact that factors such as training, internal regulations and automated support systems have on the support available for program implementation. The support for program implementation factor can also be affected by the personal characteristics (e.g., attitudes) of individuals who are implementing the program.

The degree to which the project is implemented and operated will be tracked to ensure that the evaluation results reflect the project as it was intended. Data will be collected to measure changes in both intermediate and ultimate outcomes, as well as any unintended outcomes, which may happen as a result of any organizational change. In addition, the evaluation will track the impact of the project and its interventions on veterans and other protected groups, the Merit Systems Principles, and the Prohibited Personnel Practices. Additional measures may be added to the model in the event that changes or modifications are made to the demonstration plan.

The intervention model at Appendix D will be used to measure the effectiveness of the personnel system interventions implemented. The intervention model specifies each personnel system change or "intervention" that will be measured and shows:

- (1) The expected effects of the intervention,
- (2) The corresponding measures, and
- (3) The data sources for obtaining the measures.

Although the model makes predictions about the outcomes of specific interventions, causal attributions about the full impact of specific interventions will not always be possible for several reasons. For example, many of the initiatives are expected to interact with each other and contribute to the same outcomes. In addition, the impact of changes in the HR system may be mitigated by context variables (e.g., the job market, legislation, and internal support systems) or support factors (e.g., training and automation support systems).

C. Evaluation

A modified quasi-experimental design will be used for the evaluation of the STRL Personnel Demonstration Program. Because most of the eligible laboratories are participating in the program, a 5 U.S.C. comparison group will be compiled from the Civilian Personnel Data File (CPDF). This comparison group will consist of workforce data from Government-wide

research organizations in civilian Federal agencies with missions and job series matching those in the DoD laboratories. This comparison group will be used primarily in the analysis of pay banding costs and turnover rates.

D. Method of Data Collection

Data from several sources will be used in the evaluation. Information from existing management information systems and from personnel office records will be supplemented with perceptual survey data from employees to assess the effectiveness and perception of the project. The multiple sources of data collection will provide a more complete picture as to how the interventions are working. The information gathered from one source will serve to validate information obtained through another source. In so doing, the confidence of overall findings will be strengthened as the different collection methods substantiate each other.

Both quantitative and qualitative data will be used when evaluating outcomes. The following data will be collected:

- (1) Workforce data;
- (2) Personnel office data;
- (3) Employee attitude surveys;
- (4) Focus group data;
- (5) Local site historian logs and implementation information;
- (6) Customer satisfaction surveys; and
- (7) Core measures of organizational performance.

The evaluation effort will consist of two phases, formative and summative evaluation, covering at least five years to permit inter- and intra-organizational estimates of effectiveness. The formative evaluation phase will include baseline data collection and analysis, implementation evaluation, and interim assessments. The formal reports and interim assessments will provide information on the accuracy of project operation, and current information on impact of the project on veterans and protected groups, Merit System Principles, and Prohibited Personnel Practices. The summative evaluation will focus on an overall assessment of project outcomes after five years. The final report will provide information on how well the HR system changes achieved the desired goals, which interventions were most effective, and whether the results can be generalized to other Federal installations.

VIII. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be

established at the start of the project and labor expenditures will be tracked yearly. Implementation costs (including project development, automation costs, step buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline.

The Personnel Management Board will track personnel cost changes and

recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided

through the organization’s budget. The projected annual expenses are summarized in Table 1. Project evaluation costs are not expected to continue beyond the first five years unless the results warrant further evaluation.

TABLE 1—PROJECTED DEVELOPMENT COSTS
[In thousands of dollars]

	FY09	FY10	FY11	FY12	FY13
Training	0K	25K	15K	10K	5K
Project Evaluation	0K	0K	15K	15K	15K
Automation	50K	50K	40K	40K	40K
Totals	50K	75K	70K	65K	60K

IX. Required Waivers to Law and Regulation

Public Law 106–398 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are waivers of law and regulation that will be necessary for implementation of the demonstration project. In due course, additional laws and regulations may be identified for waiver request.

The following waivers and adaptations of certain 5 U.S.C. provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, U.S.C.

