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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234, 253, 259, and 399

[Docket No. DOT–OST–2007–0022]

RIN No. 2105–AD72

Enhancing Airline Passenger Protections

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation is issuing a final rule to enhance airline passenger protections in the following ways: By requiring air carriers to adopt contingency plans for lengthy tarmac delays and to publish those plans on their Web sites; by requiring air carriers to respond to consumer problems; by deeming continued delays on a flight that is chronically late to be unfair and deceptive in violation of 49 U.S.C. 41712; by requiring air carriers to publish information on flight delays on their Web sites; and by requiring air carriers to adopt customer service plans, to publish those plans on their Web sites, and audit their own compliance with their plans. The Department took this action on its own initiative in response to the many instances when passengers have been subject to delays on the airport tarmac for lengthy periods and also in response to the high incidence of flight delays and other consumer problems.

DATES: This rule is effective April 29, 2010.

FOR FURTHER INFORMATION CONTACT: Daeleen Chesley or Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), *Daeleen.Chesley@dot.gov* or *Blane.Workie@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2007, the Department of Transportation (DOT or Department) issued an Advance Notice of Proposed Rulemaking (ANPRM) in Docket DOT–OST–2007–22 entitled ''Enhancing Airline Passenger Protections.'' This ANPRM was published in the **Federal Register** five days later. *See* ''Department of Transportation, Office of the Secretary, 14 CFR Parts 234, 253, 259, and 399 [Docket No. DOT–OST–2007–0022], RIN No. 2105–AD72, 72 FR 65233 *et seq.* (November 20, 2007). We announced in the ANPRM that we were considering adopting or amending rules to address several concerns, including, among others, the problems consumers face when aircraft sit for hours on the airport tarmac. We observed that, beginning in December of 2006 and continuing through the early spring of 2007, weather problems had kept more than a few aircraft sitting for long hours on the tarmac, causing the passengers undue discomfort and inconvenience. We observed further that passengers were also being harmed by the high incidence of less extreme flight delays. We acknowledged that the industry and interested observers have attributed both the lengthy tarmac waits and many of the other flight delays to a number of factors besides weather, such as capacity and operational constraints, for example. We also noted that some of these issues are being addressed by the Federal Aviation Administration (FAA) in other contexts.

Citing our authority and responsibility under 49 U.S.C. 41712, in concert with 49 U.S.C. 40101(a)(4), 40101(a)(9) and 41702, to protect consumers from unfair or deceptive practices and to ensure safe and adequate service in air transportation, we called for comment on seven tentative proposals intended to ameliorate difficulties that passengers experience without creating undue burdens for the carriers. The measures on which we sought comment in the ANPRM covered the following subjects: Contingency plans for lengthy tarmac delays; carriers' responses to consumer problems; chronically delayed flights; delay data on Web sites; complaint data on Web sites; reporting of on-time performance of international flights; and customer service plans.

We received approximately 200 comments in response to the ANPRM. Of these, 13 came from members of the industry—*i.e.,* air carriers, air carrier associations, and other industry trade associations—and the rest came from consumers, consumer associations, and two U.S. Senators. In general, consumers and consumer associations maintained that the Department's proposals did not go far enough, while carriers and carrier associations attributed the current problems mostly to factors beyond their control such as weather and the air traffic control system and tended to characterize the proposals as unnecessary and unduly burdensome. The travel agency associations generally expressed support for consumer protections.

On December 8, 2008, after reviewing and considering the comments on the ANPRM, we issued a Notice of Proposed Rulemaking (NPRM). *See* 73 FR 74586 (December 8, 2008). The NPRM covered the following subjects: Contingency plans for lengthy tarmac delays; carriers' responses to consumer problems; chronically delayed flights; reporting certain flight delay information; and customer service plans. It did not cover complaint data on Web sites or reporting of on-time performance for international flights, both of which were raised in the ANPRM. We decided not to propose to require carriers to publish complaint data on their Web sites because we believe the data would be of little or no value to consumers since consumers already have access to a tabulation of airline complaints filed by passengers with the Department in the Air Travel Consumer Report. These complaints are a reliable indicator of the types of complaints about air travel filed by passengers with airlines. We also decided not to propose to require carriers to report on-time performance of international flights for a number of reasons, including concerns that a reporting requirement could make carriers less inclined to hold flights for inbound connections resulting in hardships for passengers in city-pairs with infrequent service.

The Department received 21 comments in response to the NPRM. Of these, 10 comments were from members

of the industry and the rest came from consumers and consumer associations. On the consumer side, eight individuals filed comments as did three consumer advocacy organizations: Flyersrights.org (formerly the ''Coalition for an Airline Passengers Bill of Rights'' or CAPBOR), the Aviation Consumer Action Project (ACAP) and the Federation of State Public Interest Research Groups (U.S. PIRG). Of the industry commenters, two carriers (US Airways and ExpressJet Airways), and two airport authorities (Dallas-Fort Worth International Airport and The City of Atlanta Department of Aviation) filed comments. Three industry associations filed comments: The National Business Travel Association (NBTA), the Air Transport Association of America (ATA), and the Regional Airline Association (RAA). Two travel agency associations, the American Society of Travel Agents (ASTA) and the Interactive Travel Services Association (ITSA), also filed comments, as did the Airports Council International, North America (ACI–NA).

In general, the consumers and consumer associations maintain that the Department's proposals do not go far enough and contend that additional regulatory measures are needed to better protect consumers. One of the consumer organizations also expressed disappointment that the Department eliminated two of the proposals, while industry commenters generally supported that decision. Overall, carriers and carrier associations continue to characterize some of the proposals as unnecessary and unduly burdensome. ATA also expressed a number of concerns with the Department's preliminary regulatory evaluation and suggests changes are best made by addressing weather-related and air traffic control related issues. The airport authorities support carriers having a contingency plan and coordination of the plans at medium and large hub airports, while the travel agency associations expressed support for consumer protections, with one noting a concern with ''unfunded mandates'' on travel agents to address problems for which they are not the cause. The commenters' positions that are germane to the specific issues raised in the NPRM are set forth below. The Department plans to seek comment on ways to further enhance protections afforded airline passengers in a forthcoming notice of proposed rulemaking by addressing the following areas: (1) Review and approval of contingency plans for lengthy tarmac delays; (2) reporting of tarmac delay data; (3) standards for customer service plans; (4) notification to passengers of flight status changes; (5) inflation adjustment for denied boarding compensation; (6) alternative transportation for passengers on canceled flights; (7) opt-out provisions where certain services are pre-selected for consumers at additional costs (*e.g.,* travel insurance, seat selection); (8) contract of carriage venue designation provisions; (9) baggage fees disclosure; (10) full fare advertising; and (11) responses to complaints about charter service.

Comments and Responses

Tarmac Delay Contingency Plans

1. Covered Entities

The NPRM: Under the proposed rule, a certificated or commuter air carrier [1] that operates domestic scheduled passenger service or public charter service using any aircraft with 30 or more passenger seats [2] would be required to develop and implement a contingency plan for lengthy tarmac delays. As proposed, it would apply to all of a covered U.S. carrier's flights, both domestic and international, including those involving aircraft with fewer than 30 seats if a carrier operates any aircraft with 30 or more passenger seats. We asked for comments on whether the Department should limit this section's applicability to carriers that operate large aircraft—*i.e.,* aircraft originally designed to have a maximum passenger capacity of more than 60 seats—and we asked proponents and opponents of this alternative to provide arguments and evidence in support of their positions.

Comments: We did not receive any comments from individual consumers or consumer groups regarding which carriers should be required to develop and implement contingency plans for lengthy tarmac delays. We did receive comments on this point from carriers, carrier associations, and airports.

RAA takes the position that, if the rule is adopted, it should apply only to those carriers that hold out services to the public, ticket passengers, offer reservation services and control decisions regarding delays and food and beverage service. RAA states that over 90 percent of passengers flying on regional aircraft travel on flights that are ticketed and handled by mainline carriers who schedule the flights, and that most regional carriers have no direct interaction with consumers in this regard. RAA also notes that these passengers' contracts of carriage are with the major carrier, not the regional airline, and that a regional carrier follows the contingency plan of its mainline airline partner. RAA explains that regional airlines that operate under agreements with more than one network partner must in some cases comply with different contingency plans at the same airport. According to RAA, at times multiple network carrier contingency plans could be in effect and even in conflict on the same flight in instances where a regional airline operates a single flight for several different network carriers. As such, RAA contends that requiring a regional carrier to have its own plan would increase the conflicts and inconsistencies that could arise as it is not clear if the regional carrier's own contingency plan would supersede the contracts of the carriers who marketed and sold the ticket to the consumer. RAA further asserts that as proposed the rule unfairly targets regional carriers, which do not make scheduling and/or delay decisions and are most often the first carriers to be subjected to FAA ground stops.

ExpressJet Airlines agrees with the comments submitted by RAA. It emphasizes that regional carriers operate under code-share agreements with mainline carriers and that those contracts dictate scheduling, delay, and cancellation decisions. It asserts that, as a result of a regional carrier having limited control over these decisions, the rule would impose unfair burdens on regional carriers. ExpressJet comments that, should the Department require carriers to have a contingency plan, all Part 121 and 135 carriers should have to abide by the regulations, not just carriers which operate aircraft having 30 or 60 seats or more, since, it is the carrier's opinion, the rule as proposed discriminates against the larger of the small regional carriers.

ACI–NA opposes limiting the application of the rule to air carriers that

[1] A certificated air carrier is a U.S. direct air carrier that holds a certificate issued under 49 U.S.C. 41102 to operate passenger and/or cargo and mail service. Air taxi operators and commuter air carriers operating under 14 CFR Part 298 are exempted from the certification requirements of 49 U.S.C. 41102. Some carriers that would otherwise be eligible for the air taxi or commuter exemption have opted to be certificated. An air taxi operator is an air carrier that transports passengers or property under the authority of Part 298 and is not a commuter air carrier as defined in that rule. A commuter air carrier is an air taxi operator that carries passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule, using small aircraft—*i.e.,* aircraft originally designed with the capacity for up to 60 passenger seats. *See* 14 CFR 298.2.

[2] We inadvertently stated ''aircraft with a design capacity of more than 30 seats'' in several sections of the NPRM. However, our intention had been to state ''aircraft with a design capacity of 30 or more seats.''

operate aircraft with more than 60 seats and notes that the rule should extend to regional airlines as they serve the vast majority of airports. ASTA also opposes limiting the application of the rule to carriers that operate large aircraft and asserts that the proposal should be extended to all carriers, pointing out that the regional airlines carried 160 million passengers in 2007.

US Airways suggests that airports, as well as other service providers, should be held equally accountable as a fair way to share the burden among regulated entities, and that international operations should not be part of the proposed requirements. ATA, which strongly opposes any requirement for hard time limits for returning to a gate and/or deplaning passengers remotely, specifically requests that international flights be excluded from any hard time limits, (1) due to the difficulty associated with accommodating passengers if flights are cancelled, (2) because those flights are better equipped to keep passengers comfortable for longer periods of time, and (3) because the time, costs, and planning associated with those flights is much higher.

DOT Response: After fully considering the comments received, the Department maintains that it is reasonable to apply the requirement to any certificated or commuter U.S. air carrier that operates passenger service using any aircraft with a design capacity of 30 or more passenger seats. In determining to do so, we note that, according to RAA's own statistics, regional airlines now carry one out of every five domestic air travelers in the United States. Moreover, most regional flights are operated by regional carriers affiliated with a major carrier via a code-share agreement, a fee-for-service arrangement, and/or an equity stake in the regional carrier. DOT statistics also demonstrate a substantial number of passengers are carried on flights operated by aircraft with 30 through 60 seats. According to data from the Department's Bureau of Transportation Statistics (BTS), a total of 668,476,000 domestic passengers were transported in 2008, 96,310,000 of which were on flights using aircraft with 30 through 60 seats. The large number of passengers carried on such aircraft accompanied by the increase in the ''branding'' of those operations with the codes of major carriers has blurred the distinction between small-aircraft and large-aircraft service in the minds of many passengers. As such, it seems appropriate to extend the rule to these operations in order to better protect the majority of consumers.

In reaching this decision, we have concluded that we cannot agree with RAA's reasoning that regional carriers should be treated differently than their mainline code-share partners and not be responsible to the passengers they transport on the vast majority of their operations because of their relationships to those partners. We recognize that the larger carrier's personnel may provide pre-flight services and make most of the decisions from an operational standpoint on code-shared flights with a regional carrier. As we pointed out in the NPRM, however, even if the determination to cancel a flight or keep it on the tarmac is made by the mainline carrier or results from action by the FAA, it is the carrier operating the flight that has direct contact with the passengers on the aircraft during a tarmac delay and that remains directly responsible for serving them. Accordingly, we have decided to apply the rule to both carriers in a code-share arrangement. We expect that the mainline carriers and their regional code-share partners will collaborate on their contingency plans to come up with standards that suit both parties. When multiple network carrier contingency plans are effective on a single flight operated by a regional carrier, it would likely not be practical for the regional carrier to apply different standards to individuals on the same flight who bought their tickets from different mainline partners. Instead, we expect the regional carrier to choose to use the contingency plan that is most beneficial to all the passengers on that flight.

With regard to the international flights of U.S. carriers, while we understand the concerns about applying hard time limits on deplaning passengers on international flights because of the different environment in which those flights operate, we believe that it is still important to ensure that passengers on international flights are also afforded protection from unreasonably lengthy tarmac delays. Therefore, we have decided to apply the requirement to develop and implement a contingency plan for lengthy tarmac delays to both the domestic and international flights of each U.S. carrier operating any aircraft with 30 or more passenger seats. This requirement applies to U.S. carriers even if they operate only international scheduled or charter service.

However, we have arrived at more flexible requirements with regard to the content of the contingency plans for a U.S. carrier's international flight (*i.e.,* flexibility to determine the time limit to deplane passengers on tarmac) as compared to its domestic flights, recognizing that international flights operate less frequently than most domestic flights, potentially resulting in much greater harm to consumers if carriers cancel these international flights. Although carriers are free to establish their own tarmac delay time limits for international flights, and even to have different limits for different specified situations, these limits must be included in each carrier's contingency plan—they are not to be ad hoc decisions made during the course of a flight delay.

An international flight for purposes of this requirement is a nonstop flight segment that takes off in the United States and lands in another country, or vice-versa, exclusive of non-traffic technical stops. For example, if a U.S. carrier operates a direct flight Chicago-New York-Frankfurt, with some Chicago-originating passengers destined for New York and others destined for Frankfurt, and the aircraft experiences a tarmac delay in Chicago, then we would consider the tarmac delay to be on a domestic flight. This is because Chicago-New York is a domestic flight segment even though the final destination of the flight is Frankfurt, Germany. If, on the other hand, the aircraft only stops for refueling or a crew change in New York and the airline carries no Chicago-New York traffic, then we would consider the tarmac delay in Chicago to be a tarmac delay on an international flight.

We have decided against applying this requirement to carriers that operate using only aircraft with fewer than 30 seats because these entities carry a very small percentage of passenger traffic and we are not aware of incidents of lengthy tarmac delays involving carriers that only operate aircraft of this size (*i.e.,* carriers that exclusively operate aircraft with a design capacity of 29 passenger seats or less). We note that the requirement to develop and implement contingency plans applies to carriers who have any aircraft with 30 or more seats, meaning that it would apply to all aircraft of those carriers, including those with fewer than 30 seats.

2. Content of Contingency Plan

The NPRM: Under the NPRM, each plan would have been required to include at least the following: The maximum tarmac delay that the carrier would permit; the amount of time on the tarmac that would trigger the plan's terms; an assurance of adequate food, water, lavatory facilities, and medical attention, if needed, while the aircraft remains on the tarmac; an assurance of sufficient resources to implement the plan; and an assurance that the plan has

been coordinated with all of the airport authorities at medium and large hub U.S. airports served by the carrier. We specifically asked for comment on whether the Department should set a uniform standard for the time interval that would trigger the terms of carriers' contingency plans and a time interval after which carriers would be required to allow passengers to deplane. If establishing a time interval was recommended, we asked commenters to propose specific amounts of time and explain why they believe those time intervals to be appropriate.

Comments: Consumer associations and individuals generally support a stronger proposal than that proposed by the Department. For example, Flyersrights.org continues to maintain that the Department should establish minimum standards for contingency plans through regulation and should also review and approve the plans rather than allow each carrier the leeway to set what it fears might be overly lax standards. Specifically, the organization requests that the Department set a ''three hours plus'' time limit for an aircraft to return to the gate and deplane passengers, if the pilot determines this can be accomplished safely. It also requests that in any rule proposed or adopted, we refer to ''potable water'' and ''operable lavatories'' rather than simply ''water'' and ''lavatory facilities'' respectively.

Other consumer associations concur with Flyersrights.org. ACAP asserts that this proposal is ''an unlawful delegation of DOT authority and responsibility to regulate airlines in the public interest by delegating this function to the airlines themselves'' and that the proposal will lead to a multiplicity of unenforceable ''standards'' and ''plans'' that will offer fewer passenger protections. ACAP also suggests three hours as the maximum interval before passengers are allowed to deplane and, without being specific, suggests payments should be made to passengers who are confined for longer periods of time.

Individual commenters make similar points. For example, they tend to think the Department should set minimum standards, particularly regarding the amount of time that triggers the provisions of the contingency plans and the maximum amount of time an aircraft can remain on the tarmac before the carrier must return the aircraft to a gate and allow passengers to deplane. Some comments also suggested specific times to trigger the terms of a carrier's contingency plan and/or for passengers to be allowed to deplane. For example, one commenter suggested 1.5 hours and three hours, respectively.

The industry commenters expressed a different point of view. NBTA stated that it does not support DOT requiring carriers to develop contingency plans and specifically the content of those plans. It does support the recommendations issued by the Tarmac Delay Task Force, but does not believe plans should be required by regulation; rather, NBTA contends that airlines, under marketplace constraints, are more likely to resolve tarmac delay issues in a manner most beneficial to the largest number of passengers.

ATA agrees in principle that carriers should have contingency plans covering lengthy tarmac delays on domestic flights, provided that each air carrier is permitted to decide on the details of its own plan based on its own unique facilities, equipment, operating procedures, and network. ATA reports that carriers already have both general contingency plans and airport-specific contingency plans that reflect the diverse facilities, equipment and network of each carrier. ATA notes that the Tarmac Delay Task Force recommends coordination among air carriers, airports, and the appropriate government agencies, and supports coordinating contingency plans with airports, but notes that a carrier cannot force an airport to cooperate in that coordination. As such, ATA thinks this part of the proposed rule should not be adopted, but if it is, suggests that some changes are necessary to ensure, for example, that a carrier is not held responsible for the airport's failure to provide services within its control or for an airport's failure to coordinate with a carrier in executing a plan.

ATA continues to oppose any requirement for a set interval of time after which an aircraft must be returned to the gate, particularly on international flights, claiming that such a requirement would do passengers more harm than good and equate to artificial scheduling restrictions. Among the potential negative consequences ATA lists are potential conflicts with government agency directives governing safety or security that could require that passengers be kept on aircraft, and increased flight cancellations in any one place that could affect passengers further down the line. In addition, ATA suggests that, if the proposal is adopted, the Department should include an exception that exempts carriers from the rule if returning to the gate would conflict with orders of the FAA or other agencies (*e.g.,* Customs & Border Protection), and notes, among other things, that in weather delay situations taxiway configurations are such that returning to the gate may not even be possible.

In general, RAA maintains that the rule requiring contingency plans should not be adopted because, it contends, the rule will not solve the current delay problem and the Department should instead focus on initiatives that increase the efficiency of the Air Traffic Control (ATC) system. Regarding the content of contingency plans, similar to ATA, RAA maintains that the Department should permit airlines to adopt their own plans that allow flexibility and reflect their own circumstances, capabilities, and passenger service standards. RAA also asserts that the proposed requirement of providing ''adequate'' food and water is unreasonable and impracticable for regional airlines because most regional airlines have no catering facilities and do not have storage room on smaller aircraft for contingency supplies. RAA further states that regional airlines serve small community airports that do not have vendors or facilities from which the airlines could readily obtain supplies of food and water.

Similar to comments of the airline associations, US Airways believes that a rule will not reduce tarmac delays, as those delays occur due to circumstances outside a carrier's control (*i.e.,* weather, ATC system, *etc.*), and states that it already has a plan in place that addresses how to handle a tarmac delay of longer than one hour. US Airways states that a carrier should not be mandated to return to the gate at a fixed time, rather this decision should be left to carrier expertise, and that forcing an aircraft to return to the gate at a fixed time may lead to more flight cancellations. Additionally, the carrier notes that it has improved its own performance based on pressure from market forces. ExpressJet Airlines, who also asserts that most delays are beyond the direct control of carriers, thinks that a DOT rule could have unintended consequences for the consumer, which could lead to increased flight cancellations.

Of the airports and airport authorities that commented on this proposal, Dallas-Fort Worth International Airport approves of the elements of the rule that require air carriers to (1) develop and implement contingency plans for lengthy tarmac delays, (2) include in their plan the maximum delay that will trigger the plan's terms in order to provide adequate warning to service providers that may be called upon for support during the event, and (3) ensure that the plan has been coordinated with airport authorities at large and medium hub airports that the carrier serves. It also states that ''coordination of each air

carrier's contingency plans with the airports they serve is an important part of this process to enable shared situational awareness and timely response to lengthy delay events in an effective manner.''

The City of Atlanta, Department of Aviation, supports the guidance as provided by the DOT Tarmac Delay Task Force, and the Department's proposal for carriers to coordinate contingency plans for lengthy tarmac delays with medium and large hub airports. It states that 2 hours is an appropriate time to trigger the terms of a carrier's contingency plan and agrees that passengers should be provided basic services as proposed by the Department. Finally, it states that carriers' plans should provide for communication, coordination, and collaboration among airport operator, airlines, Federal agencies, and other service providers.

ACI–NA supports the proposal, in general. ACI–NA opines that DOT should not impose a maximum time limit for deplaning passengers during lengthy tarmac delays and that airport-specific plans should not be required, in order to give airlines flexibility, but it does support requiring carriers to post information regarding their plans at their ticketing and gate areas. ACI states that DOT should review the plans prior to their implementation and that airlines should coordinate their plans with all airports at which they provide scheduled or charter service, not just medium and large hub airports. ACI also suggests a template be developed that can be used to assist airlines and airports in addressing the appropriate elements for coordination.

As for the travel agency associations, ASTA strongly supports the notion of carriers adopting and complying with contingency plans and believes that the DOT should review the plans to ensure they contain specific promises that are enforceable. ASTA also supports the imposition of a single mandatory deplanement time limit, the three hours provided in the legislation introduced by Senators Boxer and Snowe and Representative Mike Thompson. However, in its initial comments, ASTA took a different position and opposed the Federal government mandating a specific time after which passengers must be deplaned. Rather, it suggested allowing each carrier to adopt its own time limits for each requirement, and requiring carriers to publish their policies in print ads and on their Web sites. ITSA did not comment on this proposal.

DOT Response: We have decided to adopt a final rule along the lines set forth in the NPRM, with one important exception: We are strengthening the protections for consumers from those initially proposed by setting time limits (1) for carriers to provide food and water to passengers; and (2) to deplane passengers when lengthy tarmac delays occur on domestic flights. In adopting this approach, we have carefully considered all the comments in this proceeding and believe that our action strikes the proper balance between permitting carriers the freedom to make marketplace-based decisions while ensuring consumers can count on receiving the protections they deserve in the unlikely event of an extended tarmac delay.

The final rule requires that each plan include, at a minimum, the following: (1) An assurance that, for domestic flights, the air carrier will not permit an aircraft to remain on the tarmac for more than three hours unless the pilot-in-command determines there is a safety-related or security-related impediment to deplaning passengers (*e.g.,kiiii* weather, air traffic control, a directive from an appropriate government agency, *etc.*), or Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations; (2) for international flights that depart from or arrive at a U.S. airport, an assurance that the air carrier will not permit an aircraft to remain on the tarmac for more than a set number of hours, as determined by the carrier in its plan, before allowing passengers to deplane, unless the pilot-in-command determines there is a safety-related or security-related reason precluding the aircraft from doing so, or Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations; (3) for all flights, an assurance that the air carrier will provide adequate food and potable water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security requirements preclude such service; (4) for all flights, an assurance of operable lavatory facilities, as well as adequate medical attention if needed, while the aircraft remains on the tarmac; (5) an assurance of sufficient resources to implement the plan; and (6) an assurance that the plan has been coordinated with airport authorities at all medium and large hub airports that the carrier serves, including medium and large hub diversion airports. Failure to do any of the above would be considered an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712 and subject to enforcement action, which could result in an order to cease and desist as well as the imposition of civil penalties.

There is little, if any dispute that passengers stuck on an aircraft during a lengthy tarmac delay deserve to be provided some type of food, potable water, working lavatories, and, if necessary, medical care. We believe a two-hour time limit is a reasonable maximum time after which carriers should ensure that passengers experiencing a tarmac delay are provided food and potable water. Carriers, of course, are free to establish an earlier time at which they will provide these services. As pointed out by ATA and confirmed in reports to Congress by the Department's Inspector General, most large carriers already have contingency plans providing for such services. As for RAA's assertion that most regional airlines lack the resources to provide adequate food and water during lengthy tarmac delays, it seems to be based on a misconception that extensive supplies are needed. The Department would consider snack foods such as pretzels or granola bars that carriers typically provide on flights to suffice as ''adequate'' food. We have clarified in this rule, as suggested by at least one commenter, that the water required under our rule must be ''potable,'' *i.e.,* drinking water.

We are also persuaded that the Department should require a set time limit, in the case of domestic flights, for the point in time after which carriers would be required to allow passengers to deplane, with exceptions for issues related to safety, or security or other government requirements that may arise. Passengers on flights delayed on the tarmac have a right to know that there is a reasonable limit and that the limit will be enforced by the Department. We conclude that a three-hour time limit is the maximum time after which passengers must be permitted to deplane from domestic flights given the cramped, close conditions on aircraft and the typical scheduled time for these flights. We have not selected a maximum delay time of less than three hours because taxi times of an hour or more are not unusual at certain large airports, such as the New York airports. By holding the airlines to a bright line rule of three-hours after which passengers must be deplaned, the Department has

established a tarmac delay limit that is both reasonable and easier to enforce.

While we agree with consumers and consumer groups that passengers should have protection from remaining on an aircraft on the tarmac for an extended period of time, we agree with ATA and other commenters that operational and safety-related concerns, such as ATC-related concerns or an inability to return to the gate without delaying other aircraft, should be taken into consideration. Thus, we have also included an exception for safety, security, or instances where Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations. We believe this strikes an appropriate balance between allowing air carriers flexibility to address their operational concerns while also providing passengers with a reasonable time after which they can expect to return to the gate and deplane, as well as make alternate travel arrangements, if necessary. Those arrangements could include re-boarding the same aircraft if the carrier decides to continue the same flight to its original destination, in which case a new three-hour period would begin when the aircraft left the gate. The Department views the three hour time limit as the outside limit at which time an aircraft should have returned to the gate or another appropriate disembarkation area in order to deplane passengers. If the carrier has reason to know that a gate or other appropriate means by which to deplane passengers will not be available at the three hour mark, we expect the carrier to make reasonable attempts to deplane passengers earlier.

With regard to deplaning passengers on international flights, we are persuaded by comments that mandating a specific time frame for deplaning passengers on these flights may be harmful to consumers because of the different environment in which those flights operate. Because international flights are of much longer duration on average, it is possible that delays may not have as negative an impact on consumers and their expectations. Also, because international flights tend to operate less frequently than most domestic flights, flight cancellations may result in much greater harm to consumers who are less likely to be accommodated on an alternate flight in a reasonable period of time. As such, while this rule requires U.S. carriers to establish time limits for deplaning passengers who experience lengthy tarmac delays on international operations, we are permitting carriers the flexibility to determine this time limit. This limit will also allow exceptions for consideration of safety, security and instances where Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations. We note that the Department is considering revisiting the issue of whether carriers should set specific time limits to deplane passengers on international flights in a supplemental notice of proposed rulemaking.

Some consumer groups and individuals requested that the Department include in the rule a requirement that the contingency plans be filed with and be reviewed and approved by the Department. Such a requirement is beyond the scope of this rulemaking. Moreover, we are not convinced that this requirement is necessary or the best use of Department aviation consumer protection resources at this time. Carriers are required to adhere to all Department rules, and it would be a departure from Department practice to require carriers to file with it proof that they have done so. The Department and its predecessor in such matters, the Civil Aeronautics Board, have issued numerous other consumer protection rules that detail specific requirements carriers must follow without having carriers file with the government proof that they have or are prepared to comply with the rule. We see some merit in approving carrier contingency plans if the Department were to dictate more detailed requirements regarding their contents and we plan to explore this approach in a future rulemaking. In the meantime, we will review the larger carriers' plans and, randomly, other carriers' plans within a year of the rule's effective date to ensure the plans contain the provisions as required by this rule.

With regard to coordination of plans, because tarmac delays are particularly problematic in situations where flights must be diverted from their intended destination airports, this rule requires carriers to coordinate their plans not only with medium and large hub airports to which they regularly operate, but also with airports that serve as diversion airports for such operations. The Department is not convinced by comments that it should remove the requirement for airlines to coordinate with airports because a carrier cannot force an airport to cooperate in that coordination. It is essential that airlines involve airports in developing their plans to enable them to effectively meet the needs of passengers. As recommended by the Tarmac Delay Task Force, we also urge carriers to include in their coordination efforts appropriate government authorities such as Customs and Border Protection and the Transportation Security Administration, when appropriate.

3. Incorporation of Contingency Plan Into Contract of Carriage

The NPRM: The NPRM proposed that each covered carrier would be required to incorporate its plan in its contract of carriage and make its contract of carriage available on its Web site. We also invited interested persons to comment on the implications of a private right of action based on a carrier's failure to follow the terms of its contingency plan and to address the potential for multiple lawsuits by classes as well as individual plaintiffs and the potential for inconsistent judicial decisions among various jurisdictions. Additionally, we asked commenters to address whether and to what extent requiring the incorporation of contingency plans in carriers' contracts of carriage might weaken existing plans by making carriers more reluctant to be specific and possibly expose themselves to liability.