Chapter 31, section 3111: Acceptance of Volunteer Service. Amended to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Chapter 31, section 3132: The Senior Executive Service. Definitions and Exclusions. Waived as necessary to allow for Pay Band V for the E&S occupational family.

Chapter 33, subchapter 1, section 3318(a): Competitive Service, Selection from Certificate. Waived in its entirety to eliminate the requirement for selection using the “rule of three”.

Chapter 33, section 3324: Appointments to Positions Classified Above GS–15. Waived the requirement for OPM approval of appointments to positions classified above GS–15.

Chapter 33, section 3341: Details. Waived as necessary to extend the time limits for details.

Chapter 41, section 4108 (a)–(c): Waived to the extent necessary to require the employee to continue in the service of NSRDEC for the period of the required service and to the extent necessary to permit the Director, NSRDEC, to waive in whole or in part a right of recovery.

Chapter 43, section 4302: Waived to the extent necessary to substitute “pay band” for “grade.”

Chapter 43, section 4303: Waived to the extent necessary to (1) substitute “pay band” for “grade” and (2) provide that moving to a lower pay band as a result of not receiving the general pay increase because of poor performance is not an action covered by the provisions of sections 4303 (a)–(d).

Chapter 43, section 4304(b)(1) and (3): Responsibilities of the OPM. Waived in its entirety to remove the responsibilities of the OPM with respect to the performance appraisal system.

Chapter 51, sections 5101–5112: Classification. Waived as necessary to allow for the demonstration project’s pay banding system.

Chapter 53, sections 5301, 5302 (8) and (9), 5303, and 5304: Pay Comparability System. Waived to the extent necessary to allow (1) demonstration project employees to be treated as GS employees, (2) basic rates of pay under the demonstration project to be treated as scheduled rates of pay, and (3) employees in Pay Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.

Chapter 53, section 5305: Special Pay Authority. Waived to the extent necessary to allow for use of a staffing

supplement in lieu of the special pay authority.

Chapter 53, sections 5331–5336: GS Pay Rates. Waived in its entirety to allow for the demonstration project’s pay banding system and pay provisions.

Chapter 53, sections 5361–5366: Grade and Pay Retention. Waived to the extent necessary to: (1) Replace “grade” with “pay band;” (2) allow demonstration project employees to be treated as GS employees; (3) provide that pay band retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position and to movements to a lower pay band as a result of not receiving the general pay increase due to a rating of record of “Unacceptable;” (4) provide that an employee on pay retention whose rating of record is “Unacceptable” is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee’s position; (5) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement; and (6) ensure that, for employees of Pay Band V of the E&S occupational family, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of base pay for GS–15, step 10 (i.e., there is no entitlement to retained rate). This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Chapter 55, section 5542(a)(1)–(2): Overtime rates; computation. Waived to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the “applicable special rate” in applying the pay cap provisions in 5 U.S.C. 5542.

Chapter 55, section 5545(d): Hazardous duty differential. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band V of the E&S occupational family.

Chapter 55, section 5547 (a)–(b): Limitation on premium pay. Waived to the extent necessary to provide that the GS–15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the “applicable special rate” in applying the pay cap provisions in 5 U.S.C. 5547.

Chapter 57, section 5753, 5754, and 5755: Recruitment and relocation, bonuses, retention allowances, and supervisory differentials. Waived to the extent necessary to allow (1) employees and positions under the demonstration project to be treated as employees and positions under the GS and (2) employees in Pay Band V of the E&S occupational family to be treated as ST employees.

Chapter 59, section 5941: Allowances based on living costs and conditions of environment; employees stationed outside continental U.S. or Alaska. Waived to the extent necessary to provide that cost-of-living allowances paid to employees under the demonstration project are paid in accordance with regulations prescribed by the President (as delegated to OPM).

Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii): Adverse Actions—Definitions. Waived to the extent necessary to allow for up to a three-year probationary period and to exclude from the definition of employee, except for those with veterans’ preference, those serving a probationary period under an initial appointment.

Chapter 75, section 7512(3): Adverse actions. Waived to the extent necessary to replace “grade” with “pay band.”

Chapter 75, section 7512(4): Adverse actions. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from GS special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement

to a non-supervisory or non-team leader position.

B. Waivers to Title 5 CFR

Part 300, sections 300.601 through 605: Time-in-Grade restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.

Part 308, sections 308.101 through 308.103: Volunteer service. Waived to allow for a Voluntary Emeritus Corps in addition to student volunteers.

Part 315, sections 315.801(a), 315.801(b)(1), 315.801(c), 315.801(e) and 315.802(a) and (b)(1): Probationary period and length of probationary period. Waived to the extent necessary to allow for up to a three-year probationary period and to exclude from the definition of employee, except for those with veterans’ preference, those serving a probationary period under an initial appointment.

Part 315, section 315.901: Statutory requirement. Waived to the extent necessary to replace “grade” with “pay band.”

Part 316, section 316.301: Purpose and duration. Waived to the extent necessary to allow for term appointments for more than 4 years.

Part 316, section 316.303: Tenure of term employees. Waived to the extent necessary to allow term employees to acquire competitive status.

Part 332, section 332.404: Order of selection from certificates. Waived to the extent necessary to eliminate the requirement for selection using the “rule of three.” *Part 335, section 335.103:* Agency promotion programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures.

Part 337, section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligibles.

Part 351.402(b): Competitive area. Waived to the extent necessary to allow separate competitive areas for demonstration and non-demonstration project employees.

Part 351.403: Competitive level. Waived to the extent necessary to replace “grade” with “pay band.”

Part 351, section 351.504: Credit for performance. Waived as necessary to revise the method for adding years of service based on performance.

Part 351, section 351.701: Assignment involving displacement. Waived to the extent that bump and retreat rights are limited to one pay band with the exception of 30 percent preference eligibles who are limited to two bands

(or equivalent of five grades), and to limit the assignment rights of employees with an unacceptable current rating of record to a position held by another employee with an unacceptable rating of record.

Part 410, section 410.309: Agreements to continue in service. Waived to the extent necessary to allow the NSRDEC Director to determine requirements related to continued service agreements.

Part 430, subpart B: Performance Appraisal for GS, Prevailing Rate, and Certain Other Employees. Waived to the extent necessary to be consistent with the demonstration project’s pay-for-performance system.

Part 432, Performance based reduction in grade and removal actions: Modified to the extent that an employee may be removed, reduced in pay band level with a reduction in pay, reduced in pay without a reduction in pay band level and reduced in pay band level without a reduction in pay based on unacceptable performance. Also, modified to delete reference to critical element. For employees who are reduced in pay band level without a reduction in pay, sections 432.105 and 432.106(a) do not apply.

Part 432, section 432.102: Coverage. Waived to the extent that the term “grade level” is replaced with “pay band.”

Part 432, section 432.104: Addressing unacceptable performance. References to “critical elements” are deleted as all elements are critical and adding that the employee may be “reduced in pay band level, or pay, or removed” if performance does not improve to an acceptable level during a reasonable opportunity period.

Part 432, section 432.105(a)(2): Proposing and taking action based on unacceptable performance: Waive “If an employee has performed acceptably for 1 year” to allow for “within two years from the beginning of a PIP.”

Part 511, subpart A: General Provisions, and subpart B: Coverage of the GS. Waived to the extent necessary to allow for the demonstration project’s classification and pay banding structure.

Part 511, section 511.601: Applicability of regulations. Classification appeals modified to the extent that white collar positions established under the project plan, although specifically excluded from title 5, are covered by the classification appeal process outlined in this section, as amended below.

Part 511, section 511.603(a): Right to appeal. Waived to the extent necessary to substitute “pay band” for “grade.”

Part 511, section 511.607(b): Non-Appealable Issues. Add to the list of

issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate occupational families and the demonstration project classification criteria.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements.

Part 531, subpart B.: Determining Rate of Basic Pay. Waived to the extent necessary to allow for pay setting and pay for performance under the provisions of the demonstration project.

Part 531, subparts D and E: Within-Grade Increases, and Quality Step Increases. Waived in its entirety.