Comments: Flyersrights.org supports requiring carriers to incorporate their contingency plans into their contracts of carriage in order to provide passengers an avenue for redress for breach of contract. ASTA also strongly supports the notion of carriers incorporating the contingency plans into their contract of carriages in order to enable consumers to more effectively enforce their rights. With regard to the potential for inconsistent judicial decisions if airlines must include their plans in their contracts of carriage, ASTA points out that this means merely that airlines will face the same litigation risks that all businesses face, and notes that the Task Force recommendations can be used as a defense.

According to RAA, regional carriers should not be required to incorporate a contingency plan into their contract of carriage because most regional passengers are subject to the ticketing carrier's contract of carriage. ExpressJet also states that, because a passenger is flying under the contract of carriage of the mainline carrier, a passenger's recourse should be against the mainline carrier, and not the regional carrier.

ATA explains that it shares the Department's goal of enhancing service for airline passengers but disagrees that rules are required to achieve this goal and strongly opposes incorporation of a contingency plan into a contract of carriage. ATA challenges the Department's legal authority to do this

in the aftermath of deregulation. ATA argues that the Department may not substitute a different enforcement process other than the one Congress intended (*i.e.,* there should not be a private right of action for violations of section 41712) and states that such an imposition would subject carriers to the vagaries of law in the fifty States.

DOT Response: The Department disagrees with the arguments of ATA and other carrier commenters that we lack the authority to require incorporation of contingency plans in contracts of carriage and that such incorporation would subject carriers to the risk of inconsistent standards among various jurisdictions. However, the Department has decided that it will not require such incorporation at this time. Instead, the Department strongly encourages carriers to incorporate the terms of their contingency plans in their contracts of carriage, as most major carriers have done voluntarily with respect to their customer service plans. At the same time, the Department will undertake a series of related measures to ensure the dissemination of information regarding each airline's contingency plans. As proposed in the NPRM, the Department requires that each air carrier with a Web site post its entire contract of carriage on its Web site in easily accessible form, including all updates to its contract of carriage. The Department also requires each air carrier with a Web site that chooses not to include their plan in its contract of carriage post the plan itself on its Web site in easily accessible form. Finally, the Department will shortly commence a new rulemaking proceeding addressing possible further enhancements to airline passenger protection in which it may consider, among other things, whether the voluntary incorporation of contingency plan terms urged here has resulted in sufficient protection for air travelers.

The airlines' incorporation of their contingency plans into their contracts of carriage is an important means of providing notice to consumers of their rights, since that information will then be contained in a readily available source. Carriers' contracts of carriage are generally posted online and must, by Department rule, be available at airports. Better informed consumers will further improve the Department's enforcement program as consumers are more likely to know of and report incidents where airlines do not adhere to their plans. Better consumer information will also create added incentive for carriers to adhere to their plans. We believe the incorporation of airline contingency plans in contracts of carriage to be in the public interest.

For these reasons, we strongly encourage carriers to include their contingency plans in their contracts of carriage and are requiring that carriers with a Web site post either their contracts of carriage containing the plans or the plans themselves (if they chose not to include the plans in their contracts of carriage) on their Web sites in easily accessible form. Additionally, to provide carriers with added incentive to incorporate their plans into their contracts of carriage, we will publicize a list of carriers that do and do not so incorporate their plans via regular press releases, the Department's Web site, and other means available to us. We will also be closely monitoring carriers' responses to our efforts in this regard and will not hesitate to revisit our decision here in the airline consumer protection rulemaking that we plan to commence in the near future. Finally, if necessary, we will consider using our authority to condition carrier certificates, as required in the public interest, to ensure that our consumer protection goals are met. *See* 49 U.S.C. 41109.

As noted above, while the Department has decided not to require at this time incorporation of contingency plans in airline contracts of carriage, we disagree with ATA's contentions that we lack the authority to require such incorporation and that the exercise of such authority would risk creating inconsistent standards across jurisdictions. Our broad authority under 49 U.S.C. 41712 to prohibit unfair and deceptive practices, and under 49 U.S.C. 41702 to ensure safe and adequate transportation, clearly encompasses the regulation of contingency plans. We have consistently exercised that authority for decades and will continue to do so. Moreover, while we have chosen not to require the incorporation of contingency plans in airline contracts of carriage at this time, there is nothing new, or unfair to carriers, about airlines being subject, through civil proceedings in State courts, to action for failing to comply with their contracts of carriage for air transportation. To the contrary, carriers have historically been subject to such actions and, indeed, the Department has for years published advice to consumers about pursuing claims against airlines, if necessary, in appropriate State small claims courts precisely because the Department has no authority to adjudicate individual claims and make monetary awards.

4. Retention of Records

The NPRM: The NPRM proposed that covered carriers retain for two years the following information for any tarmac delay that either triggers their contingency plans or lasts at least four hours: The length of the delay; the cause of the delay; and the actions taken to minimize hardships for passengers. Our proposal did not contemplate that the Department would review or approve the plans, but we stated that the Department would consider failure to comply with any of the above requirements—including implementing the plan as written—to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 and therefore subject to enforcement action.

Comments: ATA questions the need for the proposed record-retention requirement covering lengthy tarmac delays, asserting that the Department's BTS already has reporting requirements covering similar issues, with the exception of how carriers respond to delay situations. With regard to this category of information, ATA suggests that a record retention requirement of six months would be sufficient and argues that retention of record for long periods of time will impose additional and unnecessary costs.

DOT Response: The Department does not believe that it is advisable to remove the record-retention requirement for a number of reasons. First, certificated U.S. carriers that account for at least one percent of domestic scheduled passenger revenue currently provide delay data to BTS but the requirement to retain information for lengthy tarmac delays under this final rule would apply to additional carriers—any certificated or commuter air carrier that operates scheduled passenger service or public charter service using any aircraft with 30 or more passenger seats. Second, most of the delay information that this rule requires carriers to retain is more specific than the delay data the largest airlines currently submit to BTS. This rule requires carriers to retain for two years the following information on any tarmac delay that either triggers their contingency plans or lasts at least three hours (as opposed to four hours in the NPRM): The length of the delay, the specific cause of the delay, and the steps taken to minimize hardships for passengers (including providing food and water, maintaining lavatories, and providing medical assistance); whether the flight ultimately took off (in the case of a departure delay or diversion) or returned to the gate; and an explanation for any tarmac delay that exceeded three hours, including why the aircraft did

not return to the gate by the three-hour mark. Aside from the length of the delay and whether the flight ultimately took off or returned to the gate, the remaining information that this rule requires carriers to retain is not available through data that the largest airlines submit to BTS. As for the cause of a delay, although the largest airlines do submit information to BTS about the nature of ground delays, this information is very general (*i.e.*, air carrier, extreme weather, National Aviation System, security, and late arriving aircraft). This rule requires carriers to retain information on the specific cause(s) of the tarmac delay. We note that the Tarmac Delay Task Force dealt with this issue in its report to the Secretary, and listed a number of lengthy on-board ground delay causal factors.[3] We recommend that carriers use that list for examples of the types of delay causes that the Department is looking for carriers to include in their retained records. Third, to the extent that carriers already collect and submit to BTS certain elements of the information that this rule requires, then there is no real burden to them of complying with the requirement.

Response to Consumer Problems

1. Designated Advocates for Passengers' Interests

The NPRM: The NPRM proposed to require certificated and commuter air carriers that operate domestic scheduled passenger service using any aircraft with 30 or more passenger seats to designate, at its system operations center and at each airport dispatch center, an employee to monitor the effects on passengers of flight delays, flight cancellations, and lengthy tarmac delays and to have input into decisions such as which flights are cancelled and which are subject to the longest delays.

Comments: ATA supports the idea of designating an airline employee at a carrier's operation center to monitor the effects of flight delays and cancellations, provided that the designee is a current employee who carries out other responsibilities as well. It does not support requiring such an employee at each airport dispatch center, claiming that this would duplicate existing procedures and would strain carriers' resources without easing the problems that consumers face. In general, RAA thinks this provision is unnecessary as airlines have no incentive to leave a plane full of passengers on the tarmac. RAA further notes that regional airlines are unable to designate personnel with responsibility for influencing delay decisions since delay decision-making is not a function of regional airline employees. NBTA characterizes this proposal as micromanagement of airline customer service and unnecessary to meet the needs of its business travelers. NBTA maintains that an air carrier's response to cancellations and delays is a key factor by which purchasers make their buying decisions, and opposes a mandate that airlines create new customer service positions at each airport. FlyersRights.org defers to the Department and the airlines to determine the best use of airline manpower to mitigate the effects of flight delays, cancellations and lengthy tarmac delays.

DOT Response: The Department has decided to require carriers to designate an employee to monitor performance of their flights; however, we are persuaded that we should not require carriers to designate an employee at their systems operations center as well as at each airport dispatch center, as long as whatever employee(s) are designated can monitor flight delays and cancellations throughout the carriers' systems and have input into decisions regarding how to best meet the needs of passengers affected by any irregular operations. By adopting this performance standard, the Department leaves it up to each carrier to determine the most efficient and effective method to monitor the effects of flight delays and cancellations (*e.g.*, designate individual(s) at its systems operations center, designate individual(s) at each airport dispatch center, designate individual(s) at another location). This rule does not require carriers to hire new employees to comply with this provision as these responsibilities may be borne by current employees in addition to their other responsibilities.

We disagree with RAA's assertion that regional carriers have no control over decisions on delays, diversions and cancellations and thus should not be required to designate an employee to monitor such occurrences. We recognize that, as a rule, regional carriers' mainline partners make most of the decisions from an operational standpoint on code-shared flights with a regional carrier; however, this does not lead to the conclusion that regional carriers are or should be totally removed from the process. Even if the determination to cancel or delay a flight or keep it on the tarmac is made by the mainline carrier, the regional carrier as the carrier operating the flight is the entity that knows first-hand the situation within and surrounding the aircraft, that is responsible for passing information about that situation to the mainline partner, and that has direct contact with the passengers and remains the sole means for directly serving them. As such, this final rule requires all airlines operating scheduled passenger service using any aircraft with 30 or more passenger seats to designate an employee to monitor the effects of flight delays, flight cancellations, and lengthy tarmac delays on passengers and to provide input into decisions on which flights to cancel and which will be delayed the longest. It applies to all of a covered U.S. carrier's scheduled flights, both domestic and international, including those involving aircraft with fewer than 30 seats if a carrier operates any aircraft with 30 or more passenger seats. The requirement to designate advocates for passenger interests applies to U.S. carriers even if they operate only international scheduled service.

2. Informing Consumers How To Complain

The NPRM: Under the proposed rule, a certificated or commuter air carrier that operates domestic scheduled passenger service using any aircraft with 30 or more passenger seats would be required to inform consumers how to file a complaint with the carrier (name of person, address, telephone number, and e-mail or Web-mail address) on its Web site, on all e-ticket confirmations, and, upon request, at each ticket counter and gate.

Comments: Flyersrights.org supports the proposal requiring airlines to provide information to passengers on how to file a complaint. ACI–NA states that consumers should be provided information regarding how to file a complaint, which should include the appropriate contact information, including a contact name, address, telephone number and e-mail or Web address.

ATA supports the proposal for carriers to provide passengers complaint contact information but contends that the Department should not dictate the particular communication method to be used (*e.g.*, e-mail, carrier's Web site, traditional mail, telephone). Instead, ATA states that the Department should allow carriers the flexibility to choose the contact method for customer complaints, as each of these various methods carries with them associated costs. In particular, ATA emphasizes the expense of telephone ''talk time'' and explains that this would impose a high cost on airlines without countervailing benefits, given other complaint methods available to consumers. ATA points out that all of its members already provide

[3] The model contingency plan is available at *http://www.regulations.gov* [Docket No. DOT–OST–2007–0108–0124.2].

complaint contact information on their Web sites. ATA also reiterates its strong opposition to the proposal that would require carriers to include complaint contact information on e-tickets. It states that this proposal is unnecessary and costly as it believes there is no indication that finding complaint contact information is a problem and views e-ticket space as being limited and having significant commercial value to the carrier and third parties. ATA estimates that the ''value to the U.S. industry as a whole of the e-ticket space, which it asserts the Department proposes to 'confiscate' is $5 million annually,'' an amount it claims far exceeds the DOT's estimate of the proposal's value. ATA also suggests that the Department not require airlines to name a specific employee contact person for complaint purposes since airline personnel change frequently, and recommends that carriers be required to provide a position/office so complaints are directed to the right department.

RAA notes that most regional airlines already have systems in place to handle passenger complaints and to coordinate those systems with their mainline partners. If the Department adopts a proposal for carriers to provide passengers complaint contact information, RAA asserts that any requirement to post complaint information on airline Web sites or e-ticketing confirmations should apply to the ticketing carrier and not to regional airlines. According to RAA, many regional airlines do not have their own Web sites upon which to post complaint information and states that only the ticketing airline should have a ''legal'' responsibility to consumers claiming breach of contract. RAA also asserts that in some cases there is no regional airline employee at the gate, ticket counter, or elsewhere in the airport.

DOT Response: The Department rejects carriers' suggestions that it leave completely to the discretion of each carrier the methods that carriers must make available to consumers to contact an airline. While generally the Department prefers specifying ends rather than means, it is important to identify a sufficient number of contact methods for customer complaints and require carriers to accept such complaints to ensure that all passengers who wish to express their dissatisfaction are able to do so easily. For example, if an airline were to only accept complaints by e-mail then those without access to the Internet would face significant difficulty in filing a complaint. On the other hand, if an airline were to only accept complaints by traditional mail then a number of individuals may decide against sending a complaint because of the ''hassle'' they see in writing a letter, addressing an envelope, and mailing the letter. However, we are persuaded that not all of the contact methods for customer complaints listed in the proposal are necessary. In this regard, we agree with ATA that we need not require carriers to receive complaints by telephone. In reaching this conclusion, we do not mean to imply that carriers should not have in place some mechanism for resolving consumer problems in real time, and failure to do so may require us to revisit this decision in the future. We also do not see the necessity in requiring carriers to accept complaints by fax. As a result, this rule only requires carriers to provide passengers their e-mail or Web-form address and their mailing address. Of course, in addition to accepting complaints by e-mail and traditional mail, airlines are free, and we encourage them, to accept customer complaints through other methods. This final rule also clarifies that it is sufficient for airlines to identify the designated department within the airline with which to file a complaint instead of identifying a specific employee contact person.

We require that complaint contact information be provided on carrier Web sites, on all e-ticket confirmations, and upon request at all airline ticket counters and boarding gates. In reaching this decision, we note that the comments do not demonstrate that including complaint contact information on e-ticket confirmations would impose substantial costs on airlines despite such assertions. Only a limited amount of space on an e-ticket space is needed to provide complaint contact information. Moreover, a carrier can comply with this requirement for providing contact information on an electronic e-ticket confirmation or itinerary by including a link to a Web site containing the complaint information in lieu of displaying the entire text of the contact information, which will take up even less space on an e-ticket. It is our opinion that requiring complaint contact information on e-tickets and, upon request, at each ticket counter and departure gate would be beneficial to consumers as a large number of passengers do not have access to the Internet while traveling and would not be able to access the complaint contact information through the airlines' Web sites.

In response to RAA's comment that many regional airlines do not have their own Web sites and there is no regional airline employee at the gate or ticket counter in some airports, we wish to make clear that the requirement to have complaint contact information in those locations would not apply to those airlines as the rule does not require regional carriers that do not have Web sites or a presence at an airport to provide information on filing complaints via these channels. However, we see no reason to narrow the coverage of this requirement to exclude regional airlines. Passengers who wish to complain to regional airlines should be able to find out how to do so.

3. Response to Consumer Complaints

The NPRM: Under the NPRM, a certificated or commuter air carrier that operates domestic scheduled passenger service using any aircraft with 30 or more passenger seats would be required to acknowledge receipt of each consumer complaint within 30 days of receiving it and send a substantive response to each complainant within 60 days of receiving it.

Comments: ASTA and Atlanta's Department of Aviation strongly support this proposal. Atlanta's Department of Aviation states that acknowledging a complaint within 30 days and providing a substantive response within 60 days is reasonable considering airline concerns about increased staffing and the need for consumers to know their complaints have been received and concerns will be addressed. Flyersrights.org also supports the proposal but takes the position that carriers should be required to provide a ''proposed final resolution'' rather than a ''substantive response'' within 60 days.

Of the carrier associations, ATA supports requiring carriers to respond to consumer problems and cites the voluntary commitments to do so that a number of carriers have long had in place. ATA states that its members agree that consumers should receive an acknowledgment within 30 days after their complaints are received, and a substantive response within 60 days, with an exception to the 30 day acknowledgement requirement for extenuating circumstances such as mail delivery and address problems, or when carriers need to obtain additional information from a passenger. ATA adds that the Department needs to clarify the term ''complaint'' as meaning a complaint that raises customer service concerns and that is submitted to the carrier's customer relations department. ATA notes that complaints made through other means cannot be tracked by the carriers and the response coordinated. ACI–NA supports the Department's proposal that carriers should have 30 days to acknowledge a

complaint and 60 days to provide a passenger with a substantive response. ACI–NA also believes the proposal should apply to all airlines operating aircraft with more than 30 seats, including regional carriers.

DOT Response: We have decided to adopt a rule along the lines set forth in the NPRM. The Department believes that 30 days to acknowledge a complaint and 60 days to provide a passenger with a substantive response represent standard practice in the industry and should allow carriers adequate time to investigate and respond appropriately. By ''substantive response'' we mean a response that addresses the specific problems about which the consumer has complained. This type of response often results in a resolution of the complaint. We are also clarifying that by ''complaint'' we mean a specific written expression of dissatisfaction concerning a difficulty or problem which the person experienced when using or attempting to use an airline's services and that contains sufficient information for the carrier to identify the passenger. Airlines will be required to acknowledge and respond to all such complaints even if a passenger does not submit it directly to the carrier's customer relations department. The Department would expect, as we find is largely already the case, that a passenger complaint sent to the wrong office or department at an airline would be expeditiously forwarded to the appropriate office within the airline.

Chronically Delayed Flights as Violations of 49 U.S.C. 41712

1. Covered Entities

The NPRM: Under the proposed rule, the Department would consider any chronically delayed flight of a certificated U.S. carrier that operates passenger service and/or cargo and mail service and that accounts for at least one percent of domestic scheduled passenger revenue to be an unfair and deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. 41712.

Comments: RAA takes the position that this requirement should only apply to airlines that hold out services to the public and ticket passengers. RAA reasons that regional airlines lack the ability to engage in the behavior the Department is seeking to prevent since regional airlines fly schedules established by major airlines and do not advertise or publish flight times independent of the mainline partner. Similarly, ExpressJet states that this requirement should not be applied to regional carriers because they are not responsible for making scheduling decisions. ExpressJet explains that typical regional carriers operate under a code-share agreement with one or more larger air carriers which agreements grant to the larger carrier the right to make non-safety related decisions regarding the regional carrier's schedule of flights. ACI–NA expressed disappointment that the Department defined ''covered carrier'' as only those that account for at least one percent of domestic scheduled passenger revenue and did not propose to provide all consumers the same level of protection. ACI–NA maintains that the requirement should apply not only to large carriers but also to the operations of regional or feeder carriers. ACI–NA points out that delays harm passengers just as much regardless of which certificate holder operates the aircraft. ACI–NA further notes that regional airlines operate half of the daily domestic flights and provide the only scheduled service to approximately 70 percent of U.S. airports.

DOT Response: The Department continues to believe that the substantial cost burden that compliance with this requirement would impose on the smaller carriers, which are not required to collect or report on-time performance data, would outweigh any corresponding public benefits. Therefore, the chronically delayed flight provision should not apply to those smaller carriers.

Under 14 CFR Part 234, any certificated U.S. carrier that accounts for at least 1 percent of domestic scheduled-passenger revenues is required to file an ''On-Time Flight Performance Report'' with the Department's Bureau of Transportation Statistics on a monthly basis, setting forth specified information for each of its flights held out in *Official Airline Guide* (OAG), in the computer reservations systems (CRS), or in other schedule publications. As a result, the Department's Office of Aviation Enforcement and Proceedings can obtain data from BTS that enable the office to determine whether the schedules that the reporting airlines cause to be listed in the OAG and CRS are indicative of the schedules that the carriers could reasonably be expected to achieve and whether the reporting airlines are operating flights that we would consider to be chronically late. These data do not currently exist in a single location for other carriers, *i.e.*, smaller carriers, and these carriers would incur significant costs in setting up the infrastructure to collect, compile and report this information. Unless the Department requires smaller carriers to also report on-time performance data, a prohibition against smaller carriers operating chronically delayed flights as defined in this rule would be difficult and impractical to enforce as there is no mechanism in place for the Department to independently determine whether such carriers are complying with the requirement. The Department believes that the cost of requiring smaller carriers to report on-time performance data in order to be able to determine whether these carriers operate chronically delayed flights outweighs the benefits to consumers in light of the fact that the operations of the reporting carriers account for nearly 90 percent of all domestic passenger enplanements. As such, we will not apply this requirement to smaller carriers. We are also clarifying that this requirement does not apply to certificated U.S. carriers that only operate cargo and mail service as the concern about chronically delayed flights involves passenger service. The final rule applies to certificated U.S. carriers that operate passenger service and that account for at least one percent of domestic scheduled passenger revenue.

2. Definition of a Chronically Delayed Flight

The NPRM: In the NPRM, we proposed to define a chronically delayed flight as a flight by a covered carrier that is operated at least 30 times in a calendar quarter and arrives more than 15 minutes late, or is cancelled, more than 70 percent of the time during that quarter. We proposed that the Department would consider a chronically delayed flight to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 if it is not corrected before the end of the second calendar quarter following the one in which it is first chronically delayed. We invited interested persons to comment on an alternate definition of a chronically late flight as one that is operated at least 30 times in a calendar quarter and that arrives at least 30 minutes late at least 60 percent of the time. We also asked whether we should adopt an even stricter definition favored by the Department's Inspector General (IG), *i.e.* a flight that is delayed 30 minutes or more, or cancelled, at least 40 percent of the time during a one month period. We noted that we were considering the option of not treating a flight that remains chronically delayed for three consecutive quarters as an unfair and deceptive practice and an unfair method of competition if every prospective passenger using any available channel of purchase is informed before buying a seat on that

flight that the flight is chronically delayed. The NPRM also broadly asked for comments on other possible chronic delay standards.

Comments: Flyersrights.org favors a stricter definition of a chronically delayed flight than the one proposed in the NPRM, specifically, that a chronically delayed flight should be defined as a flight that operates at least 30 times in a calendar quarter and arrives more than 15 minutes late more than 50 percent of the time during that quarter. Flyersrights.org further states that it finds woefully lax a requirement that would allow a carrier to operate a chronically delayed flight for three consecutive calendar quarters (9 months) and asserts that carriers should not be allowed two calendar quarters (six months) to correct chronically delayed flights. Instead, Flyersrights.org suggests that carriers be provided one calendar quarter (3 month period) to fix the problem. Flyersrights.org also disagrees with the option suggested by the Department not to consider a chronically delayed flight as an unfair and deceptive practice if all the passengers are informed that the flight is a chronically delayed flight before purchasing a ticket, as it allows a carrier to continue providing poor service. It also states that DOT should provide for a parallel regulatory approach for ''chronically cancelled'' flights as well. Of the consumer associations that commented on this provision, ACAP concurs with Flyersrights.org. Several individual commenters stated that they believe a chronically delayed flight should be considered an unfair and deceptive practice.

Of the carrier associations that commented, ATA supports the proposed definition of a chronically delayed flight as a flight that operates at least 30 times in a calendar quarter and arrives 15 minutes late, or is cancelled, more than 70% of the time during that quarter. ATA supports the proposal not to consider it an unfair and deceptive practice if a passenger is informed when purchasing a ticket that a flight is chronically delayed. RAA asserts that a prohibition on chronically delayed flights is unnecessary as airlines are already motivated to provide delay-free service since airlines incur costs (*e.g.*, must pay crews overtime, burn fuel), negative publicity and adverse consumer reaction when on-time performance suffers. RAA emphasizes that, rather than penalizing airlines, the Department should focus on improving the efficiency of our nation's ATC system.

ACI–NA maintains that delays cause passengers to lose confidence in an airport's operations, which can impact both the airport's finances and the local community's economy. ACI–NA disagrees with the option put forth in the rulemaking that the Department not treat a chronically delayed flight as an unfair and deceptive practice if the passenger is informed that a flight is chronically delayed prior to purchase, as it questions how DOT could determine that every passenger has been appropriately informed. ACI–NA also questions whether it is reasonable to define a chronically delayed flight as a flight that is delayed more than 70% of the time in a calendar quarter. ACI–NA explains that a 50% standard is more reasonable as air travelers should be able to expect that airlines can arrive at the promised time for at least half of their operations. ACI–NA supports the proposal to consider chronically delayed flights operated for three consecutive calendar quarters as an unfair and deceptive practice.

Of the travel agency associations, ASTA, supports defining a chronically delayed flight as an unfair and deceptive practice, but suggests that the proposal can be improved in a number of ways. First, ASTA argues that a chronically delayed flight should be defined as a flight that is late more than 50 percent of the time as this is in tune with the way most people think of this issue. As an alternative, ASTA notes that it could also support the DOT Inspector General's recommendation of a 40 percent factor with a 30 minute trigger. Second, ASTA asserts that airlines should be able to cure a chronic delay problem in three months rather than six months. ASTA notes its concern that as proposed an airline can operate a flight that is delayed 70 percent of the time for nine months before there is a remedy. ASTA also strongly opposes the ''option'' of excusing chronically delayed flights from being considered an unfair and deceptive practice if a consumer is informed of the chronic delay. ASTA explains that this option encourages the airlines to continue operating chronically delayed flights while shifting the cost burden onto the retail distribution system to inform the public about the practice on a flight-by-flight basis.

DOT Response: The Department agrees with commenters advocating the need to strengthen the definition of a chronically delayed flight and is adopting a more rigorous set of criteria for determining what constitutes a chronically delayed flight in an effort to further improve carrier performance. The final rule defines a flight as chronically delayed if it is operated at least 10 times in a month and arrives more than 30 minutes late (including cancelled flights) more than 50 percent of the time during that period. We find persuasive the comments that suggested that the Department should define a flight as chronically delayed if it is late more than 50 percent of the time rather than 70 percent of the time, as a flight that is delayed ''more often than not'' is commonly viewed by consumers and the public at large as being chronically delayed. From the standpoint of the consumer, the offering of scheduled service and the acceptance of reservations by a carrier give rise to the justifiable expectation that the carrier has the intent and the capability to arrive at the promised time. Consumers rely on carrier schedules and, to the extent they are chronically inaccurate, consumers are seriously harmed. We are also changing the criteria in the definition of a chronically delayed flight related to the number of operations that must take place in a given time period from at least 30 operations in a calendar quarter to at least 10 operations in a month, as we believe a monthly standard is a more precise, simplified and rigorous standard by which to determine a chronic delay. Further, we are amending the threshold defining a flight delay for purposes of this requirement from 15 minutes late to 30 minutes late because while no consumer likes delay, the real concern appears to be with significant delays, the kind that result in missed connections and other problems.

With regard to when to classify a chronically delayed flight as an unfair and deceptive practice, the Department agrees with comments that the proposal provided too much time for airlines to act to correct chronically delayed flights. The final rule specifies that a flight that remains chronically delayed for more than four consecutive one-month periods is an unfair or deceptive practice within the meaning of 49 U.S.C. 41712 and subject to enforcement action. This more stringent standard will better ensure that airlines do not schedule flights that they reasonably know or should know are going to be seriously late most of the time, thereby providing consumers more reliable information about the actual arrival time of a flight. We also believe this provision provides carriers adequate time to adjust their schedules. Carriers know at the beginning of month two whether the flights they operated during month one were chronically late. We believe that carriers can make adjustments to their schedules within 60 days; therefore, we expect that

during months two, three and four carriers would adjust their schedule for each of their chronically late flights to make the schedule for that flight more realistic by month five. While flight delays for weather, mechanical, or other operational reasons occur frequently in the airline industry, the Department considers the continued publishing of schedules that list chronically late flights to be one form of unrealistic scheduling and an unfair or deceptive practice and unfair method of competition within the meaning of 49 U.S.C. 41712.

In the NPRM, we expressed some concern that if a significantly larger number of flights are defined and identified as chronically delayed flights then carriers may choose to cancel these flights rather than operate them. The Department believes that the definition of chronically delayed flight in this final rule, while more stringent than the one proposed, will nevertheless not lead to a large number of flight cancellations as we have found, based on calendar year 2008 data provided by BTS, that the vast majority of the chronically delayed flights as defined in this rule were not chronically delayed for four or more consecutive months. This indicates that carriers were able to ensure that these flights operated on schedule without canceling flights.

We are not adopting the option we suggested in the NPRM of not treating a flight that remains chronically delayed for three consecutive quarters (now after four consecutive months) as an unfair and deceptive practice if every prospective passenger using any available means of purchase is informed before buying a seat on that flight that the flight is chronically delayed. We are concerned that this proposal could result in more chronically delayed flights and that it would be difficult for the Department to determine if all passengers were properly notified prior to purchasing a ticket that the flight is a chronically delayed flight.

3. Unrealistic Scheduling of Flights (Other Than Chronically Delayed Flights)

The NPRM: Other than an editorial change (the removal of references to ''Board''), the proposal would not make any other changes to the existing rule which states that unrealistic scheduling of flights by any air carrier providing scheduled passenger air transportation or the use of any figures, with respect to the advertising of schedule performance, purporting to reflect schedule or on-time performance without providing detailed information about the basis of the calculation would be an unfair or deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. 41712.