Part 531, subpart F: Locality-Based Comparability Payments. Waived to the extent necessary to allow (1) demonstration project employees, except employees in Pay Band V of the E&S occupational family, to be treated as GS employees; (2) base rates of pay under the demonstration project to be treated as scheduled annual rates of pay; and (3) employees in Pay Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.

Part 536: Grade and Pay Retention. Waived to the extent necessary to (1) replace “grade” with “pay band;” (2) provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position; (3) allow demonstration project employees to be treated as GS employees; (4) provide that pay retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of “Unacceptable;” (5) provide that an employee on pay retention whose rating of record is “Unacceptable” is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee’s position; (6) ensure that for employees of Pay Band V in the E&S occupational family, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of base pay for GS-15, step 10 (i.e., there is no entitlement to retained rate); and (7) provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement. This waiver applies to ST employees only if they move to a GS-

equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Part 550, sections 550.105 and 550.106: Bi-weekly and annual maximum earnings limitations. Wd to the extent necessary to provide that the GS-15 maximum special rate (if any) for the special rate category to which a project employee belongs is deemed to be the “applicable special rate” in applying the pay cap provisions in 5 U.S.C. 5547.

Part 550, section 550.703: Definitions. Waived to the extent necessary to modify the definition of “reasonable offer” by replacing “two grade or pay levels” with “one band level” and “grade or pay level” with “band level.”

Part 550, section 550.902: Definitions. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Pay Band V of the E&S occupational family.

Part 575, subparts A, B, C, and D: Recruitment Incentives, Relocation Incentives, Retention Incentives and Supervisory differentials. Waived to the extent necessary to allow (1) employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the GS and (2) employees in Pay Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.

Part 591, subpart B: Cost-of-Living Allowance and Post Differential—Non-foreign Areas. Waived to the extent necessary to allow (1) demonstration project employees to be treated as employees under the GS and (2) employees in Band V of the E&S occupational family to be treated as ST employees for the purposes of these provisions.

Part 752, sections 752.101, 752.201, 752.301, and 752.401: Principal statutory requirements and Coverage. Waived to the extent necessary to allow for up to a three-year probationary period and to exclude from the definition of employee, except for those with veterans’ preference, those serving a probationary period under an initial appointment.

Part 752, section 752.401: Coverage. Waived to the extent necessary to replace “grade” with “pay band,” and to provide that a reduction in pay band level is not an adverse action if it results from the employee’s rate of base pay being exceeded by the minimum rate of base pay for his/her pay band.

Part 752, section 752.401(a)(4): Coverage. Waived to the extent necessary to provide that adverse action provisions do not apply to (1)

conversions from GS special rates to demonstration project pay, as long as total pay is not reduced and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment upon voluntary movement to a non-supervisory or non-team leader position) or decreases in the amount of a supervisory or team leader pay adjustment based on the annual review.

Appendix A: NSRDEC Employees by Duty Location (Totals Exclude SES, ST, DCIPS, and FWS Employees)

The servicing personnel office for all employees is the Natick CPAC, Northeast Region, CHRA. Servicing Personnel Offices = 1.

Duty Location	NSRDEC Employees
Natick, MA	694
Arlington, VA	1
Cambridge, MA	1
Fort Belvoir, VA	1
Fort Benning, GA	2
Fort Bragg, NC	1
Fort Lee, VA	1
Fort Leonard Wood, MO	1
Fort Polk, LA	1
Haymarket, VA	1
London, England	1
Lowell, MA	2
North Dartmouth, MA	1
Picatinny, NJ	1
Stafford, VA	1
Tampa, FL	1
Tokyo, Japan	1
Total All Employees	712