Comments: We received only one comment on this issue. ATA opposes the proposal to continue requiring that advertising of on-time performance reveal the detailed information about basis of the calculation. ATA states that the effect of requiring so many data points will be to prevent the use of this statistic. ATA also asserts that the Department should not adopt this proposal as there isn't any consumer demand for this level of detail and it would create a burden with no public benefit.

DOT Response: This rule continues to prohibit carriers providing scheduled passenger service from engaging in unrealistic scheduling, which can be many things beyond the Department's definition of a chronically delayed flight that a carrier continues to hold out for more than four consecutive months. For example, a flight that is cancelled 30 percent of the time for a sustained period of time could be considered to be unrealistic scheduling. The posting of unrealistic schedules can have a significant and harmful impact on consumers. When a carrier publishes schedules, it assumes an obligation to adhere to those schedules insofar as is reasonable. A carrier's practice of publishing schedules that it knows or should know it probably will not achieve can also adversely affect competition, which ultimately redounds to the further detriment of consumers, whose choices in air travel may have been reduced by the carrier's artifice.

With respect to the advertising of schedule performance, this rule continues to regard as an unfair or deceptive practice the use of any figures purporting to reflect schedule or on-time performance without indicating the basis of the calculation, the time period involved, and the pairs of points or the percentage of system-wide operations thereby represented and whether the figures include all scheduled flights or only scheduled flights actually performed. We are not persuaded by ATA's assertions that this requirement is not beneficial to consumers. Without this requirement, a carrier's advertising of on time performance could be very misleading and consumers would not have any basis for determining whether a statistic provided by a carrier is trustworthy or even relevant to their particular circumstance.

Delay Data on Carriers' Web Sites

1. Covered Entities/Scope

The NPRM: Under current rule, certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues (''reporting carriers'') are required to track on-time performance, report it to DOT, and provide, during the course of reservations/ticketing discussions or inquires about flights, the on-time performance percentage for a flight upon request. In the NPRM, we proposed to continue requiring reporting carriers' reservations agents to disclose on-time performance information to consumers only upon request although we had solicited comment in the ANPRM as to whether reservations agents should disclose this information to consumers without being asked and whether any disclosure requirement should be expanded to cover more types of carriers or travel agents. In the NPRM, we also proposed requiring reporting carriers to provide certain flight delay data on their Web sites. We proposed to require this delay data only for flights of reporting carriers but asked commenters if we should in addition require the reporting carriers to post delay data on their Web site for all their domestic code-share partners' flights, including those carriers that are not themselves required to report on-time performance. We decided not to propose requiring on-line travel agencies to post delay data on their Web sites (a proposal upon which we solicited comment in the ANPRM) because of concerns that the cost would outweigh the benefits.

Comments: No one commented as to whether the proposal to continue requiring reporting carriers to disclose the on-time performance code for a flight upon request should or should not be expanded to cover more carriers (*e.g.,* domestic scheduled passenger service using aircraft with 30 or more seats) or more types of flights (*e.g.,* code-share flights). The comments received on scope/coverage addressed only the proposal to require carriers to publish delay data on their Web sites. Flyersrights.org recommends that the regulation require covered carriers to post flight delay information only for code-share flights operated by carriers that report on-time performance, as this will narrow the amount of information required. Flyersrights.org suggests that the Department can expand the requirement later based on consumer comments. ACI–NA believes that it is important for consumers to have access to comprehensive on-time performance data and strongly supports requiring

that flight delay data be made available on reporting carriers' Web sites for all the domestic code-share flights of that carrier.

ATA states that, given the Department's proposal not to impose any data reporting requirements on travel agents, the proposal unfairly burdens the reporting carriers as these carriers would uniquely bear the cost of collecting data, programming, and updating their booking sites to reflect such data. ATA also contends that the proposal is unfair to the approximately thirty percent of passengers who book through carriers' Web sites as they would be burdened with having to see performance information that they did not request and likely do not want. ATA suggests that the ''excessive performance data display'' may even discourage booking travel through carriers' Web sites. ATA's comments indicate that it supports extending the requirement for disclosure of flight delay information on Web sites to cover online travel agencies if the Department imposes such a requirement on reporting carriers. On the other hand, ITSA supports the preliminary conclusions reached by the Department that the cost of imposing a requirement for online travel agencies to post flight delay information would vastly outweigh the benefits to consumers. ITSA urges the Department to make final its tentative decision not to apply this requirement to online travel companies, global distributions systems and other third party online reservation services. ASTA notes that the Department wisely exempts travel agencies from the requirement to disclose flight delay information.

DOT Response: We have decided to continue to require reporting carriers to disclose the on-time performance code for a flight upon request as there were no comments received on this point and the rule as is works well from the Department's perspective. The final rule requires a reporting carrier to display on its Web site flight delay information for each flight it operates and for each flight its U.S. code-share partners operate for which schedule information is available. The Department believes that requiring a reporting carrier to display on its Web sites flight delay information for each domestic flight it holds out as its own will help consumers make better informed decisions when selecting flights. In adopting this approach, we are rejecting arguments that requiring a reporting carrier to provide flight delay information for domestic code-share flights operated by carriers that do not report on-time performance would unduly burden them. There are currently only 21 non-reporting U.S. carriers that code-share with reporting carriers, and the on-time performance data for these carriers may be collected through third party entities at a reasonable cost. FlightStats is an example of a third party which collects detailed on-time performance data for many airlines. Moreover, the benefit of flight delay data to consumers does not differ based on whether the flight is operated by a reporting carrier, its reporting code-share partner or its non-reporting code-share partner. We note that if more than one reporting carrier has an agreement with the same code-share partner, each reporting carrier must display on its website the on-time performance information for the covered flight that bears the reporting carrier's code.

We again considered applying the requirement to publish delay data to online travel agencies, but we continue to view the cost of requiring on-line travel agencies to post the flight delay information as outweighing the benefits to passengers. The cost to on-line travel agencies of complying with such a requirement is much higher than it is for the reporting carriers because of costs associated with reformatting the Global Distribution Systems (booking engines used by travel agencies) and Online Travel Companies (online agencies with independent airline ticket booking capabilities).

2. Disclosure of Flight Delay Information by Airline Reservation Agents

The NPRM: This proposal would not make any changes to the existing rule which requires covered carriers to disclose upon request the on-time performance of a flight during the course of reservations/ticketing discussions, transactions, or inquires about flights between a carrier's employees and the public. We decided not to propose that the carrier reservations agents be required to disclose a carrier's on-time performance at the time of booking without being asked (an issue upon which we solicited comment in the ANPRM) because of concerns that the costs of providing this information to all callers, whether requested or not, would be unduly burdensome to carriers and of dubious benefit to consumers, particularly if the rule provides for flight delay information on the carriers' Web sites.

Comments: Flyersrights.org states its continued belief that passengers would like to be told, without having to ask, about the past on-time performance of the flight they are discussing on the phone or in person with a carrier employee or travel agent. ATA did not comment on this provision of the NPRM. However, at the ANPRM stage, ATA expressed its strong opposition to requiring carriers' reservations agents to disclose on-time information without being asked, because of its belief that the high cost of compliance would outweigh its speculative benefit.

DOT Response: We have decided to issue a rule along the lines set forth in the NPRM. Specifically, the final rule requires a reporting carrier to disclose upon request the on-time performance of a flight during the course of reservations discussions or inquires about flights. We note that requiring carriers to provide passengers on-time performance data during discussions, transactions or inquires, even if not requested, would be burdensome to a degree and of dubious benefit. We note that the rule has been amended to clarify that the requirement to provide on time performance data upon request applies whether a member of the public is speaking with a carrier's employee or contractor.

3. Disclosure of Flight Delay Information on Web Site

The NPRM: This proposal would require covered carriers to include for each listed flight in the flight inquiry/booking stream on their Web sites, at a point before the passenger selects a flight for purchase, the following information for the flight for the most recent calendar month for which the carrier has reported on-time performance data to DOT: (1) The percentage of arrivals that were on time (within 15 minutes of scheduled arrival time); (2) the percentage of arrivals that were more than 30 minutes late; (3) special highlighting of any flight that was late (*i.e.,* arrived more than 15 minutes past scheduled arrival time) more than 50 percent of the time; and (4) the percentage of cancellations. We proposed that this information be provided by either showing the percentage of on-time arrivals on the initial listing of flights and disclosing the remaining information on a later page at some stage before a consumer buys a ticket, or by making available all the required information via a hyperlink on the page with the initial listing of flights. We also proposed to require that carriers load the delay information for the previous month into their internal reservations systems between the 20th and 23rd day of the current month to ensure that all carriers are posting information covering the same period.

Comments: In general, individual commenters (as opposed to organizations) who addressed this issue agree that carriers should be required to

disclose flight delay information on their Web sites. One commenter notes that she has concerns that the cost to modify and provide delay information on a carrier's Web site may be too burdensome and, consequently, may be passed on to consumers. FlyersRights.org urges that airlines be required to post the on-time performance data for all their flights rather than just the nonperforming flights.

ATA supports requiring disclosure of on-time arrival percentages for each flight on a carrier's Web site for the most recent reported calendar month as this information is already reported to BTS. However, ATA objects to a requirement for carriers to report and display any flight delay data not currently required by BTS. ATA asserts that collecting and reporting on the data categories proposed by the Department in its NPRM would be expensive and overly burdensome because it would require substantial efforts to capture this information, significant reprogramming of internal software, rebuilding of portions of Web sites and delay of other critical technology projects. ATA also contends that the requirement does not have any offsetting benefits. ATA reiterates its comment to the ANPRM that past delay information is unlikely to predict future performance because of variations in seasonal weather. It notes that 70 percent of delays and cancellations are due to weather, which makes performance data from previous periods a poor predictor of the passenger's probable flight experience. ATA also states that the additional data that the Department is proposing carriers make available on their Web sites would provide little additional consumer benefit since many carriers already post on-time data on their Web sites. ATA further expresses concern that flight on-time statistics can be misinterpreted by passengers and provides an example of a passenger erroneously assuming a flight will be delayed in September because it was delayed in August and arriving late for the flight and missing that flight.

Similar to ATA, NBTA supports requiring carriers to provide on-time performance information to consumers only ''so long as these requirements are aligned with performance reports that carriers must file with DOT.'' ASTA states that it is not ''convinced of the efficacy'' of the publication of delay data on a carrier's Web site. ITSA thinks this is a matter best left to the marketplace, and concurs with ATA that data will be of no use due to the unpredictability of weather-related delays. As such, ITSA does not support inclusion of this proposal in the final rule.

DOT Response: The final rule requires that covered carriers provide on their Web sites the following on-time performance information: (1) Percentage of arrivals that were on time—*i.e.,* within 15 minutes of scheduled arrival time; (2) the percentage of arrivals that were more than 30 minutes late (including special highlighting if the flight was late more than 50 percent of the time); and (3) the percentage of flight cancellations if 5 percent or more of the flight's operations were canceled in the month covered. The Department recognizes that industry representatives support only the requirement to post on-time (within 15 minutes of scheduled arrival time) arrival percentages for each flight on a carrier's Web site because this information is already reported to BTS. However, the Department views the posting of the percentage of arrivals that were more than 30 minutes late as important because consumers are particularly interested in significant delays as these delays are the kind that are likely to result in missed connections and other serious problems. The Department is also requiring special highlighting of flights if they are late more than 30 minutes of scheduled arrival time more than 50 percent of the time to enable consumers to make more informed travel decisions. For example, chronic lengthy delays on short flights may result in passengers choosing other modes of transportation, choosing earlier flights or selecting a different airline. Without a requirement for carriers to publish such information, knowing which flights are often late can be difficult for passengers to determine, which can lead to frustration and confusion. Similarly, without a requirement for carriers to post information about flights that are cancelled more than 5% of the time, consumers would be unaware prior to purchasing a ticket on that flight that it is regularly cancelled. We agree with carriers that publishing data on the percentage of cancellations for all flights is an unnecessary burden and may result in too much ''clutter'' on the Web site.

With regard to the manner in which this information must be posted on carriers' Web sites, we have amended the rule so carriers must show all the delay data on the initial listing of flights or by a hyperlink on the page with the initial listing of flights. We were concerned that if we permitted carriers to simply display flight delay information at any stage before a consumer buys a ticket it could result in passengers not having access to that information until just before they click the ''Buy Now'' button. By providing flight delay data to consumers at an earlier stage, they can choose during the browsing/shopping phase whether or not to abandon consideration of a given flight that is canceled regularly or has a high percentage of delays longer than 30 minutes. To ensure that all carriers are posting flight delay information covering the same month, the final rule maintains the language in the proposal that carriers load data for the previous month into their internal reservation systems between the 20th and 23rd day of the current month.

Carriers' Adherence to Customer Service Plans

1. Covered Entities

The NPRM: This proposal would require carriers covered by 14 CFR Part 234 (''Airline Service Quality Performance Reports'')—*i.e.,* certificated air carriers that account for at least one percent of domestic scheduled passenger revenue (''reporting carriers'')—to adopt customer service plans for their scheduled service and for public charter flights that they sell directly to the public and audit their adherence to their plans annually. We explained in the NPRM that we are proposing that the rule include public charter flights because the operating carrier is the party responsible for ensuring that charter passengers receive many of the promised services in those customer service plans. The NPRM did not provide an explanation as to the reason that the Department tentatively decided not to cover all U.S. airlines that operate scheduled passenger service using any aircraft with 30 or more passenger seats as proposed in the ANPRM.

Comments: ATA believes that the Department should require all carriers to adopt customer service plans, not just U.S. airlines that account for at least one percent of scheduled domestic passenger revenue. ACI–NA also supports imposing this requirement on all carriers, as it does not believe there is any justification for protecting only a portion of the traveling public. RAA identifies six regional carriers that account for at least one percent of scheduled domestic passenger revenue and argues that this requirement should not apply to any of them since none of them offer their own reservations services and do not ticket passengers for the vast majority of their services. ExpressJet also filed comments contending that the requirement for customer service plans should not apply to regional carriers operating as code-

share partners of mainline airlines because these carriers do not sell or hold out transportation to customers, as their mainline partners do.

DOT Response: In response to comments, the Department has changed the types of carriers that are covered by this requirement. We agree with commenters that the benefits afforded consumers by airlines' customer service plans should be expanded beyond consumers who purchase tickets for flights on U.S. airlines that account for at least one percent of scheduled domestic passenger revenue. A substantial number of domestic air travelers in the United States are carried on flights using aircraft with 30 through 60 seats. As mentioned earlier, in 2008, according to data received from BTS, a total of 668,476,000 domestic passengers were transported, 96,310,000 of which were on flights using aircraft with 30 through 60 seats. Many of these were carried by non-reporting carriers. Because of the use of smaller aircraft to carry a significant number of domestic passengers, we conclude that it is appropriate to extend the rule to these operations in order to better protect the majority of consumers. Moreover, in a Final Report on Airline Customer Service Commitments issued on February 12, 2001, the Department's IG recommended that all U.S. carriers be required to adopt customer service plans. Subsequently, in a Status Report on Actions Underway to Address Flight Delays and Improve Airline Customer Service issued on April 9, 2008, the IG recommended that U.S. airlines that provide domestic scheduled service using any aircraft with more than 30 passenger seats be required to self-audit such plans.

With regard to the comments from RAA and ExpressJet that this requirement should not apply to regional carriers when conducting operations under code-share agreements with larger carriers, we disagree. We recognize that regional or other airlines that code-share with mainline carriers generally do not offer their own reservations and ticketing services or directly perform certain other customer service elements. However, we cannot agree that they should not be responsible at all to the passengers they transport during many of their operations because of their relationships to those larger airlines. Instead, we have decided to apply the requirement to adopt and audit customer service plans in a more flexible manner, as described below, that takes into account their role, including the fact that certain carriers that may not hold out and sell air transportation to consumers. Consequently, this final rule requires U.S. airlines that operate scheduled passenger service using any aircraft with 30 or more passenger seats (including carriers that code-share with mainline carriers) to adopt and audit a customer service plan, and to publish this plan on their Web sites. It is important to note that this requirement applies to all of a covered U.S. carrier's scheduled flights, both domestic and international, including those involving aircraft with fewer than 30 seats if a carrier operates any aircraft with 30 or more passenger seats. The requirement to adopt and audit a customer service plan, and to publish this plan on the Web site applies to U.S. carriers even if they operate only international scheduled service.

2. Content of Customer Service Plan

The NPRM: We proposed in the NPRM that, at a minimum, each plan would have to address the same subjects as the customer service elements adopted from the ATA's Customers First initiative: (1) Offering the lowest fare available; (2) notifying consumers of known delays, cancellations, and diversions; (3) delivering baggage on time; (4) allowing reservations to be held or cancelled without penalty for a defined amount of time; (5) providing prompt ticket refunds; (6) properly accommodating disabled and special-needs passengers, including during tarmac delays; (7) meeting customers' essential needs during lengthy on-board delays; (8) handling ''bumped'' passengers in the case of oversales with fairness and consistency; (9) disclosing travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration; (10) ensuring good customer service from code-share partners; and (11) improving responsiveness to customer complaints. We solicited comment on whether we should also require carriers to describe in their customer service plans the services they provide to mitigate passengers' inconvenience resulting from flight cancellations and missed connections and to specify whether they provide these services in all circumstances or only when the cause of the cancellations or missed connections were within their control.

Comments: Flyersrights.org and its members support the proposal and take the position that the Department should also establish minimum standards for carriers to meet their obligations under the plans, review the plans for adequacy, and approve them if appropriate. ASTA also recommends that the Department undertake to review the customer plans at least for the purpose of a preliminary determination of whether they are sufficiently specific and enforceable. NBTA thinks that customer service is best left to market forces, but a baseline standard for passengers' rights should exist. ATA supports the proposal that carriers adopt and adhere to their customer service plans and states that its members adopted customer service plans in 2000 and have made these plans available to the public. In response to the Department's question as to whether it should require carriers to describe in customer plans the services a carrier provides to mitigate passenger inconveniences resulting from cancellations and misconnections, ATA states that carriers need flexibility to take action that will minimize the impact of delays. In this regard, ATA explains that carriers should not be required to provide a list of services, as it would ultimately diminish passenger satisfaction due to the loss of flexibility to deal with specific situations. ATA also notes that services can be very specific, change over time, and include competitively sensitive information.

RAA contends that many of the subjects proposed to be addressed in a customer service plan would be inappropriate if applied to an airline that does not hold out, market, sell or ticket its services. RAA states that most regional carriers do not offer fares, take reservations, ticket passengers, receive payment from passengers, provide refunds to passengers, or have their own frequent flyer rules or cancellation policies. ExpressJet asks that the Department eliminate elements in the customer service commitments, such as the requirement that a customer service plan ''ensure good customer service from code-share partners,'' that it asserts has no applicability to carriers that do not hold out and sell air transportation to individuals.

DOT Response: The Department agrees with comments from RAA and ExpressJet that some of the subjects proposed to be addressed in the customer service plan would only apply in the context of the relationship between a seller of the air transportation and a buyer, and it would thus not be appropriate to mandate that carriers that do not offer their own reservation services or ticket passengers adopt a plan for addressing these elements. More specifically, we view the customer service elements concerning offering the lowest fare available, allowing reservations to be held or cancelled without penalty for a defined amount of time, and providing prompt ticket refunds as having no applicability to an airline that does not hold out, market,

sell or ticket its services. Similarly, the commitment concerning disclosing travel itinerary, cancellation policies, frequent flyer rules and aircraft configuration would also not be applicable to an airline that does not sell or ticket its services to the extent these travel-related disclosures are made at the point of sale. We are further persuaded that only an airline that sells air transportation to individual customers should be required to adopt a plan ensuring good customer service from its code-share partners. As such, airlines that do not offer their own reservations and ticketing services may comply with the provisions of the customer service elements that address functions they do not perform by including in their customer service plan under each of these elements an explanation that this service is not provided by them and identifying the airline that provides the service. With regard to the other required elements in a customer service plan, including the promise to handle overbooked passengers with fairness and consistency, we believe that the covered airlines, whether or not they sell air transportation to passengers, have responsibilities in this area and must fully address these subjects in their customer service plans.

The Department has decided to require carriers to describe in customer plans the services a carrier provides to mitigate passenger inconvenience resulting from cancellations and misconnections. Consumers deserve to know up front what to expect in such an event. We believe that carriers already note in their contracts of carriage many of the services they will provide to mitigate passenger inconveniences due to flight irregularities. Moreover, our requirement here is in no way a limitation on carriers. They always retain the flexibility to provide additional services, when necessary.

The Department also agrees with commenters that there should be some baseline standard in place to ensure that the carriers' customer service plans are specific and enforceable. The NPRM, however, did not propose to establish such standards. Consequently, the Department plans to seek comment about establishing standards for ensuring compliance with customer service plans in a forthcoming notice of proposed rulemaking. The preamble to that NPRM will discuss this issue in more detail.

3. Incorporation of Customer Service Plan Into Contract of Carriage

The NPRM: The NPRM proposed that each covered carrier be required to incorporate its customer service plan in its contract of carriage and make its contract of carriage available on its Web site. As in the case of contingency plans for lengthy tarmac delays, we invited interested persons to comment on the implications of our creating a private right of action here, particularly potential benefits to passengers, potential negative consequences, and the costs to carriers.

Comments: Flyersrights.org notes that incorporating customer service plans into a contract of carriage is important as it provides an avenue for individual passengers to enforce airline promises. Flyerrights.org also supports providing contract of carriage information on a carrier's Web site, stating that it provides passengers an opportunity to educate themselves on the carrier's stated obligations. ACAP and U.S. PIRG agree with the views of Flyersrights.org. ASTA also supports incorporating the customer service plans into the contract of carriage, but has concerns about its effectiveness because DOT does not plan to review the plans to ensure sufficient specificity and enforceability. ATA opposes a requirement that these plans be incorporated in carriers' contracts of carriage. ATA challenges the Department's legal authority to do this in the aftermath of deregulation and argues that the Department cannot substitute Congress's chosen enforcement mechanism which precludes private judicial enforcement with one of its own creation. ATA also expresses concern that litigation costs would increase dramatically over current levels if each customer service commitment were incorporated into airlines' contracts of carriage.

DOT Response: Although we agree with the commenters about the benefits of customer service plans being incorporated into a carrier's contract of carriage, we will not in this final rule make such incorporation a mandatory requirement of covered carriers, for the same reasons as stated in our discussion of contingency plans. The Department has determined that for now it should strongly encourage carriers to voluntarily incorporate the terms of their customer service plans in their contracts of carriage. At the same time, the Department will undertake a series of related measures to ensure the dissemination of information regarding each airline's customer service plans. The Department believes that incorporation of the customer service plans into carriers' contracts of carriage provides individuals notice of their rights and carrier responsibilities in a readily available source and will help improve compliance with the matters so incorporated. However, as stated in our discussion of contingency plans, we believe that incentives exist for carriers to include their customer service plans in their contracts of carriage and, as pointed out by the Department's Inspector General in his 2006 report, most major airlines already do so.

As discussed above, the Department will require each air carrier that has a Web site to post its entire contract of carriage on its Web site in easily accessible form, including all updates to its contract of carriage. The Department will also require each air carrier with a Web site that chooses not to include their customer service plan in its contract of carriage to post the plan itself on its Web site in easily accessible form.

Many airlines already post their contract of carriage, including their customer service plan, on their Web site. An airline's contract of carriage is also available for public inspection at airports and ticket offices. The purpose of this requirement is to ensure that interested consumers can easily review an airline's contract of carriage, which as of the effective date of the rule may include the customer service plan of airlines that choose to incorporate such a plan. By reviewing an airline's contract of carriage, consumers can find out an airline's stated legal obligations to passengers and be better informed about their rights and a carrier's responsibilities when problems occur (for example, the passenger's rights and carrier's responsibilities if an airline delays or cancels a flight or loses a bag).

This rule also requires each covered carrier that has a Web site to post its entire contract of carriage on its site in easily accessible form. Many airlines already post their contract of carriage on their Web site. An airline's contract of carriage is also available for public inspection at airports and ticket offices. The purpose of this requirement is to ensure that interested consumers can easily review an airline's contract of carriage, which as of the effective date of rule may include the customer service plan of airlines that are required to have such a plan. By reviewing an airline's contract of carriage, consumers can find out an airline's stated legal obligations to passengers and be better informed about their rights and a carrier's responsibilities when problems occur (for example, the passenger's rights and carrier's responsibilities if an

airline delays or cancels a flight or loses a bag).

4. Audit of Customer Service Plans

The NPRM: The NPRM proposed that each covered carrier audit its own adherence to its plan annually and make the results of its audits available for the Department's review for two years. We rejected carriers' arguments in comments to the ANPRM against requiring audits and invited carriers that oppose self-auditing as unduly burdensome to provide evidence of the costs that they anticipate. We also rejected consumers' arguments that the Department should set standards for the audits, review all audits, or have them done by our IG.

Comments: NBTA favors giving the Department's IG the resources to conduct audits of carriers' customer service plans, and suggests that these audits be conducted not more frequently than once every three years and at similar times in the year to provide accurate comparative information. ATA agrees with the self-auditing proposal because internal auditors are more familiar with the industry, and it saves time and training costs associated with outside auditors. ASTA notes that self-auditing is unlikely to improve the situation because the ''promises'' carriers make in their customer service plans are likely to be aspirational, lacking in substance and unenforceable.

DOT Response: The rule requires each carrier to audit its own adherence to its plan annually and to make the results of each audit available for the Department's review for two years afterwards. The Department believes that a system for verifying compliance with customer service plans is essential. We believe that requiring covered carriers to audit their plans annually will further influence carriers to live up to their commitments. We agree with ATA that self-auditing is preferable as internal auditors are familiar with the industry and the cost of external audits can be avoided. The Department's IG, in several reports, also recommended that airlines conduct internal audits to measure their compliance with their customer service plans. Some airlines are already doing so, but most are not. We disagree with the suggestion that the IG, rather then the airlines, conduct routine audits. In the past, in response to Congressional requests, the IG has conducted audits of the customer service commitments that ATA member carriers voluntarily adopted; however, these audits, which were costly, lengthy and resource intensive, were not routine annual audits. Instead, the audits focused on the effectiveness of the plans and the extent to which each airline met the provisions under its plan for the purpose of making recommendations for improving accountability, enforcement and consumer protections afforded to air travelers.

The Department believes that audits of customer service plans should be conducted at least once a year to enable an airline to quickly take action if it learns that it is not in compliance with its customer service plans or if it is not effectively implementing its plan. If audits are conducted once every three years as suggested by one commenter, an airline may not be properly implementing its customer service plans for quite some time before it becomes aware of the problem. We are also not requiring that the audits be conducted ''at similar times in the year'' or even that there be a single unified audit of all the subjects covered in the customer service plans, in order to allow each airline the flexibility to design an audit program that fits its particular operational environment.

Retroactive Applicability of Amendments to Contracts of Carriage

The NPRM: In the NPRM, we proposed to adopt a rule to prohibit carriers from retroactively applying any material amendment to their contracts of carriage with significant negative implications for consumers to people who have already bought tickets. We asked for commenters to address the implications of a carrier's being held to different contract terms vis-à-vis different passengers on the same flight if some bought their tickets before the contract of carriage was amended and some afterwards.

Comments: NBTA states that customers on the same flight should be governed under the same contract of carriage, and last minute business travelers should not be subject to different contracts than other passengers. ATA also opposes this measure, and notes that carriers need flexibility and such a requirement will discourage carriers from making improvements in customer service due to the difficulty of dealing with differing customer service standards as applied to passengers depending on the time of purchase. ASTA thinks the Department should prohibit retroactive changes to the contract of carriage, as the contract is formed at the moment of purchase. ASTA states that it would be unfair to the airlines to allow consumers to take retroactive advantage of improvements that were not in effect when they bought their tickets and equally unfair to consumers to permit an airline to change the bargain that existed when the ticket was purchased.

DOT Response: As we believe that consumers have the right to receive accurate information at the time of purchase about the terms in the contract of carriage that are applicable to them and to which they will be held, this final rule prohibits carriers from retroactively applying any material amendment to their contracts of carriage that has any significant negative implications for consumers who have already bought tickets. We believe that it would be unfair, for example, for a passenger to purchase a non-refundable ticket in March for a flight in May and to learn later that the carrier added a significant fee in April that the passenger would be subject to and that may have affected his/her purchase decision had he/she been aware of it. This provision is included in the rule as a new section 253.9 in Part 253.

Effective Date of Rule

The NPRM: In the NPRM, we proposed that the final rule take effect 180 days after its publication in the **Federal Register** in order to afford carriers sufficient time to adopt their plans, modify their computer systems, and take other necessary steps to be able to comply with the new requirements before we begin enforcing them. We invited comments on whether 180 days is an appropriate interval for completing these changes.

Comments: We received few comments on this issue. Flyersrights.org suggested that the rules should become effective after 120 days. NBTA thinks a ''reasonable date should be established after determining the impact the final rule will have on carriers.'' ACI–NA supports the DOT proposal to make the final rule effective 180 days after publication in the **Federal Register** but suggests a tiered implementation schedule providing an extra 120 days to small and non-hub airports if the Department adopts its suggestion that airlines be required to coordinate their plans with all airports at which they provide service. ATA recommends a ''significant implementation period'' as the rule would require substantial software and operational changes.

DOT Response: We agree with ATA and NBTA that carriers should have sufficient time to implement these changes. We also agree with Flyerrights.org that four months is adequate time for carriers to implement the necessary changes. Consequently, for the reasons stated above the rule will go into effect 120 days after it is published in the **Federal Register**.

Regulatory Analyses and Notices

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

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget. The final Regulatory Evaluation has concluded that the benefits of the final rule exceed its costs, even without considering non-quantifiable benefits. The total present value of benefits over a 20 year period at a 7% discount rate is $169.7 million and the total present value of costs over a 20 year period at a 7% discount rate is $100.6 million. The net present value of the rule for 20 years at a 7% discount rate is $69.1 million. A copy of the final Regulatory Evaluation has been placed in the docket.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. An air carrier is a small business if it provides air transportation only with small aircraft (*i.e.*, aircraft with up to 60 seats/18,000 pound payload capacity). *See* 14 CFR 399.73. Our analysis identified 19 small businesses potentially affected by the requirements of the final rule. However, although certain elements of this rule impose new requirements on these small air carriers, the Department believes that the economic impact will not be significant based on its examination because for those carriers identified as small businesses (and for which data on receipts was readily available) annualized total costs of the rule are estimated to be one tenth of one percent or less of annual receipts per firm. More specifically, annualized total costs as a percent of annual receipts ranged from 0.09% to 0.0006%. On the basis of this examination, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. A copy of the Regulatory Flexibility Analysis has been placed in docket.

C. Executive Order 13132 (Federalism)

This Final Rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not include any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13084

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to: Department of Transportation, Office of Aviation Enforcement and Proceedings, Office of the General Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. OST may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. OST intends to obtain current OMB control numbers for the three new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The ICRs were previously published in the **Federal Register** as part of NPRM (73 FR 74587) and the Department invited interested persons to submit comments on any aspect of each of these three information collections, including the following: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information.

The final rule contains three new information collection requirements. The first is a requirement that certificated and commuter air carriers that operate passenger service using any aircraft with 30 or more passenger seats retain for two years the following information about any ground delay that lasts at least three hours: the length of the delay, the precise cause of the delay, the actions taken to minimize hardships for passengers, whether the flight ultimately took off (in the case of a departure delay or diversion) or returned to the gate; and an explanation for any tarmac delay that exceeded 3 hours. The Department plans to use the information to investigate instances of long delays on the ground and to identify any trends and patterns that may develop. The assumptions upon which the calculations for this requirement are based have not changed; however, we have modified the information collection burden hours to take into account the fact that the final rule requires covered carriers to retain information about any ground delay that last at least three hours as opposed to ground delays that last at least four hours as proposed in the NPRM. Also, rather than using data about the total number of tarmac delays in 2007 as we did in the NPRM, we use the total number of tarmac delays averaged in 2007–2008. The second is a requirement that any certificated and commuter air carrier that operates scheduled passenger service using any aircraft with 30 or more passenger seats adopt a customer service plan, audit its adherence to the plan annually, and retain the results for two years. The Department plans to review the audits to monitor carriers' compliance with their plans and take enforcement action when appropriate. We have revised the information collection burden hours for this requirement because it applies not

only to the reporting carriers as proposed in the NPRM but to all U.S. airlines that operate domestic scheduled passenger service using any aircraft with 30 or more passenger seats. The third is a requirement that each reporting carrier display on its Web site information on each listed flight's on-time performance for the previous month for both its flights and those of its non-reporting code-share carriers. This information will help consumers to select their flights. The assumptions upon which the calculations for this requirement are based have changed significantly. Initially, we had estimated that the one-time programming cost for displaying flight delay data on each covered carrier's Web sites would be $20,000. Based on industry comments received, we have revised the on-time programming cost from $20,000 to $400,000 for each covered carrier. The median hourly wage for computer programmers has decreased from $33.47 to $32.73.

For each of these information collections, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

1. Requirement To Retain for Two Years Information About Any Ground Delay That Lasts at Least Three Hours

Respondents: Certificated and commuter air carriers that operate domestic passenger service using any aircraft with 30 or more passenger seats.

Estimated Annual Burden on Respondents: From 0 to 21 hours and 15 minutes (1275 minutes) per year for each respondent. The estimate was calculated by multiplying the estimated time to retain information about one ground delay (15 minutes) by the total number of ground delay incidents lasting at least three hours per respondent (from 0 to 85 incidents, averaged in 2007–2008).

Estimated Total Annual Burden: A maximum of 207 hours and 15 minutes (12,435 minutes) for all respondents. The estimate was calculated by multiplying the estimated time to retain information about one ground delay (15 minutes) by the total number of ground delay incidents lasting at least three hours in calendar years 2007–2008 (averaged) for the reporting carriers (748) and adding the product of the estimated time to retain information about one ground delay (15 minutes) multiplied by 11 percent of the total number of ground delay incidents lasting at least three hours in calendar years 2007–2008 (averaged) for the reporting carriers (82.28). (The reporting carriers accounted for 89 percent of domestic scheduled passenger service, so we have assumed that nearly all of the remaining 11 percent was provided by other certificated and commuter carriers using aircraft with more than 30 passenger seats.)

Frequency: From 0 to 85 ground delay information sets to retain per year for each respondent. (N.b. Some air carriers may not experience any ground delay incident of at least three hours in a given year, while some larger air carriers could experience as many as 85 in a given year according to data on ground delays in the average of calendar years 2007 and 2008.)

2. Requirement That Each Covered Carrier Retain for Two Years the Results of Its Annual Self-Audit of Its Compliance With Its Customer Service Plan

Respondents: Certificated and commuter air carriers that operate domestic scheduled passenger service using any aircraft with 30 or more passenger seats (42 carriers).

Estimated Annual Burden on Respondents: 15 minutes per year for each respondent. The estimate was calculated by multiplying the estimated time to retain a copy of the carrier's self-audit of its compliance with its Customer Service Plan by the number of audits per carrier in a given year (1).

Estimated Total Annual Burden: A maximum of 10 hours and 30 minutes (630 minutes) for all respondents. The estimate was calculated by multiplying the time in a given year for each carrier to retain a copy of its self-audit of its compliance with its Customer Service Plan (15 minutes) by the total number of covered carriers (42).

Frequency: One information set to retain per year for each respondent.

3. Requirement That Each Covered Carrier Display on Its Web Site, at a Point Before the Consumer Selects a Flight for Purchase, the Following Information for Each Listed Flight Regarding its On-Time Performance During the Last Reported Month: the Percentage of Arrivals That Were on Time, the Percentage of Arrivals That Were More Than 30 Minutes Late (With Special Highlighting if the Flight Was More Than 30 Minutes Late More Than 50 Percent of the Time), and the Percentage of Flight Cancellations if the Flight Is Cancelled More Than 5% of the Time. We Are Adding a Requirement That a Marketing/Reporting Carrier Display Delay Data for Its Non-Reporting Code-Share Carrier(s)

Respondents: Every U.S. carrier that accounts for at least one percent of scheduled passenger revenue, maintains a Web site, and is not already displaying the required information (9 carriers).

Estimated Annual Burden on Respondents: 11,964 hours (717,780 minutes) in the first year and no more than 12 hours (720 minutes) in subsequent years for each respondent. The estimate for the first year was calculated by adding the estimated number of hours per respondent for developing its Web site for data posting (11,951 hours [717,060 minutes], the quotient of a one-time programming cost of $400,000 divided by $33.47, the median hourly wage for computer programmers) to the estimated number of hours for management of data links (12 hours [720 minutes], estimated at one hour per month).

Estimated total annual burden: 107,667 hours (6,460,020 minutes) in the first year and no more than 108 hours (6,480 minutes) in subsequent years for all respondents. The estimate for the first year was calculated by multiplying the number of hours per respondent for developing its Web site for data posting (11,951 hours) by the number of covered carriers (9) and adding the product of the number of hours per year for management of data links (12) and the number of covered carriers (9). The estimate for subsequent years was calculated by multiplying the number of hours per year for management of data links (12) by the number of covered carriers requiring action to come into compliance (9).

Frequency: Development of Web site for data posting: 1 time for each respondent. Updating information for each flight listed on Web site: 12 times per year (1 time per month) for each respondent.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rule.

Issued this 18th day of December 2009 in Washington, DC.

Ray LaHood,

Secretary of Transportation.

List of Subjects

14 CFR Parts 234 and 259

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 253

Air carriers, Consumer protection, Contract of carriage.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and

fares, Air taxis, Consumer protection, Small businesses.

■ For the reasons set forth in the preamble, the Department amends 14 CFR Chapter II as follows:

PART 234—[AMENDED]

■ 1. The authority citation for 14 CFR Part 234 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401 and 417.

■ 2. Section 234.11 is revised to read as follows:

§ 234.11 Disclosure to consumers.

(a) During the course of reservations or ticketing discussions or transactions, or inquiries about flights, between a carrier's employees or contractors and the public, the carrier shall disclose upon reasonable request the on-time performance code for any flight that has been assigned a code pursuant to this part.

(b) For each domestic flight for which schedule information is available on its Web site, including domestic code-share flights, a reporting carrier shall display the following information regarding the flight's performance during the most recent calendar month for which the carrier has reported on-time performance data to the Department: the percentage of arrivals that were on time—*i.e.*, within 15 minutes of scheduled arrival time, the percentage of arrivals that were more than 30 minutes late (including special highlighting if the flight was late more than 30 minutes of scheduled arrival time more than 50 percent of the time), and the percentage of flight cancellations if 5 percent or more of the flight's operations were canceled in the month covered. The information must be provided by showing all of the required information on the initial listing of flights or by showing all of the required information via a prominent hyperlink in close proximity to each flight on the page with the initial listing of flights.

(c) Each carrier shall load the information whose disclosure is required under paragraphs (a) and (b) of this section into its internal reservation system between the 20th and 23rd day of the month after the month for which the information is being provided.

PART 253—[AMENDED]

■ 3. The authority citation for 14 CFR Part 253 is revised to read as follows:

Authority: 49 U.S.C. 40113; 49 U.S.C. Chapters 401, 415 and 417.

■ 4. A new § 253.9 is added to read as follows:

§ 253.9 Retroactive Changes to Contracts of Carriage

An air carrier may not retroactively apply to persons who have already bought a ticket any material amendment to its contract of carriage that has significant negative implications for consumers.

■ 5. A new part 259 is added to read as follows:

PART 259—ENHANCED PROTECTIONS FOR AIRLINE PASSENGERS

Sec.
259.1 Purpose.
259.2 Applicability.
259.3 Definitions.
259.4 Contingency plan for lengthy tarmac delays.
259.5 Customer Service Plans
259.6 Notice and Contract of Carriage.
259.7 Response to consumer problems.

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, and 41712.

§ 259.1 Purpose.

The purpose of this part is to mitigate hardships for airline passengers during lengthy tarmac delays and otherwise to bolster air carriers' accountability to consumers.

§ 259.2 Applicability.

This rule applies to all the flights of a certificated or commuter air carrier if the carrier operates scheduled passenger service or public charter service using any aircraft originally designed to have a passenger capacity of 30 or more seats, with the following exceptions: §§ 259.5 and 259.7 do not apply to charter service.

§ 259.3. Definitions.

Certificated air carrier means a U.S. air carrier that holds a certificate issued under 49 U.S.C. 41102 to operate passenger service or an exemption from 49 U.S.C. 41102.

Commuter air carrier means a U.S. air carrier as established by 14 CFR 298.3(b) that is authorized to carry passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule using small aircraft.

Large hub airport means an airport that accounts for at least 1.00 percent of the total enplanements in the United States.

Medium hub airport means an airport accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States.

Small aircraft means any aircraft originally designed to have a maximum passenger capacity of 60 or fewer seats or a maximum payload capacity of 18,000 pounds or less.

Tarmac delay means the holding of an aircraft on the ground either before taking off or after landing with no opportunity for its passengers to deplane.

§ 259.4 Contingency plan for lengthy tarmac delays.

(a) *Adoption of Plan.* Each covered carrier shall adopt a Contingency Plan for Lengthy Tarmac Delays for its scheduled and public charter flights at each large and medium hub U.S. airport at which it operates such air service and shall adhere to its plan's terms.

(b) *Contents of Plan.* Each Contingency Plan for Lengthy Tarmac Delays shall include, at a minimum, the following:

(1) For domestic flights, assurance that the air carrier will not permit an aircraft to remain on the tarmac for more than three hours unless:

(i) The pilot-in-command determines there is a safety-related or security-related reason (*e.g.* weather, a directive from an appropriate government agency) why the aircraft cannot leave its position on the tarmac to deplane passengers; or

(ii) Air traffic control advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.

(2) For international flights that depart from or arrive at a U.S. airport, assurance that the air carrier will not permit an aircraft to remain on the tarmac at a large or medium hub U.S. airport for more than a set number of hours, as determined by the carrier and set out in its contingency plan, before allowing passengers to deplane, unless:

(i) The pilot-in-command determines there is a safety-related or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers; or

(ii) Air traffic control advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.

(3) For all flights, assurance that the air carrier will provide adequate food and potable water no later than two hours after the aircraft leaves the gate (in the case of departure) or touches down (in the case of an arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security considerations preclude such service;

(4) For all flights, assurance of operable lavatory facilities, as well as

adequate medical attention if needed, while the aircraft remains on the tarmac;

(5) Assurance of sufficient resources to implement the plan; and

(6) Assurance that the plan has been coordinated with airport authorities at all medium and large hub airports that the carrier serves, including medium and large hub diversion airports.

(c) *Amendment of plan.* At any time, an air carrier may amend its Contingency Plan for Lengthy Tarmac Delays to decrease the time for aircraft to remain on the tarmac for domestic flights covered in paragraph (b)(1) of this section, for aircraft to remain on the tarmac for international flights covered in paragraph (b)(2) of this section, and for the trigger point for food and water covered in paragraph (b)(3) of this section. An air carrier may also amend its plan to increase these intervals (up to the limits in this rule), in which case the amended plan shall apply only to those flights that are first offered for sale after the plan's amendment.

(d) *Retention of records.* Each air carrier that is required to adopt a Contingency Plan for Lengthy Tarmac Delays shall retain for two years the following information about any tarmac delay that lasts at least three hours:

(1) The length of the delay;

(2) The precise cause of the delay;

(3) The actions taken to minimize hardships for passengers, including the provision of food and water, the maintenance and servicing of lavatories, and medical assistance;

(4) Whether the flight ultimately took off (in the case of a departure delay or diversion) or returned to the gate; and

(5) An explanation for any tarmac delay that exceeded 3 hours (*i.e.,* why the aircraft did not return to the gate by the 3-hour mark).

(e) *Unfair and Deceptive Practice.* An air carrier's failure to comply with the assurances required by this rule and as contained in its Contingency Plan for Lengthy Tarmac Delays will be considered an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 that is subject to enforcement action by the Department.

§ 259.5 Customer Service Plan.

(a) *Adoption of Plan.* Each covered carrier shall adopt a Customer Service Plan applicable to its scheduled flights and shall adhere to this plan's terms.

(b) *Contents of Plan.* Each Customer Service Plan shall, at a minimum, address the following subjects:

(1) Offering the lowest fare available;

(2) Notifying consumers of known delays, cancellations, and diversions;

(3) Delivering baggage on time;

(4) Allowing reservations to be held without payment or cancelled without penalty for a defined amount of time;

(5) Providing prompt ticket refunds;

(6) Properly accommodating passengers with disabilities and other special-needs, including during tarmac delays;

(7) Meeting customers' essential needs during lengthy tarmac delays;

(8) Handling ''bumped'' passengers with fairness and consistency in the case of oversales;

(9) Disclosing travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration;

(10) Ensuring good customer service from code-share partners;

(11) Ensuring responsiveness to customer complaints; and

(12) Identifying the services it provides to mitigate passenger inconveniences resulting from cancellations and misconnects.

(c) *Self-auditing of Plan and Retention of Records.* Each air carrier that is required to adopt a Customer Service Plan shall audit its own adherence to its plan annually. Carriers shall make the results of their audits available for the Department's review upon request for two years following the date any audit is completed.

§ 259.6 Notice and Contract of Carriage.

(a) Each air carrier that is required to adopt a Contingency Plan for Lengthy Tarmac Delays or a Customer Service Plan may include such plans in their Contract of Carriage.

(b) Each air carrier that has a Web site shall post its Contract of Carriage on its Web site in easily accessible form, including all updates to its Contract of Carriage.

(c) Each air carrier that is required to adopt a Contingency Plan for Lengthy Tarmac Delays shall, if it has a Web site but does not include such Contingency Plan for Lengthy Tarmac Delays in its Contract of Carriage, post its Contingency Plan for Lengthy Tarmac Delays on its Web site in easily accessible form, including all updates to its Contingency Plan for Lengthy Tarmac Delays.

(d) Each air carrier that is required to adopt a Customer Service Plan shall, if it has a Web site but does not include such Customer Service Plan in its Contract of Carriage, post its Customer Service Plan on its Web site in easily accessible form, including all updates to its Customer Service Plan.

§ 259.7 Response to consumer problems.

(a) *Designated Advocates for Passengers' Interests.* Each covered carrier shall designate for its scheduled flights an employee who shall be responsible for monitoring the effects of flight delays, flight cancellations, and lengthy tarmac delays on passengers. This employee shall have input into decisions on which flights to cancel and which will be delayed the longest.

(b) *Informing consumers how to complain.* Each covered carrier shall make available the mailing address and e-mail or Web address of the designated department in the airline with which to file a complaint about its scheduled service. This information shall be provided on the carrier's Web site (if any), on all e-ticket confirmations and, upon request, at each ticket counter and boarding gate staffed by the carrier.

(c) *Response to complaints.* Each covered carrier shall acknowledge receipt of each complaint regarding its scheduled service to the complainant within 30 days of receiving it and shall send a substantive response to each complainant within 60 days of receiving the complaint. A complaint is a specific written expression of dissatisfaction concerning a difficulty or problem which the person experienced when using or attempting to use an airline's services.

PART 399—[AMENDED]

■ 6. The authority citation for 14 CFR Part 399 continues to read as follows:

Authority: 49 U.S.C. 40101 *et seq.*

■ 7. Section 399.81 is revised to read as follows:

§ 399.81 Unrealistic or deceptive scheduling.

(a) The unrealistic scheduling of flights by any air carrier providing scheduled passenger air transportation is an unfair or deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. 41712.

(b) With respect to the advertising of schedule performance, it is an unfair or deceptive practice and an unfair method of competition to use any figures purporting to reflect schedule or on-time performance without indicating the basis of the calculation, the time period involved, and the pairs of points or the percentage of system-wide operations thereby represented and whether the figures include all scheduled flights or only scheduled flights actually performed.

(c) *Chronically delayed flights.* (1) This section applies to any air carrier that is a ''reporting carrier'' as defined in Part 234 of Department regulations (14 CFR Part 234).

(2) For the purposes of this section, a chronically delayed flight means any domestic flight that is operated at least

10 times a month, and arrives more than 30 minutes late (including cancelled flights) more than 50 percent of the time during that month.

(3) For purposes of this paragraph, the Department considers all of a carrier's flights that are operated in a given city-pair market whose scheduled departure times are within 30 minutes of the most frequently occurring scheduled departure time to be one single flight.

(4) The holding out of a chronically delayed flight for more than four consecutive one-month periods represents one form of unrealistic scheduling and is an unfair or deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. 41712.

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BILLING CODE 4910–9X–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB87

Electronic Filing of Financial Reports and Notices

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending certain of its regulations in connection with electronic filing of financial reports and related notices. The amendments broaden the language in the Commission's regulations applicable to electronic filings of financial reports to clarify that, to the extent a futures commission merchant (''FCM'') submits a Form 1–FR to the Commission electronically, it may do so using any user authentication procedures established or approved by the Commission. The amendments also permit registrants to electronically submit filings in addition to financial reports, including an election to use a non-calendar fiscal year, requests for extensions of time to file uncertified financial reports and ''early warning'' notices required under Commission regulations. In connection with the filing of financial reports, the amendments specify, consistent with other requirements and existing practice, that a statement of income and loss is included as a required part of the non-certified 1–FR filings for FCMs and introducing brokers (''IBs''). The amendments also require more immediate, but less prescriptive, documentation regarding a firm's capital condition when a firm falls below its required minimum adjusted net capital. Finally, the final regulations include several other minor amendments to correct certain outdated references and to make other clarifications to existing regulations.

DATES: Effective Date: January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Thelma Diaz, Associate Director, Division of Clearing and Intermediary Oversight, 1155 21st Street, NW., Washington, DC 20581. Telephone number: 202–418–5137; facsimile number: 202–418–5547; and electronic mail: *tdiaz@cftc.gov*, or Lawrence T. Eckert, Special Counsel, Division of Clearing and Intermediary Oversight, 140 Broadway, New York, New York 10005. Telephone number (646) 746–9704; and electronic mail: *leckert@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 13, 2009, the Commission published for comment in the **Federal Register** proposed amendments to Regulations 1.10 and 1.12 (the ''Proposals'').[1] Commission Regulation 1.10 sets forth the financial reporting requirements for FCMs and IBs [2] and Regulation 1.12 requires FCMs, IBs and applicants for registration thereof to provide notice of a variety of predefined events as or before they occur.[3]

The Proposals consisted of several amendments regarding electronic filing of financial reports and notices by FCMs and IBs as well as amendments to certain other financial reporting requirements. Specifically, the Commission proposed amendments to: (1) Broaden language in the Commission's regulations concerning authentication procedures applicable to electronic filing of financial reports in order to enable internet-based filing of such reports in anticipation of expected changes to ''WinJammer™,'' an application used by FCMs that file their non-certified financial reports electronically with the Commission; (2) expand the types of filings that FCMs and IBs may submit electronically to include required ''early warning'' notices and certain other notices and filings under Regulations 1.10 and 1.12; (3) provide for less prescriptive, but more immediate, documentation to be filed regarding a firm's undercapitalized condition; (4) expressly include an income statement in the required periodic unaudited financial reports of FCMs and IBs; and (5) make several other minor amendments to correct certain outdated references and to make other clarifications to existing regulations.

The 30-day public comment period on the Proposals expired on November 12, 2009. The Commission received one written comment on the Proposals, submitted by the National Futures Association (''NFA''). NFA noted its agreement and support of the Commission's Proposals and commended the Commission for its review of its electronic filing requirements and proposal of changes to reflect technological advances and current practices. As discussed below, NFA also encouraged the Commission to consider certain additional amendments to further expand the use of electronic filing in certain circumstances. NFA did not suggest delaying the implementation of the Proposals while these additional suggestions made by NFA are under consideration by the Commission. The Commission further notes that certain provisions included in the additional amendments offered by NFA for consideration may require publication in the **Federal Register** for prior notice and comment before they may be adopted. For the reasons set forth below, the Commission has therefore determined to adopt the amendments as proposed.

II. Rule Amendments

A. Electronic Filing Issues

1. Amendments to Regulation 1.10

Commission Regulation 1.10(c) generally sets forth the provisions governing where and how financial reports required to be filed by FCMs and IBs under Regulation 1.10 must be filed. Regulation 1.10(c)(1) indicates with whom reports should be filed and Regulation 1.10(c)(2) addresses the method for submitting such reports. Electronic submission of certified financial reports currently is addressed separately in Regulation 1.10(b)(2)(iii).

[1] 74 FR 52434 (Oct 13, 2009). The Commission's regulations cited in this rulemaking may be found at 17 CFR Ch. 1 (2009).

[2] For simplicity, references in this **Federal Register** release to IBs in connection with financial reporting and notice requirements are intended to refer to IBs that are not operating pursuant to a guarantee agreement.

[3] For example, Regulation 1.12(a) requires immediate telephonic notice, to be confirmed in writing by facsimile, when a registrant's (or applicant's) adjusted net capital falls below that required by Regulation 1.17. Other provisions of Regulation 1.12 require notification to the Commission for certain ''early warning'' events. Regulation 1.12(b), for example, requires notification by a registrant or applicant if such entity's adjusted net capital drops below a specified threshold.

This section provides that FCMs must file certified financial reports in paper form and IBs must file such reports electronically in accordance with electronic filing procedures established by NFA.

For clarification and ease of reading, the Commission is moving Regulation 1.10(b)(2)(iii) into a new subparagraph of Regulation 1.10(c)(2). Regulation 1.10(c)(2) is being amended as discussed below and divided into 2 new subparagraphs: New subparagraph (c)(2)(i) addresses electronic filing by FCMs with the Commission and new subparagraph (c)(2)(ii) addresses electronic filings with NFA by IBs and by applicants for registration as IBs and FCMs.

Regulation 1.10(c)(2) currently provides that non-certified financial reports may be submitted to the Commission ''in electronic form using a Commission assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission * * *.'' The adopted amendments to Regulation 1.10(c)(2) broaden the language in the regulation relating to user authentication by no longer limiting user authentication to the use of a personal identification number (''PIN''). As described in the proposing release, the use of such a PIN is no longer consistent with the internet-based enhancements under development for Winjammer. The revisions to Regulation 1.10(c)(2) also permit any filing or other notice submitted under the regulation to be transmitted electronically, rather than limiting such submission to financial reports as under the current regulation. Such other notices would include, for example, an election to use a fiscal year other than a calendar year under Regulation 1.10(e) and a request for an extension of time to file uncertified financial reports under Regulation 1.10(f). Regulation 1.10(d)(4)(iii), which deals with electronic filing of Form 1–FR, is being amended by deleting references to the use of a PIN.

As amended, Regulation 1.10(c)(2)(i) provides that all filings or other notices or applications prepared by a futures commission merchant ''[except with respect to the filing of certified financial reports which must be filed in paper form], and pursuant to [Regulation 1.10] may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instruction issued by or approved by the Commission, if the futures commission merchant or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report.''

Amended Regulation 1.10(c)(2)(ii) provides that ''[except with respect to the filing of certified FOCUS reports by a registered broker or dealer with the SEC], all filings or other notices or applications prepared by an introducing broker or applicant for registration as an introducing broker or futures commission merchant * * * must be filed electronically in accordance with electronic filing procedures established by the National Futures Association * * *.''

In its comment letter, NFA indicated that it would support the Commission further broadening the permitted use of electronic filing to include FCM certified financial statements. The current requirement in Regulation 1.10 for FCM certified financial statements to be filed in paper form is due in part to the fact that such statements are not prepared in a standard format that lends itself easily to electronic input. NFA suggested that notwithstanding this lack of standardization, the Commission could consider permitting the submission of such statements in portable document format (''pdf''). The Commission notes, however, that this suggestion requires further review because the pdf format is not conducive to the application of automated review of the data by the Commission. Further review would also be beneficial in light of continuing developments in technology that may at a later date result in increased benefits of electronic filing of certified financial statements for the filers, the Commission and the DSRO recipients. The adoption of the amendments as proposed will not impede such further review, and will make available to these same parties other recognized enhancements to the current requirements for electronic filing.

2. Amendments to Regulation 1.12

Commission Regulation 1.12 requires FCMs, IBs and applicants for registration thereof to provide notice of a variety of predefined events as or before they occur.[4] The Commission proposed to amend Regulation 1.12(i), which sets forth the procedures for filing notices under Regulation 1.12, to allow FCMs and IBs to submit electronically filings otherwise required to be submitted in writing via facsimile.[5] In its comment letter, NFA supported this change, but suggested that the Commission consider requiring, rather than simply permitting, registrants to electronically file such notices. Although the Commission strongly encourages, and believes that most registrants will choose to utilize, electronic filing as a more efficient and expeditious means to file notices, the Commission nonetheless appreciates that there may be times when a registrant would prefer, or is otherwise unable, to file electronically. For example, a registrant may have a regulatory deadline under the Commission's regulations but be unable to satisfy such deadline through electronic means due to temporary technological issues with WinJammer™, NFA's EasyFile system or the registrants' own systems. Moreover, moving from a permissive to mandatory filing requirement may require publication in the **Federal Register** in order to obtain public comment on such a proposal. In light of these concerns, the Commission has determined to adopt the amendment as proposed.

The amendment adopted adds a new subparagraph 1.12(i)(3) to the Commission's regulations which provides that ''[e]very notice or report required to be provided in writing under [Regulation 1.12] may, in lieu of facsimile, be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission.'' An electronic submission is required to clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing would constitute and become a substitute for the manual signature of the authorized signer.

B. Income Statement Filing Requirement

Commission Regulation 1.10(d) sets forth the content requirements for financial reports filed with the Commission: The Commission proposed to amend Regulation 1.10(d)(1) to require ''statements of income (loss)'' to be included as part of FCM and IB non-certified financial report filings. The Commission noted that this amendment is consistent with Regulation 1.10(d)(2)(ii), which requires FCMs and

[4] See footnote 3, above.

[5] IBs file notices under Regulation 1.12 with NFA pursuant to NFA rules. NFA has indicated that it intends to make changes to the EasyFile system and/or NFA rules, as may be necessary to facilitate the electronic filing by IBs of notices or other information permitted to be submitted electronically by the Proposal but currently filed with NFA in paper form.

IBs to include an income statement as part of their certified financial reports, and is a practice currently followed by most registrants. NFA voiced its support of this amendment in its comment letter noting its agreement that the income statement provides the Commission with important information for monitoring the financial condition of firms. The Commission is adopting the amendment as proposed.

As noted in the Proposals, this amendment does not affect the ability of a broker-dealer to file with the Commission in accordance with Regulation 1.10(h) the FOCUS report under the Securities and Exchange Act of 1934, including the income statement currently provided in that report.[6]

C. Net Capital Undercapitalization Documentation

Regulation 1.12(a) requires a registrant or applicant for registration as an FCM or IB that knows or should have known that its adjusted net capital is less than the minimum required by the Commission or by its designated self-regulatory organization (''DSRO'') to provide notice of such event immediately by telephone and confirm such telephonic notice in writing by facsimile. Regulations 1.12(a)(2) (applicable to FCMs) and 1.12(a)(3) (applicable to IBs) further require that, within 24 hours thereafter, the registrant (or applicant) must file certain specific financial records with the Commission.[7]

The Commission also is amending Regulations 1.12(a)(2) and (a)(3) to require more immediate, but less prescriptive, reporting to the Commission when a registrant or applicant falls below its minimum net capital requirement. NFA supported this amendment, stating its agreement with the Commission that it is more beneficial for the Commission to receive prompt information concerning a firm's capital condition than to receive such information in a specific prescribed format. Under the amended regulation, a firm must continue to provide immediate telephonic notice, confirmed in writing, in the event that its adjusted net capital falls below its required minimum. Amended Regulation 1.12(a)(2) requires that together with such initial telephonic notice and written confirmation, a firm must provide ''documentation in such form as necessary to adequately reflect the firm's capital condition as of any date such person's adjusted net capital is less than the minimum required.''[8] The Commission envisions that such adequate documentation would at a minimum specify the firm's adjusted net capital requirement and actual adjusted net capital for any date during which the firm fell below its regulatory requirement. The amended regulation also requires a firm to provide similar documentation to that initially provided for any other days the Commission may request.[9] By requiring documentation as of ''any'' date that adjusted net capital is less than the required minimum, the amended regulation makes clear that where a firm is undercapitalized on more than one day, documentation related to all such time must be provided.