Appendix B: Occupational Series by Occupational Family

I. Engineering & Science

- 0062 Clothing Design Series
- 0180 Psychology Series
- 0190 General Anthropology Series
- 0401 General Natural Resources Management and Biological Sciences Series
- 0403 Microbiology Series
- 0413 Physiology Series
- 0630 Dietician and Nutritionist Series
- 0801 General Engineering Series
- 0803 Safety Engineering Series
- 0806 Materials Engineering Series
- 0810 Civil Engineering Series
- 0830 Mechanical Engineering Series
- 0850 Electrical Engineering Series
- 0854 Computer Engineering Series
- 0855 Electronics Engineering Series
- 0861 Aerospace Engineering Series
- 0893 Chemical Engineering Series
- 0896 Industrial Engineering Series
- 1301 General Physical Science Series
- 1310 Physics Series
- 1320 Chemistry Series
- 1382 Food Technology Series
- 1384 Textile Technology Series
- 1515 Operations Research Series
- 1520 Mathematics Series
- 1530 Statistics Series
- 1550 Computer Science Series

II. Business/Technical

- 0201 Human Resources Management Series
- 0301 Miscellaneous Administration and Program Series
- 0340 Program Management Series
- 0343 Management and Program Analysis Series
- 0346 Logistics Management Series
- 0501 Financial Administration and Program Series
- 0510 Accounting Series
- 0560 Budget Analysis Series
- 0802 Engineering Technician Series
- 0856 Electronics Technician Series
- 0905 General Attorney Series
- 0950 Paralegal Specialist Series
- 1001 General Arts and Information Series
- 1060 Photography Series
- 1071 Audiovisual Production Series
- 1082 Writing and Editing Series
- 1083 Technical Writing and Editing Series
- 1084 Visual Information Series
- 1101 General Business and Industry Series
- 1102 Contracting Series
- 1150 Industrial Specialist Series
- 1222 Patent Attorney
- 1311 Physical Science Technician Series
- 1410 Librarian Series
- 1670 Equipment Services Series
- 2210 Information Technology Management Series

III. General Support

- 0181 Psychology Aid and Technician Series
- 0203 Human Resources Assistant Series
- 0303 Miscellaneous Clerk and Assistant Series
- 0318 Secretary Series
- 0326 Office Automation Clerical and Assistance Series
- 0344 Management Clerical and Assistance Series
- 0503 Financial Clerical and Technician Series
- 0525 Accounting Technician Series
- 0561 Budget Clerical and Assistance Series
- 0986 Legal Assistance Series
- 1087 Editorial Assistance Series
- 1411 Library Technician Series
- 2005 Supply Clerical and Technician Series

Appendix C: Performance Elements

Each performance element is assigned a minimum weight. The total weight of all elements in a performance plan must equal 100. The supervisor assigns each element a weight represented as a percentage of the 100

in accordance with individual duties/responsibilities objectives and the organization's mission and goals. All employees will be rated against the first four performance elements listed below. Those employees whose duties require team leader responsibilities will be rated on element 5. All managers/supervisors will be rated on element 6.

1. Technical Competence

The extent to which an employee demonstrates: The technical knowledge, skills, abilities and initiative to: Produce the quality and quantity of work as defined in individual performance objectives and assigned tasks; innovation and improvement in addressing technical challenges, sound decisions and recommendations that get the desired results; the ability to solve technical problems; initiative to maintain/increase their technical skills through professional growth, training and/or developmental/special assignments. Minimum Weight: 15%.

2. Interpersonal Skills

The employee's demonstrated ability to: Provide or exchange ideas and information; listen effectively so that resultant actions show complete comprehension; coordinate actions to include and inform appropriate personnel of decisions and actions; be an effective team player; be considerate of differing viewpoints, exhibit willingness to compromise on areas of difference for win-win solutions; exercise tact and diplomacy; maintain effective relationships both within and external to the organization; readily give assistance and show appropriate respect and courtesy. Minimum Weight: 10%.

3. Management of Time and Resources

The extent to which an employee demonstrates ability to: Meet schedules/milestones, prioritize/balance tasks, utilize and, where appropriate, properly control available resources (to include for supervisors: Allocates/monitors resources and equitably distributes work to subordinates appropriately); execute contract management responsibilities; respond to changing requirements and re-direction; create/implement new ideas to improve work efficiencies. Minimum Weight: 15%.

4. Customer Satisfaction

The extent to which an employee: Achieves customer and mission goals/

objectives; provides acceptable solutions/ideas in response to customer needs; understands and manages customers' expectations, constraints and sensitivities; demonstrates customer care through facilitating, responsive, courteous and reliable actions; promotes relationships of trust and respect; markets to potential customers/develops new customers and programs within the scope of job responsibility. Minimum Weight: 10%.