Regulation 1.12(a)(3), which provides documentation requirements for IBs that provide the Commission with notice of their undercapitalized condition, has been deleted because Regulation 1.12(a)(2) as amended applies to IBs as well as to FCMs. Regulation 1.12(i)(1) also is being amended by deleting certain language related to the method of filing documentation that is no longer required to be submitted to the Commission in light of the amendments to Regulation 1.12(a)(2) discussed above.

D. Miscellaneous Amendments to Regulations

The Commission proposed a number of minor amendments to Regulations 1.10 and 1.12 to correct certain outdated references and to otherwise clarify existing regulations. NFA noted their support of certain of these amendments that eliminated requirements that provided for duplicative filing with NFA and the Commission (enumerated as items (1) and (2), below). The Commission received no comments on the other amendments. The Commission is, therefore, adopting each of the amendments as proposed and, as outlined below:

(1) Regulation 1.10(c)(1) is amended to clarify that FCM and IB applicants for registration need file financial reports required as part of the application process only with NFA and not also with a regional office of the Commission;

(2) Regulation 1.12(i)(1) is amended to clarify that an applicant for registration as an FCM need file any notices required under Regulation 1.12 only with NFA and not also with the Commission. The amended regulation makes clear that any notice or report filed with NFA will be deemed to be filed with, and to be the official record of, the Commission;

(3) The following minor wording amendments are being made to Regulation 1.10(c)(1) for the purposes of consistency with other provisions of the regulations and/or general clarification:

(A) The reference to ''[a] report filed by an [IB] pursuant to paragraph (b)(2)(i) or (b)(2)(ii)'' is amended to clarify that ''a report'' in this context is meant to refer to Form 1–FR;

(B) The reference to subparagraphs (b)(2)(i) and (b)(2)(ii) is being amended for simplicity to refer only to paragraph (b)(2) in general; and

(C) The language of paragraph 1.10(c)(1) is being amended to clarify that it is intended to cover not only ''reports'' but all reports and other ''information;''

(4) Regulations 1.10(b)(2)(i) and 1.10(b)(2)(ii) are being amended to delete language referring to an option to file financial statements on a calendar-year basis which is no longer contained in the Commission's regulations;

(5) Regulation 1.10(b)(3), which permits an FCM or IB to satisfy the Commission's Form 1–FR filing requirements if it satisfies certain financial reporting standards and reporting requirements of its DSRO, is being amended to delete outdated language referring to DSRO regulations applicable ''after the effective date of these regulations by the Commission''; and

(6) Language within regulation 1.10(h) that references ''NFA'' is amended for consistency purposes by spelling out ''National Futures Association.''

[6] Under SEC Regulation 17a–5 and rules of applicable self-regulatory organizations, certain securities brokers or dealers may include as part of their quarterly FOCUS report filings a consolidated Statement of Income (Loss) for the relevant quarter rather than a Statement of Income (Loss) for the month for which the report is being filed (i.e., March, June, September or December). Such broker-dealers that also are registered as FCMs would file these same reports with the Commission. The Commission wishes to make clear that an otherwise complete FOCUS report filing made with the Commission that includes such a consolidated Statement of Income (Loss) will be deemed an acceptable filing in accordance with Commission Regulation 1.10(h).

[7] Specifically, Regulation 1.12(a)(2) requires an FCM (or applicant) to file with the Commission: (1) A statement of financial condition; (2) a statement of the computation of its minimum capital requirements; (3) the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts; and (4) the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers. Regulation 1.12(a)(3) requires an IB (or applicant) to file a statement of financial condition and a statement of the computation of its minimum capital requirements.

[8] This amendment is consistent with SEC Regulation 17a–11 which requires a broker or dealer whose net capital falls below its required minimum to give notice of the deficiency that same day, specifying the broker or dealer's net capital requirement and its current amount of net capital.

[9] Regulation 1.10(b)(4) already provides that representatives of the Commission may upon written notice require Form 1–FR or other financial information at such times as specified by the representative.

III. Related Matters

A. Administrative Procedure Act

The Administrative Procedure Act (''APA'') provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, unless the agency is permitted to implement an earlier effective date under one of the exceptions recognized by the APA.[10] The exceptions set forth in the APA are as follows: (1) A substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.[11]

The amendments being made to Rules 1.10 and 1.12 will ''grant or recognize an exemption or relieve a restriction'' in that they generally serve to permit and enable registrants to file notices and reports electronically that previously were required to be filed in paper form. In addition, the amendments include a number of non-substantive amendments to correct certain outdated references and to otherwise clarify existing regulations.

With regard to the amendments relating to the timing of documentation required by firms that become undercapitalized, the Commission has a clear interest in receiving such information immediately and believes, therefore, that there is ''good cause'' to make such requirement effective in fewer than 30 days. With respect to the amendments requiring an income statement, the Commission believes that there is also ''good cause'' to make this provision effective on January 4, 2010, consistent with the other rule amendments. It would not be logical for the income statement requirement to be implemented at a time later than the effective date of the remaining rules, as the information in the income statement is an integral part of a registrant's financial statements. Further, as the SEC and several self-regulatory organizations already require dual registrants and other FCMs to include the income statement in their financial statements, the income statement is already formatted as part of the Form 1–FR reports that registrants currently file with the Commission, and the data required to complete it is generally already available from other parts of the form. In fact, substantially all FCMs and IBs already complete the income statement as part of their required periodic non-certified financial report filings.

Accordingly, the Commission has determined to make these amendments effective on January 4, 2010, consistent with the anticipated availability of the updated WinJammer™ system.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 et seq., requires that agencies, in rulemaking, consider the impact of those regulations on small businesses. This rulemaking would affect FCMs and IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.

With respect to IBs, the Commission stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all IBs should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[12] These amendments will not place any additional burdens on IBs that are small businesses because all such parties, if any, already are subject to the financial reporting and notice requirements under Regulations 1.10 and 1.12 and already file financial reports through NFA's electronic filing system. Additionally, although the Commission is amending its regulations to add a requirement to include statements of income and loss as part of non-certified financial report filings, substantially all IBs already are filing this data in practice and, in any event, must compute the relevant income and loss data (although not currently required to be provided in a separate income statement) in order to complete Commission Form 1–FR or the SEC FOCUS report, as applicable, under the Commission's regulations.[13] The Commission's Proposals solicited public comment on this analysis.[14] No comments were received. Accordingly, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the action taken herein will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This rulemaking provides an alternative method of collection for a required collection of information under Part 1 of the Commission's rules, but is not anticipated to change the burden under such collection as the actual financial reporting requirements have not changed significantly. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission submitted a copy of this section to the Office of Management and Budget (''OMB'') for its review. No comments were received in response to the Commission's invitation in its notice of proposed rulemaking to comment on any change in the potential paperwork burden associated with these rule amendments.[15]

D. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the Commodity Futures Modernization Act, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. The Commission, in its discretion, can choose to give greater weight to any one of the five enumerated areas and determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission's proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon.[16] No comments were received with respect to this analysis. Therefore, pursuant to such consideration, the Commission has decided to adopt these amendments as discussed above.

[10] 5 U.S.C. 553(b) and (d).

[11] 5 U.S.C. 553–(d).

[12] See 48 FR 35248, 35275–78 (Aug. 3, 1983).

[13] See Commission Regulations 1.10(b)(2) and 1.10(h) (requiring IBs to file with the Commission Form 1–FR–FCM or, as an alternative in the case of a registered broker or dealer with the SEC, the FOCUS report).

[14] 74 FR at 52438.

[15] Id.

[16] 74 FR at 52439.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Reporting and recordkeeping requirements.

■ In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6f, 6g and 12a(5), the Commission hereby amends 17 CFR part 1 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24, as amended by the Commodity Futures Modernization Act of 2000, appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

■ 2. Section 1.10 is amended by removing paragraph (b)(2)(iii) and revising paragraphs (b)(2)(i), (b)(2)(ii)(A), (b)(3), (c)(1) and (c)(2), (d)(1)(ii), (d)(4)(iii), and (h) as follows:

§ 1.10 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(2)(i) Except as provided in paragraphs (b)(3) and (h) of this section, and except for an introducing broker operating pursuant to a guarantee agreement which is not also a securities broker or dealer, each person registered as an introducing broker must file a Form 1–FR–IB semiannually as of the middle and the close of each fiscal year. Each Form 1–FR–IB must be filed no later than 17 business days after the date for which the report is made.

(ii)(A) In addition to the financial reports required by paragraph (b)(2)(i) of this section, each person registered as an introducing broker must file a Form 1–FR–IB as of the close of its fiscal year which must be certified by an independent public accountant in accordance with § 1.16 no later than 90 days after the close of each introducing broker's fiscal year: *Provided, however*, that a registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer must file this report not later than the time permitted for filing an annual audit report under § 240.17a–5(d)(5) of this title.

* * * * *

(3) The provisions of paragraphs (b)(1) and (b)(2) of this section may be met by any person registered as a futures commission merchant or as an introducing broker who is a member of a designated self-regulatory organization and conforms to minimum financial standards and related reporting requirements set by such designated self-regulatory organization in its bylaws, rules, regulations, or resolutions and approved by the Commission pursuant to Section 4f(b) of the Act and § 1.52: *Provided, however*, That each such registrant shall promptly file with the Commission a true and exact copy of each financial report which it files with such designated self-regulatory organization.

* * * * *

(c) *Where to file reports.* (1) Form 1–FR filed by an introducing broker pursuant to paragraph (b)(2) of this section need be filed only with, and will be considered filed when received by, the National Futures Association. Other reports or information provided for in this section will be considered filed when received by the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located and by the designated self-regulatory organization, if any; and reports or other information required to be filed by this section by an applicant for registration will be considered filed when received by the National Futures Association. Any report or information filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

(2)(i) Except as provided in the last sentence of this subparagraph, all filings or other notices prepared by a futures commission merchant pursuant to this section may be submitted to the Commission in electronic form using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission, if the futures commission merchant or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report. A Form 1–FR required to be certified by an independent public accountant in accordance with § 1.16 which is filed by a futures commission merchant must be filed in paper form and may not be filed electronically.

(ii) Except as provided in paragraph (h) of this section, all filings or other notices or applications prepared by an introducing broker or applicant for registration as an introducing broker or futures commission merchant pursuant to this section must be filed electronically in accordance with electronic filing procedures established by the National Futures Association. In the case of a Form 1–FR–IB that is required to be certified by an independent public accountant in accordance with § 1.16, a paper copy of any such filing with the original manually signed certification must be maintained by the introducing broker or applicant for registration as an introducing broker in accordance with § 1.31.

* * * * *

(d)(1) * * *

(ii) Statements of income (loss) and a statement of changes in ownership equity for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

* * * * *

(4) * * *

(iii) In the case of a Form 1–FR filed via electronic transmission in accordance with procedures established by or approved by the Commission, such transmission must be accompanied by the user authentication assigned to the authorized signer under such procedures, and the use of such user authentication will constitute and become a substitute for the manual signature of the authorized signer for the purpose of making the oath or affirmation referred to in this paragraph.

* * * * *

(h) *Filing option available to a futures commission merchant or an introducing broker that is also a securities broker or dealer.* Any applicant or registrant which is registered with the Securities and Exchange Commission as a securities broker or dealer may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b), (c), and (j) of this section) a copy of its Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II, Part IIA, or Part II CSE (FOCUS Report), in lieu of Form 1–FR; *Provided, however*, That all information which is required to be furnished on and submitted with Form 1–FR is provided with such FOCUS Report; and *Provided, further*, That a certified FOCUS Report filed by an introducing broker or applicant for registration as an introducing broker in lieu of a certified Form 1–FR–IB must be filed according to National Futures Association rules, either in paper form or electronically, in accordance with procedures established

by the National Futures Association, and if filed electronically, a paper copy of such filing with the original manually signed certification must be maintained by such introducing broker or applicant in accordance with § 1.31.

* * * * *

■ 3. Section 1.12 is amended by:
■ a. Revising paragraphs (a)(2) and (i)(1);
■ b. Removing paragraph (a)(3); and
■ c. Adding paragraph (i)(3) as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(a) * * *

(2) Provide together with such notice documentation in such form as necessary to adequately reflect the applicant's or registrant's capital condition as of any date such person's adjusted net capital is less than the minimum required. The applicant or registrant must provide similar documentation for other days as the Commission may request.

* * * * *

(i)(1) Every notice and written report required to be given or filed by this section (except for notices required by paragraph (f) of this section) by a futures commission merchant or a self-regulatory organization must be filed with the regional office of the Commission with jurisdiction over the state in which the registrant's principal place of business is located, with the principal office of the Commission in Washington, DC, with the designated self-regulatory organization, if any; and with the Securities and Exchange Commission, if such registrant is a securities broker or dealer. Every notice and written report required to be given or filed by this section by an applicant for registration as a futures commission merchant must be filed with the National Futures Association (on behalf of the Commission), with the designated self-regulatory organization, if any, and with the Securities and Exchange Commission, if such applicant is a securities broker or dealer. Any notice or report filed with the National Futures Association pursuant to this paragraph shall be deemed for all purposes to be filed with, and to be the official record of, the Commission.

* * * * *

(3) Every notice or report required to be provided in writing to the Commission under this section may, in lieu of facsimile, be filed via electronic transmission using a form of user authentication assigned in accordance with procedures established by or approved by the Commission, and otherwise in accordance with instructions issued by or approved by the Commission. Any such electronic submission must clearly indicate the registrant or applicant on whose behalf such filing is made and the use of such user authentication in submitting such filing will constitute and become a substitute for the manual signature of the authorized signer.

Issued in Washington, DC, on December 24, 2009, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–31032 Filed 12–29–09; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2965; File No. S7–23–07]

RIN 3235–AJ96

Temporary Rule Regarding Principal Trades With Certain Advisory Clients

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting as final Rule 206(3)–3T under the Investment Advisers Act of 1940, the interim final temporary rule that establishes an alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of Section 206(3) of the Investment Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. As adopted, the only change to the rule is the expiration date. Rule 206(3)–3T will sunset on December 31, 2010.

DATES: *Effective Date:* December 30, 2009.

FOR FURTHER INFORMATION CONTACT: Sarah A. Bessin, Assistant Director, Daniel S. Kahl, Branch Chief, or Matthew N. Goldin, Senior Counsel, at (202) 551–6787 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting as final temporary Rule 206(3)–3T [17 CFR 275.206(3)–3T] under the Investment Advisers Act of 1940 [15 U.S.C. 80b].

I. Background

On September 24, 2007, we adopted, on an interim final basis, Rule 206(3)–3T, a temporary rule under the Investment Advisers Act of 1940 (the ''Advisers Act'') that provides an alternative means for investment advisers who are registered with us as broker-dealers to meet the requirements of Section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients.[1] The purpose of the rule was to permit broker-dealers to sell to their advisory clients, in the wake of *Financial Planning Association* v. *SEC* (the ''FPA Decision''),[2] certain securities held in the proprietary accounts of their firms that might not be available on an agency basis—or might be available on an agency basis only on less attractive terms [3]—while protecting clients from conflicts of interest as a result of such transactions.[4]

The rule vacated in the FPA Decision had allowed broker-dealers to offer fee-based accounts without complying with the Advisers Act, including the requirements of Section 206(3). Section 206(3) makes is unlawful for any investment adviser, directly or indirectly, ''acting as a principal for his own account, knowingly to sell any security to or to purchase any security from a client * * *, without disclosing to such client *in writing* before the completion of such transaction the

[1] Rule 206(3)–3T [17 CFR 275.206(3)–3T]. All references to Rule 206(3)–3T and the various sections thereof in this Release are to 17 CFR 275.206(3)–3T and its corresponding sections. *See also Temporary Rule Regarding Principal Trades with Certain Advisory Clients,* Investment Advisers Act Release No. 2653 (Sep. 24, 2007) [72 FR 55022 (Sep. 28, 2007)] (''2007 Principal Trade Rule Release'').

[2] 482 F.3d 481 (D.C. Cir. 2007). In the FPA Decision, handed down on March 30, 2007, the Court of Appeals for the District of Columbia Circuit vacated (subject to a subsequent stay until October 1, 2007) Rule 202(a)(11)–1 under the Advisers Act. Rule 202(a)(11)–1 provided, among other things, that fee-based brokerage accounts were not advisory accounts and were thus not subject to the Advisers Act. For further discussion of fee-based brokerage accounts, see 2007 Principal Trade Rule Release, Section I.

[3] *See* 2007 Principal Trade Rule Release at nn.19–20 and Section VI.C.

[4] As a consequence of the FPA Decision, broker-dealers offering fee-based brokerage accounts became subject to the Advisers Act with respect to those accounts, and the client relationship became fully subject to the Advisers Act. These broker-dealers—to the extent they wanted to continue to offer fee-based accounts and met the requirements for registration—had to register as investment advisers, if they had not done so already, act as fiduciaries with respect to those clients, disclose all material conflicts of interest, and otherwise fully comply with the Advisers Act, including the restrictions on principal trading contained in Section 206(3) of the Act. *See* 2007 Principal Trade Rule Release, Section I.

capacity in which he is acting and obtaining the consent of the client to such transaction.'' [5] Prior to our adoption of Rule 206(3)–3T, several firms that had offered fee-based brokerage accounts informed our staff that the written disclosure and the client consent requirements of Section 206(3) act as an operational barrier to their ability to engage in principal trades with their clients. Most informed us that they planned to discontinue fee-based brokerage accounts as a result of the FPA decision. They explained that they planned to do so because of the application of the Advisers Act and that, unless they were provided an exemption from (or an alternative means of complying with) Section 206(3), they would be unable to provide the same range of services to those fee-based brokerage customers who elected to become advisory clients and would expect few to elect to do so.

Rule 206(3)–3T was designed to continue to provide the protection of transaction-by-transaction disclosure and consent [6] to advisory clients when investment advisers seek to trade with them on a principal basis, subject to several conditions.[7] Specifically, Rule 206(3)–3(T) permits an adviser, with respect to non-discretionary advisory accounts,[8] to comply with Section 206(3) of the Advisers Act by, among other things, meeting the following conditions:

(i) Providing written, prospective disclosure regarding the conflicts arising from principal trades; [9]

(ii) Obtaining written, revocable consent from the client prospectively authorizing the adviser to enter into principal transactions; [10]

(iii) Making certain disclosures, either *orally or in writing,* and obtaining the client's consent before each principal transaction; [11]

(iv) Sending to the client confirmation statements disclosing the capacity in which the adviser has acted and disclosing that the adviser informed the client that it may act in a principal capacity and that the client authorized the transaction; [12] and

(v) Delivering to the client an annual report itemizing the principal transactions made during the year.[13]

The rule also requires that the investment adviser be registered as a broker-dealer under Section 15 of the Securities Exchange Act of 1934 (the ''Exchange Act'') [15 U.S.C. 78o] and that each account for which the adviser relies on the rule be a brokerage account subject to the Exchange Act, and the rules thereunder, and the rules of the self-regulatory organization(s) (''SRO'') of which it is a member.[14] The rule is not available for principal trades of securities if the investment adviser or a person who controls, is controlled by, or is under common control with the adviser (''control person'') is the issuer or is an underwriter of the security.[15] The rule includes one exception—an adviser may rely on the rule for trades in which the adviser or a control person is an underwriter of non-convertible investment-grade debt securities.[16] Rule 206(3)–3T(b) clarifies that the rule does not relieve in any way an investment adviser from its obligation to act in the best interests of each of its advisory clients, including fulfilling the duty with respect to the best price and execution for a particular transaction for the advisory client.[17] Rule 206(3)–3T was set to expire on December 31, 2009, approximately 27 months after its adoption.[18]

II. Discussion

We are adopting Rule 206(3)–3T in the same form in which we adopted it on an interim final basis in 2007, except that the sunset period of the rule will end one year later (on December 31, 2010). Absent further action by the Commission, Rule 206(3)–3T will expire on December 31, 2010. As we continue to assess the operation of the rule along with intervening developments, we believe that the substantive provisions of Rule 206(3)–3T as it was adopted on an interim final basis provide sufficient protections to advisory clients to warrant its continued operation for an additional limited period of time. We will use that time to consider whether to propose to continue the rule beyond the revised sunset date and, if so, what if any modifications should be made to the rule.

a. Comments on the Scope and Conditions of the Rule

We received comment letters from eight commenters on the interim final rule.[19] Several favored narrowing the scope of the exemption provided by the rule or opposed its expansion.[20] Others, however, urged us to expand the rule's exemption to cover additional securities.[21] Some commenters suggested that an adviser be prohibited from relying on the rule when trading any securities underwritten or issued by the adviser or any of its affiliates (*i.e.,* that we exclude underwritten non-convertible investment grade debt securities).[22] Others asked that we allow advisers, in reliance on the rule, to engage in principal trades with clients in various types of securities the adviser or an affiliate underwrote that are highly liquid and for which ascertainable prices are readily available.[23]

Some commenters generally viewed the protections afforded to clients under the rule as inadequate,[24] while others urged us to modify the rule to make it easier for advisers to effect principal

[5] 15 U.S.C. 80b–6(3) (emphasis added). *See also* 2007 Principal Trade Rule Release, Section II.A.

[6] Rule 206(3)–3T(a)(4). *See also* 2007 Principal Trade Rule Release, Section II.B.4.

[7] For a discussion of Section 206(3) of the Advisers Act, its legislative history and our past interpretations of it, see the 2007 Principal Trade Rule Release, Section II.A.

[8] For purposes of the rule, the term ''investment discretion'' has the same meaning as in Section 3(a)(35) of the Exchange Act [15 U.S.C. 78c(a)(35)], except that it excludes investment discretion granted by a customer on a temporary or limited basis. Rule 206(3)–3T(a)(1). *See also* 2007 Principal Trade Rule Release at n. 31.

[9] Rule 206(3)–3T(a)(3). *See also* 2007 Principal Trade Rule Release, Section II.B.3.

[10] Rule 206(3)–3T(a)(3). Rule 206(3)–3T also requires an adviser seeking to rely on the rule to include with each written disclosure required by the rule a conspicuous, plain English statement that the client may revoke the prospective, written consent without penalty at any time by written notice to the investment adviser. Rule 206(3)–3T(a)(8). *See also* 2007 Principal Trade Rule Release, Section II.B.3.

[11] Rule 206(3)–3T(a)(4). *See also* 2007 Principal Trade Rule Release, Section II.B.4.

[12] Rule 206(3)–3T(a)(5). *See also* 2007 Principal Trade Rule Release, Section II.B.5.

[13] Rule 206(3)–3T(a)(6). *See also* 2007 Principal Trade Rule Release, Section II.B.6.

[14] Rule 206(3)–3T(a)(7). *See also* 2007 Principal Trade Rule Release, Section II.B.7.

[15] Rule 206(3)–3T(a)(2). *See also* 2007 Principal Trade Rule Release, Section II.B.2.

[16] Rule 206(3)–3T(a)(2). *See also* 2007 Principal Trade Rule Release, Section II.B.2. A separate Commission rulemaking may have an impact on the rule's definition of ''non-convertible investment grade debt securities.'' *See* note 34 below.

[17] Rule 206(3)–3T(b). *See also* 2007 Principal Trade Rule Release, Section II.B.8.

[18] Rule 206(3)–3T(d). *See also* 2007 Principal Trade Rule Release, Section II.B.9.

[19] The comment letters are available at *http://www.sec.gov/comments/s7-23-07/s72307.shtml.* However, one additional comment letter was submitted in connection with our proposed *Interpretive Rule under the Advisers Act Affecting Broker-Dealers,* Investment Advisers Act Release No. 2652 (Sep. 24, 2007). International Association of Small Broker Dealers and Advisers (Oct. 25, 2007) (''IASBDA Letter.'') The IASBDA Letter addresses one particular aspect of the rule, as noted below, and is available at *http://www.sec.gov/comments/s7-22-07/s72207-3.pdf.*

[20] *See, e.g.,* Comment Letter of the Financial Planning Association (Nov. 30, 2007) (''FPA Letter I''); Comment Letter of the National Association of Personal Financial Advisors (Nov. 30, 2007) (''NAPFA Letter'').

[21] *See, e.g.,* Comment Letter of the Securities Industry and Financial Markets Association (Nov. 30, 2007) (''SIFMA Letter I''); Comment Letter of Davis Polk & Wardwell (Dec. 4, 2007) (''DPW Letter'').

[22] *See, e.g.,* Comment Letter of Fund Democracy and the Consumer Federation of America (Nov. 30, 2007) (''FD/CFA Letter'').

[23] *See, e.g.,* SIFMA Letter I.

[24] *See, e.g.,* NAPFA Letter.

transactions with their clients.[25] For example, one commenter urged us to limit the rule's relief to principal transactions with sophisticated or wealthy investors who are in a position to protect themselves.[26] Another suggested the rule expressly require firms to develop policies and procedures that are specifically designed to detect, deter and prevent disadvantageous principal transactions.[27] And others suggested that we require that the disclosure supporting the initial client authorization for principal trades be in a separately executed, stand-alone document and not permit it to be incorporated directly into an account opening agreement.[28] Some commenters asserted, however, that the disclosure requirements—in particular, requiring transaction-by-transaction disclosures for principal trades with sophisticated investors—were too restrictive,[29] while others argued that they did not go far enough.[30] Some commenters suggested we impose additional disclosures or disclosure-related requirements.[31] One commenter questioned the rule's overall focus on disclosure and urged us to consider instead requiring affirmative measures designed to prevent principal trading abuses.[32]

Commenters who addressed the issue generally agreed with our view that principal trades in securities issued or underwritten by an adviser or its control persons should not be permitted under the rule.[33] However, these commenters expressed differing views with respect to the rule's exception from the general prohibition for trades in which the adviser or control person is an underwriter of non-convertible investment grade debt securities.[34] We also received mixed comments on the rule's limitation of relief to investment advisers that are registered with the Commission as broker-dealers. Some commenters, generally those representing financial institutions that act as both advisers and broker-dealers, supported the limitation[35] while others opposed it.[36]

Several commenters agreed with our decision to limit the rule to non-discretionary accounts.[37] In contrast, one commenter urged us to expand the rule to be available to all advisory accounts, not just non-discretionary ones.[38] One commenter urged us to limit the scope of the rule so that advisers may only rely on it when they are conducting a principal trade with a ''qualified client,'' as defined under Rule 205–3 [17 CFR 275.205–3] under the Advisers Act,[39] while another argued that the rule should not be restricted to particular clients.[40]

b. Comments on Sunset Provision

Five commenters addressed the duration of Rule 206(3)–3T.[41] Three expressed support for the temporary duration of the rule, arguing that, in light of the substantial risks associated with principal trading facilitated by the rule, a temporary effectiveness period would be important for the Commission to assess whether the scope of relief provided by the rule is appropriate.[42] Two commenters supported making the rule permanent at the end of the sunset provision with broadened relief.[43]

We received two subsequent letters from market participants. The Securities Industry and Financial Markets Association (SIFMA) urged us to extend

[25] *See, e.g.,* DPW Letter.

[26] FPA Letter I.

[27] FD/CFA Letter.

[28] *See, e.g.,* FD/CFA Letter; NAPFA Letter; FPA Letter I.

[29] *See, e.g.,* DPW Letter (although supporting the rule, commenting that the Commission should provide more relief from the restrictions of Section 206(3) to permit affirmative waiver of the transaction-by-transaction disclosure and consent requirements with respect to transactions with financially sophisticated investors involving certain ''readily marketable'' securities).

[30] *See, e.g.,* Comment Letter of the Investment Advisers Association (Nov. 30, 2007) (''IAA Letter'') (expressing strong opposition to any expansion of the relief provided in the rule, or relaxation of the rule's conditions, and emphasizing the importance of monitoring the rule in practice before making further changes); FPA Letter I (expressing concern about the risks attendant to principal trades); NAPFA Letter (arguing that any expansion of the scope of the rule would be inappropriate because of the potential risks associated with principal trades).

[31] *See, e.g.,* FD/CFA Letter; FPA Letter I (expressing concern that the transaction-specific disclosures required by the rule may not provide investors with enough information regarding conflicts of interest and suggested additional disclosures that should be required by the rule).

[32] *See* note 27 above and accompanying text.

[33] *See, e.g.,* FD/CFA Letter; FPA Letter I; SIFMA Letter I.

[34] *Compare* SIFMA Letter I (arguing that we should expand the exception to underwritten preferred stock, convertible debt, and certificates of deposit (among others)) *with* FPA Letter I (specifically urging us not to extend the exception to debt instruments other than investment grade municipal debt and corporate debt and expressing concern with price transparency of debt instruments, generally) and FD/CFA Letter (arguing that the exception should not be further expanded or that it should be eliminated altogether because of concerns regarding the price transparency of debt instruments).

One commenter supporting a broadening of the exception also urged us to modify our definition of ''investment grade debt security'' to require that a qualifying security receive ratings from only one nationally recognized statistical rating organization (''NRSRO'') instead of two. SIFMA Letter I. We are considering more globally, and in a separate rulemaking, whether our inclusion of requirements related to credit ratings in our rules and forms as an indication of investment grade quality has, in effect, placed an ''official seal of approval'' on ratings and has adversely affected the quality of due diligence and investment analysis. *See References to Ratings of Nationally Recognized Statistical Rating Organizations in Rules Under the Investment Company Act and Investment Advisers Act,* Investment Company Act Release No. 28327 (Jul. 1, 2008) [73 FR 40124 (July 11, 2008)]. In conjunction with recently reopening the comment period for the proposal with respect to Rule 206(3)–3T, the Commission requested comment on whether it should substitute an approach that uses credit ratings as a minimum standard along with additional criteria that must be met with regard to evaluating securities. The re-opened comment period closed on December 8, 2009. *See References to Ratings of Nationally Recognized Statistical Rating Organizations,* Investment Company Act Release No. 28939 (Oct. 5, 2009) [74 FR 52358 (Oct. 9, 2009)].