5. Team/Project Leadership

The extent to which a team/project leader: Ensures that the organization's/project's strategic plan, mission, vision and values are communicated into the team/project plans, products and services; provides guidance/direction to organization/project personnel; leads the team to achieve project objectives; coordinates/balances workload among team/project personnel; informs the supervisor of team/project/individual work accomplishments, problems, and training needs; resolves simple, informal complaints, informs supervisor of performance management issues/problems. (Mandatory for non-supervisory team leaders, optional for project leaders and program managers.) Minimum Weight: 15%.

6. Supervision and EEO

The extent to which a supervisor: Leads, manages, plans, communicates and assures implementation of strategic/operational goals and objectives of the organization; develops individual performance objectives, evaluates performance, evaluates performance by defining expectations, gives feedback and provides recognition; initiates personnel actions to recruit, select, promote and/or reassign employees in a timely manner; develops subordinates using positive motivational techniques on job expectations, training needs, and attainment of career goals; recognizes and rewards quality performance, takes corrective action to resolve performance or conduct issues; applies EEO and Merit Principles, and creates a positive, safe and challenging work environment; ensures appropriate internal controls to prevent fraud, waste or abuse and safeguards assigned property/resources. (Mandatory for managers/supervisors). Minimum Weight: 25%.

Appendix D: Intervention Model

Intervention	Expected effects	Measures	Data sources
1. Compensation: a. Pay banding	Increased organizational flexibility Reduced administrative workload, paper work reduction. Advanced in-hire rates	Perceived flexibility	Attitude survey.
	Slower pay progression at entry levels. Increased pay potential	Actual/perceived time savings	Personnel office data, PME results, attitude survey
		Starting salaries of banded v. non-banded employees.	Workforce data.
		Progression of new hires over time by band, career path.	Workforce data.
		Mean salaries by band, group, demographics.	Workforce data.
	Increased satisfaction with advancement.	Total payroll costs	Personnel office data.
	Increased pay satisfaction	Employee perceptions of advancement.	Attitude survey.
		Pay satisfaction, internal/external equity.	Attitude survey.

Intervention	Expected effects	Measures	Data sources
	Improved recruitment	Offer/acceptance ratios; Percent declinations.	Personnel office data.
b. Conversion buy-in	Employee acceptance	Employee perceptions of equity, fairness.	Attitude survey.
c. Pay differentials/	Increased incentive to accept supervisory/team leader positions.	Cost as a percent of payroll	Workforce data.
2. Performance Management:		Perceived motivational power	Attitude survey.
a. Cash awards/	Reward/motivate performance	Perceived motivational power	Attitude survey.
a. Cash awards/	bonuses	To support fair and appropriate distribution of awards.	Workforce data.
b. Performance based pay progression.	Increased pay-performance link ...	Amount and number of awards by group, demographics.	Workforce data.
	Improved performance feedback ..	Perceived fairness of awards	Attitude survey.
		Satisfaction with monetary awards	Attitude survey.
		Perceived pay-performance link ...	Attitude survey.
		Perceived fairness of ratings	Attitude survey.
		Satisfaction with ratings	Attitude survey.
		Employee trust in supervisors	Attitude survey.
		Adequacy of performance feedback.	Attitude survey.
	Decreased turnover of high performers/Increased turnover of low performers.	Turnover by performance rating scores.	Workforce data.
	Differential pay progression of high/low performers.	Pay progression by performance scores, career path.	Workforce data.
	Alignment of organizational and individual performance objectives and results.	Linkage of performance objectives to strategic plans/goals.	Performance objectives, strategic plans.
	Increased employee involvement in performance planning and assessment.	Perceived involvement	Attitude survey/focus groups.
c. New appraisal process	Reduced administrative burden	Performance management	Personnel regulations.
d. Performance development	Improved communication	Employee and supervisor perceptions of revised procedures.	Attitude survey.
	Better communication of performance expectations.	Perceived fairness of process	Focus groups.
		Feedback and coaching procedures used.	Focus groups.
		Time, funds spent on training by demographics.	Personnel office data.
	Improved satisfaction and quality of workforce.	Perceived workforce quality	Training records.
3. "White Collar" Classification:			Attitude survey.
a. Improved classification systems with generic standards.	Reduction in amount of time and paperwork spent on classification.	Time spent on classification procedures.	Personnel office data.
		Reduction of paperwork/number of personnel actions (classification/promotion).	Personnel office data.
b. Classification authority delegated to managers.	Ease of use	Managers' perceptions of time savings, ease of use.	Attitude survey.
	Increased supervisory authority/accountability.	Perceived authority	Attitude survey.
	Decreased conflict between management and personnel staff.	Number of classification disputes/appeals pre/post.	Personnel records.
		Management satisfaction with service provided by personnel office.	Attitude survey.
c. Dual career ladder	No negative impact on internal pay equity.	Internal pay equity	Attitude survey.
	Increased flexibility to assign employees.	Assignment flexibility	Focus groups, surveys.
	Improved internal mobility	Perceived internal mobility	Attitude survey.
	Increased pay equity	Perceived pay equity	Attitude survey.
	Flatter organization	Supervisory/non-supervisory ratios.	Workforce data.
	Improved quality of supervisory staff.	Employee perceptions of quality or supervisory.	Attitude survey.
4. Modified RIF:			Attitude survey.
	Minimize loss of high performing employees with needed skills.	Separated employees by demographics, performance scores.	Workforce data.
			Attitude survey/focus group.