[35] *See, e.g.,* SIFMA Letter I (arguing that the dual registration condition preserves important investor protections that were available to former fee-based brokerage customers who elected after the FPA Decision to convert their accounts to advisory accounts).

[36] *See, e.g.,* FPA Letter I (urging us to eliminate the limitation because investors would already receive the protections of both the Advisers Act and the Exchange Act whether the adviser is itself also registered as a broker-dealer or whether it is simply affiliated with a broker-dealer, and further arguing that that the condition may have anticompetitive effects, providing an advantage to investment advisers that are also registered as broker-dealers); Comment Letter of the American Bar Association, section of Business Law's Committee on Federal Regulation of Securities (Apr. 18, 2008) (''ABA Committee Letter'') (arguing that the substantial regulatory burdens of applying two regulatory regimes is not offset by additional investor protection benefits).

[37] *See, e.g.,* FD/CFA Letter (arguing that discretionary accounts present a ''greater risk of abuse as a general matter'' and expressed appreciation for the protections provided by this limitation); IAA Letter; SIFMA Letter I (agreeing that the rule should apply to all non-discretionary accounts, but specifically noting that the rule should not be further limited in application to former fee-based brokerage accounts only); FPA Letter I (supporting the limitation as providing a critical investor protection, but arguing that we should consider further narrowing the non-discretionary account limitation to include only those accounts that were formerly fee-based brokerage accounts).

[38] ABA Committee Letter (arguing that the specific exclusion in the rule for adviser-underwritten securities, together with an adviser's best execution obligations, provides investors with sufficient investor protections and therefore clients in discretionary accounts should not be precluded from the benefits of the relief provided by the rule).

[39] FPA Letter I (further arguing that institutional clients or natural persons who are deemed to be ''qualified clients'' for purposes of Rule 205–3 are better positioned to understand the nature of principal transactions and the potential conflicts and, therefore, are better able to protect themselves against potential abuses than are other investors). Another commenter also expressed general objections to the placing of any principal trades by investment advisers. NAPFA Letter.

[40] SIFMA Letter I (noting that all investors should be able to benefit from the greater investment choices, potentially enhanced executions and additional liquidity provided by the rule).

[41] FPA Letter I; Comment Letter of the Financial Planning Association (Sep. 16, 2008) (''FPA Letter II''); IAA Letter; SIFMA Letter I; Comment Letter of the Securities Industry and Financial Markets Association (Aug. 21, 2009) (''SIFMA Letter II''); DPW Letter; NAPFA Letter.

[42] FPA Letter I; IAA Letter; NAPFA Letter.

[43] DPW Letter; SIFMA Letter I.

the temporary rule for two years in light of pending legislation that could address principal trading by investment advisers.[44] The Financial Planning Association (FPA) also wrote recommending allowing the rule to expire or extending it for no more than an additional year while the Commission conducts a study that either substantiates a clear basis for adopting a permanent exemption under Section 206(3) or disproves the view of firms that it affords unique benefits to the public.[45]

c. Limited Extension of Temporary Rule

When we adopted Rule 206(3)–3(T) on a temporary basis in September 2007, we anticipated the two-year period would provide us with adequate time to evaluate the operation of the rule in the marketplace and determine, in conjunction with consideration of all comments received, whether the rule should be made permanent, modified or allowed to expire. At the time we adopted the interim final rule, we explained that we would need to take action no later than the end of the original duration of the temporary rule if we intended to continue the same or similar relief.[46]

We need additional time to understand how, and in what situations, advisers are using the rule. Fewer firms than we anticipated at the time we adopted the rule on an interim final basis immediately determined to rely on it and those that did were slower than expected to implement the rule. We take seriously the investor protection concerns raised by commenters. Consequently, we have determined to limit the duration of the extension to one year while we continue to evaluate the operation of the rule. As our staff continues to gather information, we will assess whether the rule is operating, and firms are applying it, in a manner consistent with protecting investors.

Given the limited nature of the extension, we believe that making other changes to the temporary rule could cause firms relying on the rule to need to make adjustments to their disclosure documents, client agreements, procedures, or systems that, depending on whether we determine to propose and adopt a permanent rule in the future, may be applicable for only a year.

Further evaluation will help inform our decision whether to propose to make the rule permanent in its current or an amended form or to allow it to expire.[47] We will consider, among other things, the comments we received on the interim final rule in deciding whether to propose a permanent rule or to let the rule expire. If we decide to propose a permanent rule, we will also consider the comments we received in determining how such a rule might differ from Rule 206(3)–T.

In addition, there are currently pending before both houses of Congress bills that may address, or otherwise have an impact on, principal trading activities by investment advisers and broker-dealers, as well as broader issues under the Advisers Act.[48] Waiting some additional time for Congress to act will permit us to consider the impact that any of those proposals, if enacted, will have on such activities prior to taking further action with respect to the temporary rule.

For the reasons discussed in this release, we have determined that it is necessary or appropriate in the public interest and consistent with the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act to adopt Rule 206(3)–T as a final temporary rule. We are adopting Rule 206(3)–3T in the same form in which we originally adopted it on an interim final basis, except that it will expire on December 31, 2010, one year after its original expiration date.

III. Certain Administrative Law Matters

The amendment to Rule 206(3)–3T is effective on December 30, 2009. The Administrative Procedure Act generally requires that an agency publish a final rule in the **Federal Register** not less than 30 days before its effective date.[49] However, this requirement does not apply if the rule is a substantive rule which grants or recognizes an exemption or relieves a restriction, or if the rule is interpretive.[50] Rule 206(3)–3T in part has interpretive aspects and is a rule that recognizes an exemption and relieves a restriction.

IV. Paperwork Reduction Act

Rule 206(3)–3T contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[51] The Office of Management and Budget (''OMB'') approved the burden estimates presented in the 2007 Principal Trade Rule Release,[52] first on an emergency basis and subsequently on a regular basis. OMB approved the collection of information with an expiration date of March 31, 2011. 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 title for the collection of information is: ''Temporary rule for principal trades with certain advisory clients, rule 206(3)–3T'' and the OMB control number for the collection of information is 3235–0630.

The 2007 Principal Trade Rule Release explains that, under Rule 206(3)–3T, there are four distinct collection burdens. Our estimate of the burden of each of the collections reflects the fact that the alternative means of compliance provided by the rule is substantially similar to the approach advisers currently employ to comply with the disclosure and consent obligations of Section 206(3) of the Advisers Act and the approach that broker-dealers employ to comply with the confirmation requirements of Rule 10b–10 under the Exchange Act. The 2007 Principal Trade Rule Release solicited comments on our PRA estimates,[53] but we did not receive comment on them. The amendment to the rule we are adopting today—to extend the rule for twelve months—does not affect the burden estimates contained in the 2007 Principal Trade Rule Release.[54]

V. Cost-Benefit Analysis

We are adopting, as a final temporary rule, Rule 206(3)–3T under the Advisers Act, which provides an alternative means for investment advisers that are registered with us as broker-dealers to meet the requirements of Section 206(3)

[44] SIFMA Letter II.

[45] FPA Letter II.

[46] *See* 2007 Principal Trade Rule Release, Section II.B.9.

[47] Subsequent to adopting Rule 206(3)–3T, the study prepared by RAND Corporation was completed. *See* Investor and Industry Perspectives on Investment Advisers and Broker-Dealers, *http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf.* The study addressed two primary questions: (1) What are the current business practices of broker-dealers and investment advisers; and (2) do investors understand the differences between and relationships among broker-dealers and investment advisers? Several of the bills currently pending before Congress are designed to harmonize the separate regulatory regimes for investment advisers and broker-dealers.

[48] *See, e.g., Investor Protection Act of 2009,* H.R. 3817, 111th Cong. (2009); *Restoring American Financial Stability Act of 2009,* S. __ 111th Cong. (2009).

[49] 5 U.S.C. 553(d).

[50] 5 U.S.C. 553(d)(1) and (2).

[51] 44 U.S.C. 3501 *et seq.*

[52] *See* 2007 Principal Trade Rule Release, Section V.B&C.

[53] *See id.,* Section V.D.

[54] As discussed above, fewer firms than we anticipated at the time we adopted the rule on an interim final basis immediately determined to rely on it and those that did were slower than expected in implementing it. We received no comments on our estimate of the number of advisers or accounts and, for purposes of this release, are retaining those estimates.

when they act in a principal capacity with respect to transactions with certain of their advisory clients. Other than extending the sunset period of the temporary rule for one year, we are not otherwise modifying the rule from the form in which we initially adopted it on an interim final basis in September 2007.

In summary, as explained in the 2007 Principal Trade Rule Release,[55] we believe the principal benefit of Rule 206(3)–3T is that it maintains investor choice and protects the interests of investors who held an estimated $300 billion in one million fee-based brokerage accounts. A resulting second benefit of the rule is that non-discretionary advisory clients of advisory firms that are also registered as broker-dealers have easier access to a wider range of securities which, in turn, should lead to increased liquidity in the markets for these securities and promote capital formation in these areas. A third benefit of the rule is that it provides the protections of the sales practice rules of the Exchange Act and the relevant self-regulatory organizations because an adviser relying on the rule must also be a registered broker-dealer. Another benefit of Rule 206(3)–3T is that it provides a lower cost alternative for an adviser to engage in principal transactions.

We believe there are some benefits associated with extension of the rule for one year. By extending the rule for one year, non-discretionary advisory clients who have had access to certain securities because of their advisers' reliance on the rule to trade on a principal basis will continue to have access to those securities without disruption. Firms relying on the rule will continue to be able to offer clients and prospective clients access to certain securities on a principal basis as well and will not need during this one-year period to incur the cost of adjusting to a new set of rules or abandoning the systems established to comply with the current rule. In other words, extension will avoid disruption to clients and firms during the period while we consider whether to make the rule permanent in its current form or in a modified form or to let it expire.

As discussed in the 2007 Principal Trade Rule Release,[56] we presented estimates of the costs of each of the rule's disclosure elements, including: the prospective disclosure and consent; transaction-by transaction disclosure and consent; transaction-by-transaction confirmations; and the annual report of principal transactions. We also provided estimates for the following related costs of compliance with Rule 206(3)–3T: (i) The initial distribution of prospective disclosure and collection of consents; (ii) systems programming costs to ensure that trade confirmations contain all of the information required by the rule; and (iii) systems programming costs to aggregate already-collected information to generate compliant principal transactions reports.[57] Finally, we solicited comment on, and requested data to assist us in further developing, our cost and benefit estimates.[58]

We did not receive comments directly addressing with supporting data the cost-benefit analysis we presented in the 2007 Principal Trade Rule Release and we continue to believe that our estimates reflect the likely costs an adviser would incur to rely on the rule.[59] Several of the comments described above, however, relating to the utility of specific disclosure provisions, along with an additional comment regarding the potential effect of the rule on small firms, do have bearing on our cost-benefit analysis of the rule. In particular, one commenter argued that the costs of transaction-by-transaction notice and consent for sophisticated investors may outweigh the benefits.[60] This commenter suggested that the rule expressly permit negative consent for principal trading because the costs for certain clients who must locate and contact an authorized person to sign an affirmative consent on behalf of the client on a timely basis may outweigh the benefits.[61] Another commenter expressed doubt that the benefit of the transaction-by-transaction confirmation requirement would outweigh the costs of revising and further burdening the standard confirmation form, especially given the rule's other disclosure and consent requirements.[62] Another commenter argued that limiting the availability of the rule to advisers that also are registered as broker-dealers imposes substantial regulatory burdens that are not justified by corresponding investor protection benefits.[63] We recognize these commenters' concerns and will consider them, as well as all the other comments we have received, if we determine to propose to make the rule permanent in its current or a modified form. For purposes of the limited extension at issue here, however, we believe the costs of adjustments to practices and systems that may or may not be continued or necessary under a potential, future permanent rule would not be justified at this time.[64]

We acknowledge that firms relying on the rule would incur operational costs associated with complying with the rule for one year. We believe that the estimates of the costs we outlined were reasonable, and no commenter provided specific, alternative estimates. We believe that the benefits were appropriately identified. We believe that all the costs and benefits associated with the rule—which, as noted above, the purpose of which was to permit broker-dealers to sell to their non-discretionary advisory clients certain securities held in the proprietary accounts of their firms that might not be available on an agency basis (or might be available on an agency basis only on less attractive terms) should be considered in aggregate. The particular array of disclosure requirements and limitations contained in the rule was tailored to safeguard investor protection and counterbalance investor protection concerns that might stem from the rule's allowance for transaction-by-transaction notice and consent to principal trades to be delivered orally or in written form, instead of just in written form. We believe that, for purposes of this one-year extension of the rule, these overall benefits justify the costs associated with the rule.

VI. Promotion of Efficiency, Competition, and Capital Formation

Section 202(c) of the Advisers Act mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, consider, in addition to the protection of investors, whether the

[55] For a complete discussion of the benefits for Rule 206(3)–3T, see 2007 Principal Trade Rule Release, Section VI.

[56] *See* 2007 Principal Trade Rule Release, Section VI.D.

[57] We note that the rule provides an *alternative* means of compliance with Section 206(3) of the Advisers Act. Therefore, there is no requirement that any adviser rely on it. We believe that it is reasonable to assume that only those advisers that conclude that the benefits in aggregate outweigh the aggregate costs of relying on the rule would choose to do so.

[58] *See* 2007 Principal Trade Rule Release, Section VI.

[59] As discussed above, fewer firms than we anticipated at the time we adopted the rule on an interim final basis immediately determined to rely on it. We received no comments on our estimate of the number of advisers or accounts and, for purposes of this release, are retaining our original estimates.

[60] DPW Letter.

[61] *Id.*

[62] FD/CFA Letter.

[63] ABA Committee Letter.

[64] *See* Section II.C. of this Release.

action will promote efficiency, competition, and capital formation.[65]

As we explained in the 2007 Principal Trade Rule Release, Rule 206(3)–3T may increase efficiency by providing an alternative means of compliance with Section 206(3) of the Advisers Act that we believe will be less costly and less burdensome.[66] By permitting oral transaction-by-transaction disclosure, advisers may be more willing to engage in principal trades with advisory clients leading advisers to provide access to certain securities the adviser or its affiliate has in inventory. As we noted in the 2007 Principal Trade Rule Release, firms have argued that making securities available to clients through principal trades could lead to faster or less expensive execution, advantages a client may deem to outweigh the risks presented by principal trading with an adviser.[67]

We further explained our expectation that Rule 206(3)–3T will promote competition because it preserves investor choice for different types of advisory accounts and that, if Rule 206(3)–3T has any effect on capital formation, it is likely to be positive, although indirect.[68] We also described our understanding that providing an alternative to the traditional requirements of transaction-by-transaction written disclosure might serve to broaden the potential universe of purchasers of securities, in particular investment grade debt securities, for the reasons described in the 2007 Principal Trade Rule Release, opening the door to greater investor participation in the securities markets with a potential positive effect on capital formation.[69]

Some commenters, while expressing support for the goal of affording investors engaged in principal transactions the protections of both the investment adviser regulatory regime (*i.e.,* the Advisers Act and rules thereunder) and the broker-dealer regulatory regime (*i.e.,* the Exchange Act and rules thereunder and the rules of applicable SROs), opposed the limitation of the temporary rule not only to investment advisers that are also registered as broker-dealers, but also to accounts that are subject to both the Advisers Act and Exchange Act.[70] One of these commenters specifically argued that these limitations are unnecessary, contending they provide no additional protection for investors engaging in principal transactions because any principal trades conducted for an advisory account would be subject to the Exchange Act and SRO rules anyway.[71] This commenter concluded that the limitation instead merely provides a competitive advantage to investment advisers that are also registered broker-dealers.[72]

We intend to continue to evaluate the effects of the rule on efficiency, competition and capital formation as we consider whether to propose to extend or modify the rule or allow it to expire. As discussed above, we have no reason to believe, based on our experience with the rule to date, that small broker-dealers (or affiliated but separate investment advisers and broker-dealers) are put at a competitive disadvantage to larger advisers that are themselves also registered as broker-dealers. We believe that the effects on efficiency, competition and capital formation of Rule 206(3)–3T as it was adopted on an interim final basis warrant its continued operation for the additional limited period of time. We anticipate no new effects on efficiency, competition and capital formation as a result of the one-year extension. During that time, we will continue to assess the rule's operation and impact along with intervening developments.

VII. Final Regulatory Flexibility Act Analysis

A final regulatory flexibility analysis (''FRFA'') was prepared in accordance with 5 U.S.C. 603 when Rule 206(3)–3T was adopted in September 2007. In the 2007 Principal Trade Rule Release, we analyzed: (i) The need for and objectives of the rule; (ii) an estimate of small entities subject to the rule; (iii) the rule's projected reporting, recordkeeping and other compliance requirements; (iv) agency action to minimize the effect on small entities; (v) duplicative, overlapping or conflicting Federal rules; and (vi) significant alternatives. We sought comment on each of these aspects of our FRFA.

As discussed above, several commenters objected to the condition that advisers seeking to rely on the rule must also be registered as broker-dealers and that each account must be subject to both the Advisers Act and the Exchange Act (and applicable SRO rules). Some contended that the burdens of requiring application of both regulatory regimes do not outweigh the benefits.[73] Others essentially argued that limiting the availability of the relief under the rule to advisers also registered as broker-dealers might be anti-competitive.[74] With respect to small entities in particular, one commenter suggested that the alternative means of compliance with the Advisers Act's principal trading restrictions made available by Rule 206(3)–3T (in particular, when considered in conjunction with the interpretive rule proposed on the same day),[75] would disadvantage small broker-dealers because they are less likely to also be registered as an investment adviser, and as a result would have to form an adviser to take advantage of the benefits of the rule.[76]

We specifically considered and discussed these issues in the final regulatory flexibility analysis in the 2007 Principal Trade Rule Release and believe that it is appropriate to continue this condition of the rule for the limited extension. As explained above, however, we expect to continue to consider these comments in conjunction with data our staff gathers on the operation of the rule in the marketplace, no later than the end of the rule's revised termination date if the Commission intends to propose to continue the same or similar relief.

VIII. Statutory Authority

The Commission is adopting Rule 206(3)–3T pursuant to Sections 206A and 211(a) of the Advisers Act.

Text of Rule

List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, Title 17, Chapter II of the

[65] 15 U.S.C. 80b–2(c).

[66] 2007 Principal Trade Rule Release, Section VII.

[67] *Id.*

[68] *Id.*

[69] *Id.,* Section II.B.2.

[70] *See, e.g.,* FPA Letter I; ABA Committee Letter; SIFMA Letter I. Another commenter commented upon potential anti-competitive aspects of the rule, in particular as it relates to a proposed (but not adopted) interpretive rule that was proposed on the same day Rule 206(3)–3T was adopted on an interim final basis. IASBDA Letter. *See also* note 19 above. Because those comments relate more directly to the proposed interpretive rule, they will be considered in conjunction with that interpretive rulemaking.

[71] FPA Letter I (arguing that a client engaging in a principal trade enjoys the benefits of two regulatory regimes regardless of whether the client's adviser is itself both an investment adviser and a broker-dealer for purposes of the Federal securities laws or instead affiliated with a separate broker-dealer with which the client engages in the trade on a principal basis because, in the first instance, a single firm is responsible for meeting all regulatory requirements (including those of the Commission and the relevant SRO) and in the second, one firm holds the broad fiduciary duties of an adviser (and is subject to Commission oversight), while the affiliated broker-dealer must still comply with the Commission's and relevant SRO's sales practice and best execution requirements).

[72] *Id.*

[73] *See* notes 35–36 and accompanying text above

[74] *See* notes 70–72 and accompanying text above.

[75] *See* note 19 above.

[76] IASBDA Letter.

Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The general authority citation for Part 275 continues to read as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 275.206(3)–3T(d) is revised to read as follows:

§ 275.206(3)–3T Temporary rule for principal trades with certain advisory clients.

(d) This section will expire and no longer be effective on December 31, 2010.

Dated: December 23, 2009.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–30877 Filed 12–29–09; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 111, 113, 141, 142 and 143

[CBP Dec. 09–47; USCBP–2006–0001]

RIN 1505–AB20

Remote Location Filing

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, the proposed amendments to title 19 of the Code of Federal Regulations (19 CFR) regarding Remote Location Filing (RLF). RLF is a planned component of the National Customs Automation Program (NCAP), authorized by section 414 of the Tariff Act of 1930, as added by section 631 within the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. RLF allows a participating NCAP filer to electronically file with CBP those consumption entries and related information that CBP can process in a completely electronic data interchange system from a location other than where the goods will arrive in the United States.

DATES: *Effective Date:* January 29, 2010.

FOR FURTHER INFORMATION CONTACT: For systems or automation issues: Tony Casucci, Office of Information Technology, at (703) 650–3053. For operational or policy issues: Cynthia Whittenburg, Trade Policy and Programs, Office of International Trade, at (202) 863–6512 or via e-mail at *remote.filing@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2007, CBP published in the **Federal Register** (72 FR 13714) a proposal to implement Remote Location Filing (RLF) regulations in a new subpart E to part 143 within title 19 of the Code of Federal Regulations (19 CFR part 143, subpart E).

RLF, which currently operates as a National Customs Automation Program (NCAP) prototype test pursuant to section 414 of the Tariff Act of 1930, as added by section 631 within the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, allows an RLF filer to electronically file with U.S. Customs and Border Protection (CBP) those consumption entries and related information that CBP can process in a completely electronic data interchange system from a location other than where the goods will arrive in the United States.

As noted in 72 FR 13714, the RLF prototype will terminate upon the effective date of this final rule. RLF prototype participants may continue to participate in the NCAP test program until this date.

CBP solicited comments on the proposed rulemaking.

Discussion of Comments

Fourteen commenters responded to the solicitation of public comment in the proposed rule. A description of the comments received, together with CBP's analyses, is set forth below.

Comment: Proposed § 143.44(c) describes RLF automation requirements as encompassing only those entries and entry summaries that CBP processes completely in an electronic data interchange system. Three commenters requested that, in the final rule, CBP either specifically list the RLF-eligible entry types or cite to a source for such information.

CBP Response: Currently, only electronically transmitted consumption entries—entry types 01 and 11—may be filed using RLF. CBP is presently working to expand the entry types that may be processed via RLF. It is anticipated that upon the total integration of the major cargo and entry summary functionalities into Automated Commercial Environment (ACE), the expansion of RLF will be fully realized and will incorporate most entry types.

As the entry types currently permitted under RLF are expanded in the future, CBP will not list them in the regulatory text; rather, CBP will include a reference in the regulatory text, at § 143.44(c), to the Web site located at *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/* that provides a current listing of permissible RLF entry types.

Comment: Four commenters requested that RLF permit the filing of all entry types (including anti-dumping, countervailing duty, and quota entries), and not be limited to type 01 and 11 consumption entries. One of the commenters also suggested that CBP create a special class of National Permit to allow a broker to file any type of entry in RLF.

CBP Response: As noted in the response to the previous comment, it is anticipated that most entry types will be permitted under RLF at such time as the major cargo and entry summary functionalities are totally integrated into ACE. For this reason, the creation of a special class of National Permit is unnecessary.

Comment: One commenter requested that all brokers meeting the criteria set forth in proposed § 143.43 should have their filer codes centrally ''turned on'' automatically in the Automated Commercial System (ACS) for all eligible RLF ports instead of having their Automated Broker Interface (ABI) Client Representatives enter them as needed.

CBP Response: The current ACS environment does not provide this capability. Coordination with the ABI Client Representative is required to enable a broker to file remotely at a specific port.

Comment: Two commenters requested additional clarification regarding the specific criteria used by CBP in establishing RLF-operational locations.

CBP Response: CBP continually reviews and makes determinations concerning the addition of new ports to the list of RLF-approved processing locations. A prospective port must, at a minimum, have appropriate electronic entry processing capabilities. In determining whether to make a port RLF-operational, CBP may take into consideration factors such as trade interest and whether CBP personnel

have been trained in RLF procedures at a particular location. Filers are encouraged to contact the CBP RLF Program Manager at *remote.filing@dhs.gov* to suggest possible port additions.

Comment: Four commenters advocated that RLF be permanently adopted as a final rule.

CBP Response: CBP concurs.

Comment: Three commenters requested that CBP adopt procedures that would provide the trade with a 90-day advance notice of new RLF-operational ports. The commenters noted that Express Consignment Carrier Facility (ECCF) operators require advance notice to modify automated systems to accept RLF entries and, although the proposed rule notice stated that new RLF locations will be listed in the Automated Broker Interface (ABI) administrative messaging system, the document did not state that advance notice will be provided. The commenters also note that messages sent via ABI will not reach parties such as carriers and ECCF operators who are not part of ABI messaging.

CBP Response: CBP will make every effort to provide advance notice to the trade of new RLF-operational ports and will list new and pending RLF-operational ports on its Web page so that parties who do not participate in the ABI administrative messaging system will be informed in this regard. The agency, however, views adopting a 90-day advance notice regulatory requirement as unnecessarily restrictive as the time it takes to train CBP personnel and ensure that the port is fully RLF operational varies from port to port. As noted above, filers are encouraged to contact the CBP RLF Program Manager at *remote.filing@dhs.gov* for information regarding possible port additions.

Comment: Three commenters requested that CBP publish a list of current RLF operational ports in a manner that is clearly labeled on the CBP Web site and includes the date of last update.

CBP Response: A complete and current list of existing RLF operational ports is set forth at the CBP Web site located at *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/*. A link entitled ''RLF Operational Locations'' directs viewers to the list, which also contains the date of last update. A reference to this Web site is set forth in § 143.42(b).

Comment: One commenter stated that the need for adequate staffing at RLF-operational ports is essential and noted a lack of uniform training at these sites.

CBP Response: CBP is in the process of updating internal RLF standard operating procedures and training materials which will help achieve a higher level of proficiency and uniformity in RLF processing skills at RLF-operational ports.

Comment: One commenter noted that under the terms of the RLF prototype, CBP accepted electronic filings of certain ''other government agency'' (OGA) information and certifications such as Toxic Substances Control Act (TSCA) certificates. The commenter urges CBP to expand RLF in this capacity.

CBP Response: CBP continues to work with OGAs to fulfill documentation requirements electronically through the International Trade Data System (ITDS). Also, as noted above, when the major cargo and entry summary functionalities are totally integrated into ACE, it is anticipated that the expansion of RLF will be fully realized and most OGA information and filings will be able to be filed electronically.

Comment: One commenter suggested that RLF should be expanded to include the Line Release process, prescribed in 19 CFR part 142, subpart D, which exists to facilitate the clearance of repetitive, low-risk transactions.

CBP Response: Line Release provides for advance cargo screening and expedited release at land border ports. The current ACS environment does not provide the capability for RLF to include Line Release. However, as entry processing migrates to ACE and CBP's system capabilities evolve, CBP will explore opportunities to achieve various process objectives based on the expanded automation capabilities.

Comment: One commenter stated that RLF regulations are not necessary because the RLF prototype has been functioning for 13 years and ACE will make RLF redundant. The commenter suggests that RLF should continue as a NCAP prototype until such time as the functionalities of ACE are totally integrated.

CBP Response: Promulgating RLF as a regulatory program will clarify and harmonize RLF requirements and provide the operational groundwork for ACE. ACE will not replace RLF; rather, ACE will be the electronic means necessary to expand RLF.

Comment: One commenter, citing the proposed amendment to 19 CFR 141.61(a)(2) which would allow electronic entry and entry summary documentation to be filed ''by the importer of record or his duly authorized agent, one of whom must be a resident of the United States for the purposes of receiving service of process,'' requested that CBP verify that it is not amending part 141 to allow customs brokers (or any other future authorized agent for an importer) to prepare and file customs entries, entry summaries and/or other ''customs business'' documents from outside the United States on the importer's behalf.

CBP Response: The amendments to 19 CFR 141.61(a)(2) are intended to provide regulatory guidance for RLF regarding the manner by which electronic entry and entry summary documentation are to be prepared. This regulatory package does not address the issue of whether entries can be filed from outside the United States.

Comment: One commenter suggested changes to proposed 19 CFR 141.61(a)(2) which concerns the preparation of electronic entry and entry summary documentation. The commenter notes that the certification of the entry filing is ''customs business,'' as defined in 19 U.S.C. 1641(a) and 19 CFR 111.1, and the person responsible for preparing the electronic filing, not simply the transmitter of the filing, must be the importer self-filer or a licensed U.S. customs broker. Accordingly, the commenter suggests deleting the phrase in proposed § 141.61(a)(2) which states, ''* * * by the importer of record or his duly authorized agent, one of whom must be resident in the United States for purposes of receiving service of process * * *'' and adding in its place the language, ''* * * by the importer of record or the importer's duly authorized customs broker''.

CBP Comment: CBP agrees with the commenter's suggested language and proposed § 141.61(a)(2), as set forth in 72 FR 13714, is amended in this document to state that the entry and entry summary documentation must be certified by the importer of record or the importer's duly authorized ''customs broker.'' This provision is further amended to retain the concept of the importer's ''duly authorized agent'' in a service of process context.

Comment: One commenter noted that RLF pertains only to customs brokers and that importers who are self-filers have no permit restrictions and may file entries of all kinds at all ports in the U.S. In order to maintain the current level playing field, brokers must continue to have the option of offering their clients the same capabilities. To that end, the commenter proposes that a special class of national permit should be created that would allow brokers to file at all ports with no restrictions as to entry types. The commenter posits that creating a new class of permit would provide brokers with the same filing options as self-filing importers.

CBP Response: The legislative intent of the Customs Modernization Act (Pub. L. 103–182, 107 Stat. 2170 (December 8, 1993)), was to allow nationally permitted brokerage firms to file electronically at all ports of entry, and CBP is working toward that objective.

Additionally, and as noted above, when the major cargo and entry summary functionalities are totally integrated into ACE, the expansion of RLF will be fully realized, and it is anticipated that RLF will be able to encompass most, if not all, entry types.

Comment: One commenter inquired whether a broker would be allowed to make entry via RLF even when the broker has an office in the port of entry.

CBP Response: A broker may use CBP's electronic invoice capabilities to facilitate an entry filing when the broker has an office in the port of entry.

Comment: Several commenters noted that express consignment carrier and courier hub facilities (ECCFs) are privately constructed and funded facilities at which ECCF operators are required to pay reimbursement fees to CBP (*see* § 24.23(b)(4)) for services provided by the agency at these facilities. As ECCFs are increasingly used by conventional brokers who do not pay reimbursement fees, the commenters suggested that CBP should impose filer code restrictions and ECCF operators should be able to choose which of their port codes will be RLF-eligible and which brokers will be permitted to file RLF entries at the ECCFs.

CBP Response: With regard to the commenters' request for filer code restrictions at ECCFs, CBP notes that RLF operational ports, including ECCFs, are open to all filers and importers who fulfill the RLF eligibility criteria.

Comment: Several commenters requested that ECCF operators be notified as part of the approval and set-up process to prevent the filing of duplicate entries resulting from situations where an importer retains the services of an outside customs broker to file an entry instead of using the ECCF's designated ''in-house'' broker who typically arranges customs clearance at the facility.

CBP Response: As this issue is substantively outside the scope of the proposed amendments to the CBP regulations set forth in 72 FR 13714, it cannot be addressed in this final rule.

CBP notes, however, that as importers are obligated to use reasonable care in making an entry, the U.S. purchaser and the foreign shipper are obligated to coordinate with each other as to which of them will be responsible for entering the foreign merchandise covered by their transaction. Brokers are obligated to exercise reasonable supervision over the customs business they perform and are obligated to ask whether an entry is being made on behalf of the foreign shipper or the U.S. purchaser. If the parties to the transaction meet their above-described legal obligations, the issue of duplicate entries being made on the same merchandise should not occur. However, where duplicate entries are filed, filers may remedy this through CBP's established entry cancellation procedures. For a further discussion of this issue, the trade is advised to contact the Trade Facilitation and Administration Division, Office of International Trade, Customs and Border Protection, at (202) 863–6000.

Comment: Several commenters note that as an ECCF operator engages in a contractual agreement with a shipper through the terms and conditions of the air waybill, the ECCF operator is contractually obligated to abide by the instructions from the shipper. These terms and conditions include the authority to make clearance arrangements at destination and offer an option under which the shipper can specify that the consignee will make clearance arrangements. The commenters expressed concern that the proposed RLF regulations make no mention of this contractual obligation and thus create the possibility of forced contractual breach by requiring the ECCF operator to accept the entry under arrangements by the consignee.

CBP Response: These comments address a substantive issue that is beyond the scope of the proposed RLF rule and therefore will not be considered in the context of this final rule.

Comment: Several commenters described the PAIRED program as distinct from RLF and suggested that if PAIRED were to be eliminated, as proposed, valuable experience and established relationships between the trade, participating government agencies and CBP will be lost. The commenters noted that PAIRED port entries were designed to facilitate legitimate low risk/repetitive trade throughout the United States and therefore play a significant part in the economic well-being of our nation and the importing companies that use the PAIRED program. The commenters further noted that although Congress stated that the PAIRED program would be eliminated upon implementation of RLF, this presupposed that RLF would provide the same benefits and unique aspects of PAIRED. In this regard, it is noted that AD/CVD entries, quota entries, single bond entries, and paper entry filings required by certain other government agencies are permitted under PAIRED, but not under RLF at this time.

CBP Response: CBP agrees that the PAIRED program is distinct from RLF. RLF is processed in a completely electronic environment while PAIRED, in most cases, still relies on paper filings. The PAIRED program was implemented in 1987 as an alternative process for importers to use the existing ''telecommunications facilities'' that were available at that time to expedite the submission, review, and final disposition of entry documentation.

PAIRED was implemented as an attempt to reduce the costs associated with maintaining the transportation in-bond system. In 1987, CBP did not possess the technological resources for electronic filing, nor did the agency possess the statutory authority to permit brokers to file entries to districts other than those for which they held district permits.

Congress directed the discontinuance of PAIRED entries upon implementation of RLF. *See* House Report No. 103–361(I), page 127. CBP is of the view that elimination of the PAIRED program fulfills Congressional intent by increasing electronic filing (a major impetus of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2170 (December 8, 1993)). The argument that RLF was intended to provide the same benefits as PAIRED is unsubstantiated and, in any event, will be rendered moot in the foreseeable future as ACE modernization development will deliver major release and entry summary processing capabilities in 2009.

Comment: Several commenters request that elimination of the PAIRED program should be phased in until RLF is implemented for all entry types.

CBP Response: CBP does not view an interim continuation of the PAIRED program as conducive to either CBP's homeland security objectives or its customs modernization initiatives.

As noted above, RLF was established under the Customs Modernization Act and provides for the electronic submission of required entry and entry summary data from any location regardless of where the merchandise arrives in the United States or where it is examined. Under RLF, physical examinations are not restricted to either the port of filing or the port of arrival (unlike PAIRED). Examination can also take place at the port nearest the cargo's final destination. RLF supports comprehensive account based processing by allowing filers to electronically manage and control filing

of customs cargo data. RLF also supports the accurate electronic tracking of cargo arrival and required electronic review. The PAIRED program does not support these important security objectives and runs counter to the agency's modernization efforts.

Conclusion

After analysis of the comments and further review of the matter, CBP has determined to adopt as final, with the changes mentioned in the comment discussion, the proposed rule published in the **Federal Register** (72 FR 13714) on March 23, 2007.

This final rule also affects an additional non-substantive change to §§ 143.43(a), 143.44(a) and 143.44(b) to clarify that the importer of record, in addition to a customs broker, may participate in RLF.

The Regulatory Flexibility Act and Executive Order 12866

Because these amendments implement a voluntary program provided for by statute, and have the effect of streamlining the entry process and reducing the overall regulatory burden on the general public, it is certified pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* that these amendments will not have a significant economic impact on a substantial number of small entities. Further, these amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

As there are no new collections of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing, Reporting and recordkeeping requirements.

19 CFR Part 113

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Invoices, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 142

Customs duties and inspection, Forms, Reporting and recordkeeping requirements.

19 CFR Part 143

Automated Broker Interface (ABI), Computer technology (Electronic entry filing), Customs duties and inspection, Entry of merchandise, Invoice requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, parts 111, 113, 141, 142 and 143 of title 19 of the CFR (19 CFR parts 111, 113, 141, 142 and 143) are amended as set forth below.

PART 111—CUSTOMS BROKERS

■ 1. The general authority citation for part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

■ 2. Section 111.2(b)(2)(i)(C) is revised to read as follows:

§ 111.2 License and district permit required.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) *Electronic filing.* A broker may electronically file entries for merchandise from a remote location, pursuant to the terms set forth in subpart E to part 143 of this chapter, and may electronically transact other customs business even though the entry is filed, or other customs business is transacted, within a district for which the broker does not have a district permit; and

* * * * *

PART 113—CUSTOMS BONDS

■ 3. The general authority citation for part 113 continues to read as follows:

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

* * * * *

§ 113.62 [Amended]

■ 4. In § 113.62, paragraph (k)(1) is amended by removing the reference ,'' subpart D,'' and by removing the words ''that subpart'' and adding in their place the words, ''part 143''.

PART 141—ENTRY OF MERCHANDISE

■ 5. The general authority citation for part 141 is revised, and the specific authority citations for subparts F and G and §§ 141.68 and 141.90 continue to read as follows:

Authority: 19 U.S.C. 66, 1414, 1448, 1484, 1624.

Subpart F also issued under 19 U.S.C. 1481;

Subpart G also issued under 19 U.S.C. 1505;

* * * * *

Section 141.68 also issued under 19 U.S.C. 1315;

* * * * *

Section 141.90 also issued under 19 U.S.C. 1487;

* * * * *

■ 6. In § 141.18:

■ a. The introductory sentence is amended by removing the word ''Customs'' and adding in its place the word ''customs'', and by removing the word ''shall'' and adding in its place the word ''may'';

■ b. Paragraph (a) is revised; and

■ c. Paragraph (b) is amended by removing the word ''Customs'' and adding in its place the term ''CBP''.

The revision reads as follows:

§ 141.18 Entry by nonresident corporation.

* * * * *

(a) Has a resident agent in the State where the port of entry is located who is authorized to accept service of process against that corporation or, in the case of an entry filed from a remote location pursuant to subpart E of part 143 of this chapter, has a resident agent authorized to accept service of process against that corporation either in the State where the port of entry is located or in the State from which the remote location filing originates; and

* * * * *

■ 7. In § 141.61:

■ a. Paragraphs (a) and (b) are revised;

■ b. Paragraph (c) is amended, in the first sentence, by removing the word ''shall'' and adding in its place the word ''must'', and; in the second sentence, by removing the word ''shall'' and adding in its place the word ''will'';

■ c. Paragraph (d) is amended by removing the word ''shall'' each place that it appears and adding the word ''must'', and by removing the words ''Customs Form'' each place they appear and adding the words ''CBP Form'';

■ d. Paragraph (e) is amended:

■ i. In paragraphs (e)(1) through (e)(3), by removing the word ''shall'' each place that it appears and adding the word ''must'', and by removing the words ''Customs Form'' each place they

appear and adding the words ''CBP Form'';

■ ii. In paragraph (e)(4), by removing the word ''shall'' and adding in its place the word ''will'' and by removing the word ''Customs'' and adding in its place the term ''CBP''; and

■ iii. In paragraph (e)(5), by removing the word ''shall'' and adding in its place the word ''will''; and

■ e. Paragraph (f) is amended:

■ i. In paragraph (f)(1), by removing the word ''shall'' and adding in its place the word ''must''; in paragraph (f)(1)(iv), by removing, in the second sentence, the words ''shall represent'' and adding in their place the words ''must represent''; and, in the third sentence, by removing the word ''shall'' and adding in its place the word ''must'' and by removing the word ''Customs'' each place that it appears and adding the term ''CBP'';

■ ii. In paragraph (f)(2)(i), by removing the word ''shall'' each place that it appears and adding the word ''must'' and by removing the word ''Customs'' and adding in its place the term ''CBP'';

■ iii. In paragraph (f)(2)(ii), by removing, in the first sentence, the word ''shall'' and adding in its place the word ''must'', by removing in the second sentence the words ''shall represent'' and adding in their place the words ''must represent''; and, in the third sentence, by removing the word ''shall'' and adding in its place the word ''must''; and, in paragraphs (f)(2)(iii) and (f)(2)(iv), by removing the word ''shall'' each place that it appears and adding the word ''must''.

The revision reads as follows:

§ 141.61 Completion of entry and entry summary documentation.

(a) *Preparation*—(1) *Paper entry and entry summary documentation.* Except when entry and entry summary documentation is filed with CBP electronically pursuant to the provisions of part 143 of this chapter:

(i) Such documentation must be prepared on a typewriter (keyboard), or with ink, indelible pencil, or other permanent medium, and all copies must be legible;

(ii) The entry summary must be signed by the importer (*see* § 101.1 of this chapter); and

(iii) Entries, entry summaries, and accompanying documentation must be on the appropriate forms specified by the regulations and must clearly set forth all required information.

(2) *Electronic entry and entry summary documentation.* Entry and entry summary documentation that is filed electronically pursuant to part 143 of this chapter must contain the information required by this section and must be certified (*see* §§ 143.35 and 143.44 of this chapter) by the importer of record or his duly authorized customs broker as being true and correct to the best of his knowledge. The importer of record, customs broker, or a duly authorized agent must be resident in the United States for purposes of receiving service of process. A certified electronic transmission is binding in the same manner and to the same extent as a signed document.

(b) *Marks and numbers previously provided.* An importer may omit from entry summary (CBP Form 7501) the marks and numbers previously provided for packages released or withdrawn.

* * * * *

§ 141.63 [Amended]

■ 8. In § 141.63:

a. Paragraphs (a)(2) and (b) are amended by removing the word ''shall'' each place that it appears and adding the word ''will''; and

b. Paragraph (c) is removed.

§ 141.68 [Amended]

■ 9. In § 141.68:

■ a. Paragraphs (a) through (e), (g), and (h) are amended by removing the word ''shall'' each place that it appears and adding the word ''will''; and

■ b. Paragraphs (a), (d), and (f) through (h) are amended by removing the word ''Customs'' each place that it appears and adding the term ''CBP''.

■ 10. In § 141.86:

■ a. Paragraphs (a) through (e) are amended by removing the word ''shall'' each place that it appears and adding the word ''must'';

■ b. Paragraph (f) is amended by removing the word ''shall'' and adding in its place the word ''must'', and by removing the word ''Customs'' and adding in its place the term ''CBP'';

■ c. Paragraph (g) is amended by removing the word ''shall'' and adding in its place the word ''must'';

■ d. Paragraph (h) is revised; and

■ e. Paragraph (j) is amended by removing the word ''shall'' and adding in its place the word ''must''.

The revisions read as follows:

§ 141.86 Contents of invoices and general requirements.

* * * * *

(h) *Numbering of invoices and pages.* (1) *Invoices.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, when more than one invoice is included in the same entry, each invoice with its attachments must be numbered consecutively by the importer on the bottom of the face of each page, beginning with No. 1.

(2) *Pages.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, if the invoice or invoices filed with one entry consist of more than two pages, each page must be numbered consecutively by the importer on the bottom of the face of each page, with the page numbering beginning with No. 1 for the first page of the first invoice and continuing in a single series of numbers through all the invoices and attachments included in one entry.

(3) *Both invoices and pages.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, both the invoice number and the page number must be shown at the bottom of each page when applicable. For example, an entry covering one invoice of one page and a second invoice of two pages must be paginated as follows:

Inv. 1, p. 1.
Inv. 2, p. 2.
Inv. 2, p. 3

* * * * *

■ 11. In § 141.90:

■ a. Paragraph (b) is revised;

■ b. Paragraph (c) is amended by removing the word ''shall'' each place that it appears and adding the word ''must'' in its place; and

■ c. Paragraph (d) is revised.

The revisions read as follows:

§ 141.90 Notation of tariff classification and value on invoice.

* * * * *

(b) *Classification and rate of duty.* The importer or customs broker must include on the invoice or with the invoice data the appropriate subheading under the provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and the rate of duty for the merchandise being entered. Except when invoice line data are linked to an entry summary line and transmitted to CBP electronically under the provisions of part 143, that information must be noted by the importer or customs broker in the left-hand portion of the invoice, next to the articles to which they apply.

* * * * *

(d) *Importer's notations in blue or black ink.* Except when invoice line data are linked to an entry summary line and transmitted to CBP electronically under the provisions of part 143, all notations made on the invoice by the importer or customs broker must be in blue or black ink.

PART 142—ENTRY PROCESS

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

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

■ 13. In § 142.3:
■ a. Paragraph (a) is amended by:
■ i. Removing in the introductory sentence the word ''shall'' and adding in its place the word ''must'';
■ ii. By removing in paragraph (a)(1) the word ''Customs'' each place that it appears and adding the term ''CBP'' and by removing the word ''shall'' and adding in its place the word ''must'';
■ iii. By removing in paragraph (a)(5) the word ''Customs'' and adding in its place the term ''CBP'';
■ iv. By removing in paragraph (a)(6) the word ''shall'' and adding in its place the word ''must'' and by removing the term ''CF'' and adding in its place the words ''CBP Form'';
■ b. Paragraph (b) is revised; and
■ c. A new paragraph (d) is added.

The revision and addition read as follows:

§ 142.3 Entry documentation required.

* * * * *

(b) *Entry summary filed at time of entry.* When the entry summary is filed at time of entry in accordance with § 142.12(a)(1) or § 142.13:

(1) CBP Form 3461 or 7533 will not be required; and

(2) CBP Form 7501 or CBP Form 3311 (as appropriate, *see* § 142.11) may serve as both the entry and the entry summary documentation if the additional documentation set forth in paragraphs (a)(2), (3), (4) and (5) of this section and § 142.16(b) is filed.

* * * * *

(d) *Electronic Format.* The entry documentation identified in this section may be submitted to CBP in either a paper or, where appropriate, an electronic format.

PART 143—SPECIAL ENTRY PROCEDURES

■ 14. The authority citation for part 143 is revised to read as follows:

Authority: 19 U.S.C. 66, 1414, 1481, 1484, 1498, 1624, 1641.

■ 15. Section 143.0 is revised to read as follows:

§ 143.0 Scope.

This part sets forth the requirements and procedures for participation in the Automated Broker Interface (ABI), for the clearance of imported merchandise under appraisement and informal entries, and under electronic entry filing and under Remote Location Filing (RLF). All requirements and procedures set forth in this part are in addition to the general requirements and procedures for all entries set forth in part 141 of this chapter. More specific requirements and procedures are set forth elsewhere in this chapter; for example, part 145 concerns importations by mail and part 10 concerns merchandise conditionally free of duty or subject to a reduced rate.

■ 16. In § 143.32, the introductory text and paragraphs (a), (b), (d) through (k), and the first sentence of paragraph (o) are revised to read as follows:

§ 143.32 Definitions.

The following are definitions for purposes of subparts D and E of this part:

(a) *ABI.* ''ABI'' means the Automated Broker Interface and refers to a module of ACS that allows entry filers to transmit immediate delivery, entry and entry summary data electronically to CBP through ACS and to receive transmissions from ACS.

(b) *ACS.* ''ACS'' means the Automated Commercial System and refers to CBP's integrated comprehensive tracking system for the acquisition, processing and distribution of import data.

* * * * *

(d) *Broker.* ''Broker'' means a customs broker licensed under part 111 of this chapter.

(e) *Certification.* ''Certification'' means the electronic equivalent of a signature for data transmitted through ABI. This electronic (facsimile) signature must be transmitted as part of the immediate delivery, entry or entry summary data. Such data are referred to as ''certified''.

(f) *Data.* ''Data'' when used in conjunction with immediate delivery, entry and/or entry summary means the information required to be submitted with the immediate delivery, entry and/or entry summary, respectively, in accordance with the CATAIR (CBP Publication 552, Customs and Trade Automated Interface Requirements) and/or CBP Headquarters directives. It does not mean the actual paper documents, but includes all of the information required to be in such documents.

(g) *Documentation.* ''Documentation'' when used in conjunction with immediate delivery, entry and/or entry summary means the documents set forth in § 142.3 of this chapter, required to be submitted as part of an application for immediate delivery, entry and/or entry summary, but does not include the CBP Forms 7501, 3461 (or alternative forms).

(h) *EDIFACT.* ''EDIFACT'' means the Electronic Data Interchange for Administration, Commerce and Transport that provides an electronic capability to transmit detailed CBP Forms 7501 and 3461, and invoice data.

(i) *Electronic entry.* ''Electronic entry'' means the electronic transmission to CBP of:

(1) Entry information required for the entry of merchandise; and

(2) Entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(j) *Electronic immediate delivery.* ''Electronic immediate delivery'' means the electronic transmission of CBP Forms 3461 or 3461 alternate (CBP Form 3461 ALT) data utilizing ACS in order to obtain the release of goods under immediate delivery.

(k) *Electronic Invoice Program (EIP).* ''EIP'' refers to modules of the Automated Broker Interface (ABI) that allow entry filers to transmit detailed invoice data and includes Automated Invoice Interface (AII) and any other electronic invoice authorized by CBP.

* * * * *

(o) *Selectivity criteria.* ''Selectivity criteria'' means the categories of information that guide CBP's judgment in evaluating and assessing the risk of an immediate delivery, entry, or entry summary transaction. * * *

* * * * *

■ 17. Part 143 is amended by adding a new subpart E, consisting of §§ 143.41 through 143.45, to read as follows:

Subpart E—Remote Location Filing

Sec.
143.41 Applicability.
143.42 Definitions.
143.43 RLF eligibility criteria.
143.44 RLF procedure.
143.45 Filing of additional entry information.

Subpart E—Remote Location Filing

§ 143.41 Applicability.

This subpart sets forth the general requirements and procedures for Remote Location Filing (RLF). RLF entries are subject to the documentation, document retention and document retrieval requirements of this chapter as well as the general entry requirements of parts 141, 142 and 143 of this chapter. Participation in the RLF program is voluntary and at the option of the filer.

§ 143.42 Definitions.

The following definitions, in addition to the definitions set forth in § 143.32 of this part, apply for purposes of this subpart E:

(a) *Remote Location Filing (RLF)*—''RLF'' is an elective method of making entry by which a customs broker with a national permit electronically

transmits all data information associated with an entry that CBP can process in a completely electronic data interchange system to a RLF-operational CBP location from a remote location other than where the goods are being entered. (Importers filing on their own behalf may file electronically in any port, subject to ABI filing requirements.)

(b) *RLF-operational CBP location*—''RLF-operational CBP location'' means a CBP location within the customs territory of the United States that is staffed with CBP personnel who have been trained in RLF procedures and who have operational experience with the Electronic Invoice Program (EIP). EIP is defined in § 143.32 of this chapter. A list of all RLF-operational locations is available for viewing on the CBP Internet Web site located at *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/.*

§ 143.43 RLF eligibility criteria.

(a) *Automation criteria.* To be eligible for RLF, a licensed customs broker or importer of record must be:

(1) Operational on the ABI (*see* 19 CFR part 143, subpart A);

(2) Operational on the EIP prior to applying for RLF; and

(3) Operational on the ACH (or any other CBP-approved method of electronic payment), for purposes of directing the electronic payment of duties, taxes and fees (*see* 19 CFR 24.25), 30 days before transmitting a RLF entry.

(b) *Broker must have national permit.* To be eligible for RLF, a licensed customs broker must hold a valid national permit (*see* 19 CFR 111.19(f)).

(c) *Continuous bond.* A RLF entry must be secured with a continuous bond.

§ 143.44 RLF procedure.

(a) *Electronic transmission of invoice data.* For RLF transactions, a customs broker or importer of record must transmit electronically, using EIP, any invoice data required by CBP.

(b) *Electronic transmission of payment.* For RLF transactions, a customs broker or importer of record must direct the electronic payment of duties, taxes and fees through the ACH (*see* 19 CFR 24.25) or any other method of electronic payment authorized by CBP.

(c) Automation requirements. Only those entries and entry summaries that CBP processes completely in an electronic data interchange system will be accepted for RLF. For a listing of entry types that may be filed via RLF, go to *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/.*

(d) Combined electronic entry and entry summary. For RLF transactions using a combined electronic entry and entry summary, a customs broker must submit to CBP, through ABI or any other electronic interface authorized by CBP, a complete and error-free electronic data transmission constituting the entry summary that serves as both the entry and entry summary.

(e) *No line release or immediate delivery entries permitted under RLF.* Line release (*see* 19 CFR, Part 142, Subpart D) or immediate delivery procedures may not be combined with RLF transactions.

(f) *Data acceptance and release of merchandise.* Data that are complete and error free will be accepted by CBP. If electronic invoice or additional electronic documentation is required, CBP will so notify the RLF filer. If no documentation is required to be filed, CBP will so notify the RLF filer. If CBP accepts the RLF entry (including invoice data) under §§ 143.34 through 143.36 of this part, the RLF entry will be deemed to satisfy all filing requirements under this part and the merchandise may be released.

(g) *Liquidation.* The entry summary will be scheduled for liquidation once payment is made under statement processing (*see* 19 CFR 24.25).

§ 143.45 Filing of additional entry information.

When filing from a remote location, a RLF filer must electronically file all additional information required by CBP to be presented with the entry and entry summary information (including facsimile transmissions) that CBP can accept electronically. If CBP cannot accept additional information electronically, the RLF filer must file the additional information in a paper format at the CBP port of entry where the goods arrived.

Approved: December 22, 2009.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. E9–30736 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9477]

RIN 1545–BI14

Use of Controlled Corporations To Avoid the Application of Section 304

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 304 of the Internal Revenue Code (Code). The regulations apply to certain transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the application of section 304 to a corporation that is controlled by the issuing corporation in the transaction, or with a principal purpose of avoiding the application of section 304 to a corporation that controls the acquiring corporation in the transaction. The regulations affect persons treated as receiving distributions in redemption of stock by reason of section 304. The text of the temporary regulations serves as the text of the proposed regulations in the notice of proposed rulemaking on this subject published in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on December 30, 2009.

Applicability Date: These regulations apply to acquisitions of stock occurring on or after *December 29, 2009.*

FOR FURTHER INFORMATION CONTACT: Sean W. Mullaney, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 304 of the Code. Section 304(a)(1) provides generally that, for purposes of sections 302 and 303, if one or more persons are in control of each of two corporations and one such corporation (acquiring corporation) acquires in exchange for property stock of the other corporation (issuing corporation) from the person (or persons) so in control, then, unless section 304(a)(2) applies, the property shall be treated as received in redemption of the stock of the acquiring corporation. Section 304(a)(2) provides generally that, for purposes of sections 302 and 303, if in exchange for property the acquiring corporation acquires stock

of the issuing corporation from a shareholder of the issuing corporation and the issuing corporation controls the acquiring corporation, then the shareholder shall be treated as receiving the property in redemption of the stock of the issuing corporation. For purposes of section 304, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of voting stock or at least 50 percent of the total value of shares of all classes of stock. With certain modifications, the constructive ownership rules of section 318 apply for this purpose.

Under section 304(b)(2), the determination of the amount of the property distribution that is a dividend (and the source thereof) is made as if the property were distributed by the acquiring corporation to the extent of its earnings and profits, and then by the issuing corporation to the extent of its earnings and profits. If the acquiring corporation is foreign, section 304(b)(5) limits the amount of earnings and profits of the acquiring corporation that are taken into account for this purpose.

As part of a broad set of anti-avoidance rules published in the **Federal Register** on June 14, 1988 (TD 8209) the IRS and the Treasury Department promulgated § 1.304–4T to address transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the application of section 304 to certain corporations. Specifically, for purposes of determining the amount of a property distribution constituting a dividend (and the source thereof) under section 304(b)(2), the District Director (now known as the Director of Field Operations) is permitted to consider a corporation (deemed acquiring corporation) as having acquired for property the stock of the issuing corporation that is in fact acquired for property by the acquiring corporation, if the deemed acquiring corporation controls the acquiring corporation and if one of the principal purposes for creating, organizing, or funding the acquiring corporation (through capital contributions or debt) is to avoid the application of section 304 to the deemed acquiring corporation.

Explanation of the Provisions

A. Transactions at Issue

The IRS and Treasury Department have become aware of certain transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the treatment of a corporation as the issuing corporation. In one such transaction, for example, a domestic corporation (USP) wholly owns two foreign corporations (F1 and F2). The basis and fair market value of the F1 stock is $100×. F1 does not have positive earnings and profits (or its earnings and profits for purposes of section 304(b)(2) are limited by section 304(b)(5)) but has at least $100× cash. The basis and fair market value of the F2 stock is $100× and F2 has earnings and profits of at least $100×. USP forms a new foreign corporation (F3) and contributes the stock of F2 to F3 in exchange for F3 stock. In a transaction subject to section 304(a)(1), USP then transfers the stock of F3 to F1 in exchange for $100× cash. Because neither F1 (the acquiring corporation) nor F3 (the issuing corporation) has positive earnings and profits, USP reports the $100x cash received in redemption of the shares deemed issued by F1 under section 304(a)(1) as a return of basis under section 301(c)(2).

B. Anti-Avoidance Rule Applicable to Deemed Issuing Corporations

The IRS and Treasury Department believe that an anti-avoidance rule similar to § 1.304–4T, but that applies in the case of a transaction entered into with a principal purpose of avoiding the treatment of a corporation as the issuing corporation is appropriate for transactions such as the one described above. Accordingly, the regulations amend § 1.304–4T to provide that for purposes of determining the amount of a property distribution that is a dividend (and the source thereof) under section 304(b)(2), the acquiring corporation shall be treated as acquiring for property the stock of a corporation (deemed issuing corporation) that is controlled by the issuing corporation, if, in connection with the acquisition for property of stock of the issuing corporation by the acquiring corporation, the issuing corporation acquired stock of the deemed issuing corporation with a principal purpose of avoiding the application of section 304 to the deemed issuing corporation.

C. Modifications to Current § 1.304–4T

Current § 1.304–4T applies at the discretion of the District Director. The IRS and the Treasury Department believe the anti-avoidance rule of current § 1.304–4T should be self-executing. Thus, current § 1.304–4T is amended accordingly.

Current § 1.304–4T applies when ''one of the principal purposes'' for the transaction is to avoid the application of section 304. The regulations included in this document apply when ''a principal purpose'' for the transaction is to avoid the application of section 304. The IRS and the Treasury Department do not view this modification as a substantive change.

Finally, and as noted above, current § 1.304–4T applies if one of the principal purposes for creating, organizing, or funding the acquiring corporation, through capital contributions or debt, is to avoid the application of section 304 to the deemed acquiring corporation. The regulations included in this document clarify that this rule may apply in cases where the funding is from an unrelated party. For example, the regulations may apply when the deemed acquiring corporation facilitates the repayment of an obligation incurred by the acquiring corporation (even if such obligation is with respect to a borrowing from an unrelated party) to acquire the stock of the issuing corporation.

D. Effective/Applicability Dates

The regulations apply to acquisitions occurring on or after December 29, 2009. No inference is intended as to the potential applicability of other Code or regulatory provisions or judicial doctrines (including step transaction or substance over form) to transactions described in the regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble and to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of the regulations is Sean W. Mullaney of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

■ **Par. 2.** Section 1.304–4 is added to read as follows:

§ 1.304–4 Special rule for the use of related corporations to avoid the application of section 304.

[Reserved]. For further guidance, see § 1.304–4T(a) through (d).

■ **Par. 3.** Section 1.304–4T is revised to read as follows:

§ 1.304–4T Special rule for the use of related corporations to avoid the application of section 304 (temporary).