Intervention	Expected effects	Measures	Data sources
	Contain cost and disruption	Satisfaction with RIF Process Cost comparison of traditional vs. Modified RIF. Time to conduct RIF-personnel office data. Number of Appeals/reinstatements.	Attitude survey/focus group. Personnel office/budget data. Personnel office data. Personnel office data.
5. Hiring Authority: a. Delegated Examining	Improved ease and timeliness of hiring process. Improved recruitment of employees in shortage categories.	Perceived flexibility in authority to hire. Offer/accept ratios	Attitude survey. Personnel office data. Personnel office data. Personnel office data. Personnel office data.
b. Term Appointment Authority	Reduced administrative workload/paperwork reduction. Increased capability to expand and contract workforce.	Percent declinations Timeliness of job offers GPAs of new hires, educational levels. Actual/perceived skills	Attitude survey. Workforce data.
c. Flexible Probationary Period	Expanded employee assessment	Number/percentage of conversions from modified term to permanent appointments. Average conversion period to permanent status. Number/percentage of employees completing probationary period. Number of separations during probationary period.	Personnel office data. Workforce data. Personnel office data. Workforce data. Personnel office data. Workforce data. Personnel office data.
6. Expanded Development Opportunities: a. Sabbaticals	Expanded range of professional growth and development. Application of enhanced knowledge and skills to work product.	Number and type of opportunities taken. Employee and supervisor perceptions.	Workforce data. Attitude survey.
b. Critical Skills Training	Improved organizational effectiveness.	Number and type of training Placement of employees, skills imbalances corrected. Employee and supervisor perceptions. Application of knowledge gained from training.	Personnel office data. Personnel office data. Attitude survey. Attitude survey/focus group.
7. Combination Of All Interventions: All	Improved organizational effectiveness. Improved management of workforce. Improved planning Improved cross functional coordination. Increased product success Cost of innovation	Combination of personnel measures. Employee/Management job satisfaction (intrinsic/extrinsic). Planning procedures Perceived effectiveness of planning procedures. Actual/perceived coordination Customer satisfaction Project training/development costs (staff salaries, contract cost, training hours per employee).	All data sources. Attitude survey. Strategic planning documents. Attitude survey. Organizational charts. Customer satisfaction surveys. Demo project office records Contract documents.
8. Context: Regionalization	Reduced servicing ratios/costs No negative impact on service quality.	HR servicing ratios Average cost per employee served. Service quality, timeliness	Personnel office data, workforce data. Personnel office data, workforce data. Attitude survey/focus groups.

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