(a) *Scope and purpose.* This section applies to determine the amount of a property distribution constituting a dividend (and the source thereof) under section 304(b)(2), for certain transactions involving controlled corporations. The purpose of this section is to prevent the avoidance of the application of section 304 to a controlled corporation.

(b) *Amount and source of dividend.* For purposes of determining the amount constituting a dividend (and source thereof) under section 304(b)(2), the following rules shall apply:

(1) *Deemed acquiring corporation.* A corporation (deemed acquiring corporation) shall be treated as acquiring for property the stock of a corporation (issuing corporation) acquired for property by another corporation (acquiring corporation) that is controlled by the deemed acquiring corporation, if a principal purpose for creating, organizing, or funding the acquiring corporation by any means (including, through capital contributions or debt) is to avoid the application of section 304 to the deemed acquiring corporation. See paragraph (c) *Example 1* of this section for an illustration of this paragraph.

(2) *Deemed issuing corporation.* The acquiring corporation shall be treated as acquiring for property the stock of a corporation (deemed issuing corporation) controlled by the issuing corporation if, in connection with the acquisition for property of stock of the issuing corporation by the acquiring corporation, the issuing corporation acquired stock of the deemed issuing corporation with a principal purpose of avoiding the application of section 304 to the deemed issuing corporation. See paragraph (c) Example 2 of this section for an illustration of this paragraph.

(c) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) *Facts.* P, a domestic corporation, wholly owns CFC1, a controlled foreign corporation with substantial accumulated earnings and profits. CFC1 is organized in Country X, which imposes a high rate of tax on the income of CFC1. P also wholly owns CFC2, a controlled foreign corporation with accumulated earnings and profits of $200×. CFC2 is organized in Country Y, which imposes a low rate of tax on the income of CFC2. P wishes to own all of its foreign corporations in a direct chain and to repatriate the cash of CFC2. In order to avoid having to obtain Country X approval for the acquisition of CFC1 (a Country X corporation) by CFC2 (a Country Y corporation) and to avoid the dividend distribution from CFC2 to P that would result if CFC2 were the acquiring corporation, P causes CFC2 to form CFC3 in Country X and to contribute $100x to CFC3. CFC3 then acquires all of the stock of CFC1 from P for $100×.

(ii) *Result.* Because a principal purpose for creating, organizing or funding CFC3 (acquiring corporation) is to avoid the application of section 304 to CFC2 (deemed acquiring corporation), under paragraph (b)(1) of this section, for purposes of determining the amount of the $100× distribution constituting a dividend (and source thereof) under section 304(b)(2), CFC2 shall be treated as acquiring the stock of CFC1 (issuing corporation) from P for $100×. As a result, P receives a $100× distribution, out of the earnings and profits of CFC2, to which section 301(c)(1) applies.

Example 2. (i) *Facts.* P, a domestic corporation, wholly owns CFC1, a controlled foreign corporation with substantial accumulated earnings and profits. The CFC1 stock has a basis of $100×. CFC1 is organized in Country X. P also wholly owns CFC2, a controlled foreign corporation with zero accumulated earnings and profits. CFC2 is organized in Country Y. P wishes to own all of its foreign corporations in a direct chain and to repatriate the cash of CFC2. In order to avoid having to obtain Country X approval for the acquisition of CFC1 (a Country X corporation) by CFC2 (a Country Y corporation) and to avoid a dividend distribution from CFC1 to P, P forms a new corporation (CFC3) in Country X and transfers the stock of CFC1 to CFC3 in exchange for CFC3 stock. P then transfers the stock of CFC3 to CFC2 in exchange for $100×.

(ii) *Result.* Because a principal purpose for the transfer of the stock of CFC1 (deemed issuing corporation) by P to CFC3 (issuing corporation) is to avoid the application of section 304 to CFC1, under paragraph (b)(2) of this section, for purposes of determining the amount of the $100x distribution constituting a dividend (and source thereof) under section 304(b)(2), CFC2 (acquiring corporation) shall be treated as acquiring the stock of CFC1 from P for $100× . As a result, P receives a $100× distribution, out of the earnings and profits of CFC1, to which section 301(c)(1) applies.

(d) *Effective/applicability date.* This section applies to acquisitions of stock occurring on or after December 29, 2009. See § 1.304–4T, as contained in 26 CFR part 1 revised as of April 1, 2008, for acquisitions of stock occurring on or after June 14, 1988, and before December 29, 2009.

(e) *Expiration date.* This section expires on or before December 31, 2012.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2009.

Michael F. Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–30861 Filed 12–29–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1215–AB75

Trust Annual Reports

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Final rule; extending filing due date.

SUMMARY: This rule extends the filing due date of Form T–1 Trust Annual Reports required to be filed during calendar year 2010. The Form T–1 is an annual financial disclosure report required to be filed, pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA), by labor unions with total annual receipts of $250,000 or more about certain trusts in which they are interested. Labor unions are required to use the Form T–1 to disclose financial information about these trusts, such as assets, liabilities, receipts, and disbursements. The Department established the Form T–1 in a final rule published October 2, 2008, with an effective date of January 1, 2009. Subsequently, the Department announced its intention to propose withdrawal of the Form T–1 (Spring 2009 Regulatory Agenda, Fall 2009 Regulatory Agenda). The Department also held a public meeting on July 21, 2009, and received comments from interested parties concerning provisions of the Form T–1 and its proposed rescission. On December 3, 2009, the Department published a Notice of Proposed Rulemaking proposing to

extend for one year Form T–1 reports due in calendar year 2010, pending the completion of a rulemaking proposing to withdraw the October 2, 2008 Form T–1 rule. In consideration of comments received, the Department now extends for one calendar year the filing due date of the Form T–1 reports otherwise required to be filed during 2010.

DATES: Effective December 30, 2009. This rule extends for one calendar year the filing due dates for Form T–1 reports required to be filed during calendar year 2010. Form T–1 reports that otherwise would be due in 2010 will be filed in 2011. This rule does not extend the filing due date of any Form T–1 report due during calendar year 2011 or beyond.

FOR FURTHER INFORMATION CONTACT: Denise M. Boucher, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On October 2, 2008, the Department of Labor, Office of Labor-Management Standards (OLMS), published a Final Rule establishing the Form T–1, Trust Annual Report. 73 FR 57411. The Form T–1 is an annual financial disclosure report to be filed by labor unions about certain trusts in which they are interested. For an organization or fund to be a labor union's trust subject to Form T–1 reporting, it must be established by the labor union or have a governing body that includes at least one member appointed or selected by the labor union, and a primary purpose of the trust must be to provide benefits to the members of the labor union or their beneficiaries. Examples of such trusts include building and redevelopment corporations, educational institutes, credit unions, labor union and employer joint funds, and job targeting funds. Labor unions currently are required to disclose financial information about the trust, such as assets, liabilities, receipts and disbursements through use of Form T–1.

Labor unions with total annual receipts of $250,000 or more (those required to file Form LM–2, Labor Organization Annual Report) are required to file the Form T–1 report. A labor union must file a Form T–1 report for each trust where the labor union, alone or in combination with other labor unions, appoints or selects a majority of the members of the trust's governing board or the labor union's contribution to the trust, alone or in combination with other labor unions, represents more than 50% of the trust's receipts. Contributions by an employer under a collective bargaining agreement are considered contributions by the labor union.

The Form T–1 rule also provides that unions will not be required to file a Form T–1 under certain circumstances, such as when the trust is a political action committee, if publicly available reports on the committee are filed with appropriate federal or state agencies; when an independent audit has been conducted for the trust, in accordance with standards set forth in the final rule; or when the trust is required to file a Form 5500 with the Employee Benefits Security Administration (EBSA).

The Form T–1 final rule took effect on January 1, 2009. Filing due dates depend on the fiscal year ending dates of both the reporting union and the trust being reported. The fiscal year of both the labor union and its trust must begin on or after January 1, 2009, for a Form T–1 report to be owed that fiscal year. The earliest Form T–1 reports would be required of unions that have, and whose trusts have, a fiscal year start date of January 1, 2009. Reports are due within 90 days of the end of the union's fiscal year. These first Form T–1 reports would therefore be due on or after January 1, 2010, but no later than March 31, 2010.

In the Spring 2009 Regulatory Agenda, the Department notified the public of its intent to initiate rulemaking proposing to rescind the Form T–1 and to require labor unions to report their wholly owned, wholly controlled, and wholly financed (''subsidiary'') organizations on their Form LM–2 or LM–3 reports. *See http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200904&RIN=1215-AB75*. Additionally, the Department held a public meeting on July 21, 2009, which allowed interested parties to comment on any aspect of the Form T–1. Furthermore, the Department's Fall 2009 Regulatory Agenda stated that such proposal to rescind would be published in January 2010 (*See http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200910&RIN=1215-AB75*). A draft proposed rule to withdraw the October 2, 2008 Form T–1 rule is currently under review by the Administration.

In view of its plan to propose rescission of the Form T–1 Trust Annual Report, the Department proposed to extend the filing due dates of Form T–1 reports that would otherwise be due in 2010, pending review and consideration of comments on the proposal to rescind. Extension of the filing due dates delays or eliminates the first year recurring and nonrecurring burdens on labor organizations associated with the Form T–1 reporting requirements pending the outcome of the proposed withdrawal. Without this extension of the filing dates, many affected labor organizations likely will incur the reporting costs and burdens associated with filing the form, including the nonrecurring first year costs and burdens associated with implementing changes to the reporting systems necessary for completion of the Form T–1. Specifically, the October 2, 2008 rule estimated that unions would incur 41.20 hours in reporting burden per Form T–1 filed during the first year of the rule's implementation, for a total first year reporting burden of 128,978.11 hours. The estimated reporting cost per form filed in the first year is $1,632.41, and the estimated reporting cost in the first year for all projected Form T–1 filings is $5,110,324.80. The Department notes that the first year burden is higher than that in later years, which is estimated to be 28.28 hours per form filed and 88,542.01 hours total. 73 FR 57444–5. If the proposal to rescind the rule ultimately is effectuated, these expenses, including upfront costs, will have been incurred unnecessarily.

In its proposal, the Department noted that the extension of the filing dates for Form T–1 reports due in 2010 would not affect the filing due date of Form T–1 reports owed in any subsequent year. The Department's proposal did not extend the filing due date of any Form T–1 report that normally would be due during calendar year 2011 or beyond. Further, in the event that the Department determines to retain the Form T–1 rule, the initial Form T–1 reports that would have been due during 2010 would be filed in 2011 in addition to any Form T–1 reports due in 2011.

For the foregoing reasons, the Department proposed extending the filing dates of Form T–1 reports due during calendar year 2010 and sought comments on the proposal.

II. Comments on the Proposal and the Department's Responses and Decision

The Department received 128 comments on this proposal. Of these, 15 supported the proposed extension and 111 opposed any changes to the Form T–1 reporting regime. Two additional comments addressed only the adequacy of the ten day comment period. One comment was received after the

comment period closed and was not considered.

Of the 111 comments submitted in opposition to any changes to the Form T–1 requirements, only one specifically addressed the Department's rationale for the proposal to extend the Form T–1 filing due dates. The remainder expressed only general opposition to any changes to the Form T–1 reporting regime, including rescission, and only approximately ten of those comments included any reference to the proposed extension.

The comment specifically opposing the Department's rationale for its proposal to extend the Form T–1 filing due dates was submitted by a public policy group. The comment asserted that the Department's rationale that an extension of the filing due date for 2010 filers is necessary to prevent them from unnecessarily incurring first year reporting burdens is flawed. It argued that an extensive amount of ''lead time'' is necessary to build new reporting systems to ensure that receipts, disbursements, and other information can be tracked from the first day the rule is in effect. The commenter claims that since the Form T–1 went into effect on January 1, 2009, filers have had nearly a year to implement the necessary tracking systems and suggests that they should have already incurred most of the costs imposed by the Form T–1 requirements. Additionally, the public policy group stated that only those in the regulated community that did not intend to comply with the reporting requirements would have failed to take the steps needed to enable them to meet the initial Form T–1 filing dates. The commenter also suggested that the Department is heading towards the elimination of ''any meaningful reporting of union finances.''

The Department disagrees with the public policy group's assertion that an extension in the deadline will not prevent unnecessary burden. As stated in the notice proposing the extension of the Form T–1 filing due dates, no filers have yet incurred any *reporting* burden and will not incur such burden until at least January 1, 2010, although calendar year filers should have incurred much of the *recordkeeping* burden for the initial Form T–1 reports. 74 FR 63335, 63336 (Dec. 3, 2009). Since a reporting labor organization must retrieve the data recorded for the entire fiscal year by the trust, and then must organize and report this data on the Form T–1, the union would initiate these steps upon completion of the fiscal year, which for the earliest filers will not begin until after December 31, 2009.

As explained in the notice proposing the extension of the Form T–1 filing due dates, the October 2, 2008 rule estimated that unions would incur 41.20 hours in reporting burden per Form T–1 filed during the first year of the rule's implementation. The estimated reporting cost per form filed in the first year is $1,632.41, and the estimated reporting cost in the first year for all projected Form T–1 filings is $5,110,324.80. 73 FR 57444–5. If the proposal to rescind the rule ultimately is effectuated, these expenses, including up front costs, will have been incurred unnecessarily. Furthermore, the Department does not accept the argument that extending this reporting eliminates ''any meaningful'' union financial disclosure, as this rule only extends Form T–1 reporting for one year.

Each of the remaining 110 comments in opposition to the Department's proposal was submitted by an individual expressing general opposition to any change in the Form T–1 reporting regime, including rescission. Approximately ten of these general comments referenced the proposed extension. However, these references generally did not provide any substantive argument in response to the Department's proposal. Rather, they asserted broadly that an extension of a rule that may be rescinded would set a ''bad precedent;'' that more transparency was needed, not less; and that the burden on unions is worth the disclosure. Comments in general opposition also referenced or alluded to such issues as President Obama's emphasis on transparency; suggestions of political and special interest favor; opposition to government corruption; general opposition to labor unions; and general opposition to the President and the Administration's economic policies. There were, in addition, other political comments unrelated to the proposed extension. The general opposition also often compared union disclosure to reporting requirements for taxpayers, the insurance industry, companies, and others; expressed support for union financial disclosure and opposed any lessening of such disclosure; supported the need to combat union corruption; and argued for the need for timely disclosure and time to evaluate the union disclosure requirements presently in place.

The Department reiterates that it is not assessing the merits of the Form T–1 in this rule extending the 2010 Form T–1 filing due dates. The Department acknowledges and fully supports the importance of labor-management transparency through the LMRDA reporting regimes. Thus, it stresses that the union financial reporting requirements, such as the Form LM–2, LM–3, and LM–4, remain in place. Further, the Form T–1 reporting requirements remain in place, as well, pending the result of a proposal to rescind them, which the Department anticipates will be published in January 2010 for notice and comment rulemaking.

Of the 15 comments supporting the extension, 12 came from national or international unions, two from federations of unions, and one from a certified public accounting (CPA) firm. These comments all offered support for the Department's justification for its proposal to extend the filing due dates for Form T–1 for one year to avoid upfront reporting costs that would prove unnecessary if the Department implemented a proposal to rescind the form.

With respect to these costs, one national union stated that its accountants and financial specialists had estimated that start up costs needed to comply with the Form T–1 requirements could be in ''the tens of thousands of dollars,'' which would likely be a one-time cost that, in its view, would not benefit the union members, trust beneficiaries, or the public with any greater transparency or accountability, while costing the unions significant dues monies. Another national union stressed that the resources that would be used to implement these reporting requirements are union members' dues. Another national union compared the implementation of the Form T–1 with the Form LM–2 changes, which required significant resources to create new accounting systems, practices and procedures, new reporting systems for officers and staff, additional accounting personnel, new forms for internal use, and the purchase of additional equipment and software, all of which are ongoing costs but higher in the first year. In the union's experience, the Form T–1 would add significant costs and burdens to those imposed by the existing Form LM–2.

Several other comments discussed the burden on trusts and the burden of union coordination with the trusts to complete the Form T–1. One international union stated that the trusts would be required to reprogram their recordkeeping systems to comply, which would be highly disruptive to the trusts and expensive for the unions. Further, according to this commenter, unions would need to retain accountants and coordinate with the trusts for reviewing the records and

preparing the report and these start-up costs would be wasted if the Department did rescind the form. This union also argued that no harm has occurred from the repeated postponement of the Form T–1 caused by court decisions.

Commenters also noted that the Department in the Spring 2009 Regulatory Agenda notified the public of its intent to initiate rulemaking to rescind the 2008 Form T–1 rule and that a notice of proposed rulemaking is now under review by the Administration with an anticipated January 2010 publication date. One national union asserted that the rescission may take place for some unions before their reports are even due, and an international union emphasized the waste of government resources, as well, if the Department were to enforce the filing due dates in 2010 while at the same time moving to rescind the form.

One of the federations of unions offered two additional arguments in support of an extension. First, the federation asserted that much of the reporting and recordkeeping burden associated with the Form T–1 is actually borne by the trusts and not the reporting unions. Although the rule requires that unions must reimburse the trusts for implementing recordkeeping systems and transmitting the information to the unions, the comment expressed doubt that trusts would be willing to alter their systems to implement the Form T–1 reporting requirements, knowing that the Department may effectuate its intention to rescind the rule. Furthermore, the federation anticipates conflict between the unions and trusts and difficulties for the Department in enforcement of the Form T–1 rule. The trusts, according to the federation, will display resistance to changing their systems for a possible one-time reporting requirement. This would put the unions in a difficult position, according to the federation, because the Department indicated in the 2008 Form T–1 rule that it expects union officials to ''take timely, reasonable, and good faith actions to obtain the necessary information from section 3(l) trusts,'' and that it could ''assert a willful and knowing violation of the filing requirements'' against the union and its officials. 73 FR at 57432.

Second, the federation maintained that enforcement of the Form T–1 in 2010 will generate litigation challenging the rule itself. The federation believes that the 2008 Form T–1 rule suffers from the same flaws identified by the courts when striking down the two previous versions of the form. Thus, the federation concluded, if the Department went forth with enforcement of the Form T–1 in 2010, pending rescission, it would unnecessarily waste its own resources and those of the courts.

Various national and international unions that belong to this federation submitted comments adopting or restating its comments, in whole or part. Further, a number of unions advised of their support for the rescission of the Form T–1. Two international unions commented that the Department may have underestimated the cost and burden associated with obtaining the necessary information from the trusts. One of these commenters urged that any effort by union officials to complete the Form T–1 exposes the union and those officials (but not the trust) to the ''risk of civil and criminal liability'' for failing to obtain the necessary data from trusts, over which they may not have practical or legal control. Further, this commenter claims, it is not clear what authority the Department has under the LMRDA to retrieve the information from the trusts on behalf of the unions. The union commented that the Department has not provided a ''safe harbor'' provision in the event that the trust fails to provide complete and accurate data by which a Form T–1 can be filed.

An international union offered similar comments to the above national union, with several additional points regarding its view that the Department underestimated the reporting burden on filers. In its view, these are errors that justify an extension even without pending regulatory action to rescind the rule. First, it argued that the itemization and aggregation requirements of the Form T–1 create tremendous burden not truly appreciated by the 2008 rule. Second, it asserted that there is no dollar threshold on the contribution of one union to a trust, which could result in unions filing Form T–1 reports for trusts that only have a small amount of money derived from the union. Further, it claims that, because there is no threshold on the size of the trust, unions could be reporting on very small trusts. Third, and similarly to other comments, it stated that the union must identify the trusts for which a Form T–1 is required, which can be costly, and it must obtain information from the third-party trust, over which it may not have any legal control. Fourth, it claimed that the 2008 rule overstated the benefits of the Form T–1 and downplayed any redundancy, because multiple unions are required to file a report on the same trust, regardless of which union has a greater financial contribution or level of control over the trust, and because trusts generally file the Internal Revenue Service (IRS) Form 990, which provides financial transparency for these entities.

The other federation of unions similarly cited potential litigation arising from the reporting requirements of the Form T–1. This federation also emphasized that labor organizations do not have the information required to be reported. The federation went on to note that although the trusts do have this information, they do not organize the data in the manner that the Form T–1 requires. The unions must reimburse the trusts to assemble and provide them with the necessary information, which, citing the Department, requires potentially unnecessary start-up costs. The federation argued that, given the current economic situation and the demand on labor organizations to further legitimate interests, it would be wasteful to mandate unions and trusts to comply with potentially unnecessary reporting requirements.

The CPA firm that submitted comments contended that the implementation of the Form T–1 would be a costly burden for unions, as many of the firm's union clients had not established procedures to implement the filing of the form, nor have, to the firm's knowledge, the trusts established any procedures to capture and provide data to the unions. The firm believes that it would be ''impractical'' for the Department to require unions to timely submit Form T–1 reports in 2010, and, instead, that a one year extension would enable such entities to prepare for either a Form T–1 or, in the case rescission is effectuated, to consolidate information about wholly owned, wholly controlled, and wholly financed organizations (*i.e.* ''subsidiary organizations'') on their Form LM–2.[1]

The Department acknowledges comments that suggest that many unions and trusts have not begun the necessary steps needed to implement the Form T–1 reporting *and* recordkeeping requirements. The Department points out that unions should already have incurred much of the *recordkeeping* burden imposed by the 2008 Form T–1 rule, as this rule went into effect on January 1, 2009. Thus, unions and trusts should have put into place the necessary systems to track trust transactions. However, the *reporting* burden has not yet been triggered for unions, and it would not be triggered until, at the earliest date, January 1, 2010. Therefore, while today's rule extends the 2010 filing due

[1] The Department's 2009 Spring and Fall Regulatory Agenda announced that a proposal to rescind the Form T–1 would be accompanied by a proposal to instead return to reporting of subsidiary organizations that are wholly owned, controlled, and financed by a single labor organization to the Form LM–2.

dates, to avoid the potentially unnecessary and burdensome *reporting* costs that would otherwise be triggered for many Form T–1 reporting unions on January 1, 2010, the Department leaves in place, for 2010, the *recordkeeping* responsibilities imposed by the 2008 rule.

Finally, four commenters claimed that the Department did not provide for an adequate comment period. A public policy group and a trade association made requests for an extension of the period and two individual commenters opposing changes to the Form T–1 requirements addressed the issue generally, while also commenting on other matters. The public policy group asked for a minimum extension of 140 days and asserted that the Department took almost a decade to develop the Form T–1, with great effort by personnel, and that a comment period of only ten days on extending ''the effective date'' of the rule is not sufficient for those union members who would gain from the disclosure provided by the Form T–1. The commenter stated that the Department has granted much longer comment periods for notices contemplating ''regulatory changes to the annual financial reports.'' In particular, the comment cited the 90-day extension granted during the recent Form LM–30 rulemaking, after a request from two unions, for a total of 150 days. Further, the comment suggested that the Department has not adequately justified the length of its comment period, particularly in light of Executive Order (E.O.) 12866, sec. 6(a)(1), and the multiple regulatory actions currently being undertaken by the Administration.

The trade association requested an 80-day extension, arguing that the ten-day period does not provide sufficient time for stakeholders to submit a meaningful response. The comment also addressed past extensions that the Department has granted, particularly concerning ''changes to the substance or filing instructions of labor organization financial reporting regulations,'' such as the 90-day extension granted during the Form LM–30 rulemaking mentioned by the public policy group, after two stakeholder requests. The trade association also cited E.O. 12866, sec. 6(a)(1), which states, in part, that ''in most cases'' an agency should include a comment period of not less than 60 days.

The Department finds that the commenters have not established grounds to extend the comment period. The Department reiterates that it sought comments on a proposal to extend the Form T–1 filing due dates for one year, not to rescind the Form T–1 rule or otherwise make regulatory changes to the form, such as was the case with the regulations referenced in the requests for an extended comment period. The Department will provide a lengthier comment period concerning any future proposal to rescind the Form T–1. The Department believes that the ten-day comment period was sufficient for the narrow purpose of reviewing the proposal to extend the filing due dates, as the large number of comments demonstrates. Further, there is urgency in providing for this extension, because the first reports to be filed under the Form T–1 rule would be due on or after January 1, 2010, and the Department anticipates publication as early as January 2010 of a proposal to withdraw the Form T–1 rule. As such, there is sufficient reason that the Department determined that a longer comment period was not feasible in this case.

For the reasons stated above and in light of the Department's intention to propose the withdrawal of the Form T–1 rule as early as January 2010, the Department has decided to extend for one year the filing due dates of Form T–1 reports that otherwise must be filed during calendar year 2010. In particular, the Department acknowledges the evidence and experience described in those comments regarding the costs and burdens associated with implementing new reporting requirements, particularly those created by the unique nature of the Form T–1, which mandates that trusts provide unions with information about the former's transactions. The Department notes comments suggesting that enforcement of the filing due dates in 2010 could lead to conflict between the unions and the trusts. Such conflict, as well as the up front reporting costs and burdens, may be avoided by extending the calendar year 2010 filing due dates for one year, pending the outcome of a proposal to rescind the 2008 Form T–1 rule. The Department believes that a one-year extension of the Form T–1 filing due dates is justified by a significant decrease in potentially unnecessary reporting burden, including up front costs.

Andrew Auerbach,

Deputy Director, Office of Labor-Management Standards.

[FR Doc. E9–30942 Filed 12–29–09; 8:45 am]

BILLING CODE 4510–CP–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–1053]

Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Danziger lift span bridge across the Inner Harbor Navigational Canal, mile 3.1, at New Orleans, LA. The deviation is necessary to remove and install the roller guide assemblies on the bridge. This deviation allows the bridge to remain closed at two different points of time during the bridge repairs project.

DATES: This deviation is effective from 7 a.m. on January 16, 2010 through 7 p.m. on January 30, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–1053 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1053 in the ''Keyword'' box and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The Coastal Bridge Company, contracted by Louisiana Department of Transportation and Development, has requested a bridge closure for the Danziger Lift Span Bridge on Route US 90 crossing the Inner Harbor Navigational Canal, mile 3.1, in New Orleans, LA. The vertical clearance of the bridge in the closed-to-navigation position is 50 feet above mean high water and 55 feet above mean low water. Currently, according to

33 CFR 117.458(b), the draw of the US 90 (Danziger) bridge, mile 3.1, shall open on signal; except that, from 8 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given, and the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. This deviation allows the draw span of the bridge to remain closed-to-navigation for 12 consecutive hours between 7 a.m. and 7 p.m. on intermittent days from January 16, 2009 through January 30, 2009. Uncontrollable variables such as inclement weather make it difficult to predict the exact dates that work can be conducted. Thus, the exact dates for the closures cannot be firmly scheduled. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System as soon as information pertaining to the exact closure dates becomes available. During the deviation period seven new aerial cables between the two bridge towers will be installed, the wiring for the roadway and navigation lighting will be replaced, and the guide rollers and span locks will be replaced. The closure periods are necessary for the guide rollers and span locks to be replaced. During the non-closure times of the deviation period the bridge will remain in the open position for vessel traffic. Navigation on the waterway consists mainly of tugs with tows. As a result of coordination between the Coast Guard and the waterway users, it has been determined that this closure will not have a significant effect on these vessels. The Coast Guard will inform these users through the Local Notice to Mariners. Vessels will be allowed to pass underneath the bridge in the closed-to-navigation position. There are alternate routes available to vessel traffic. The bridge will not be able to open for emergencies.

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

Dated: December 14, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–30931 Filed 12–29–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–1059]

Drawbridge Operation Regulation; Sacramento River, Knights Landing, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Knights Landing Drawbridge across the Sacramento River, mile 90.1, at Knights Landing, CA. The deviation is necessary to allow the bridge owner, California Department of Transportation, to paint portions of the drawbridge. This deviation allows the bridge owner to operate the double leaf bascule bridge in single leaf mode during the deviation period.

DATES: This deviation is effective from 7 a.m. on December 30, 2009 to 7 a.m. on February 6, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–1059 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–1059 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516, e-mail *David.H.Sulouff@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: California Department of Transportation requested a temporary change to the operation of the Knights Landing Drawbridge, mile 90.1, Sacramento River, at Knights Landing, CA. The draw opens on signal if at least 12 hours notice is given as required by 33 CFR 117.189(b). This deviation allows the bridge owner to operate the double leaf bascule bridge in single leaf mode while securing one leaf of the drawspan in the closed-to-navigation position from 7 a.m. on December 11, 2009 to 7 a.m. on February 6, 2010.

The Knights Landing Drawbridge provides 3 feet vertical clearance above the 100 year floodplain when closed and unlimited vertical clearance in the open-to-navigation position. The drawbridge provides 199 feet horizontal clearance between bridge piers. The horizontal clearance provided by the drawbridge during single leaf operation is reduced by approximately 100 feet between the tip of the closed bascule and the opposite pier face. The vertical clearance will be unaffected.

No alternative routes are available for navigation. This temporary deviation has been coordinated with all known waterway users. No objections were received concerning the temporary deviation.

Vessels that can safely transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

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

Dated: December 14, 2009.

J.R. Castillo,

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

[FR Doc. E9–30918 Filed 12–29–09; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R05–RCRA–2009–0908; SW–FRL–9096–7]

Hazardous Waste Management System; Exclusion for Identifying and Listing Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA (also, ''the Agency'' or ''we'' in this preamble) is taking direct final action to grant a petition submitted by Professional Plating, Inc. (PPI), in Brillion, Wisconsin to exclude (or ''delist'') up to 140 cubic yards of sludge per year generated by its wastewater treatment plant from the list of hazardous wastes.

The Agency has decided to grant the petition based on an evaluation of waste-specific information provided by PPI. This decision conditionally excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

We conclude that PPI's petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other factors which would cause the waste to be hazardous when disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste.

DATES: This rule is effective on March 1, 2010 without further notice, unless EPA receives adverse comment by January 29, 2010. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–RCRA–2009–0908 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Mail:* Todd Ramaly, Land and Chemicals Division, (Mail Code: LR–8J), EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604.
- *Hand Delivery:* Todd Ramaly, Land and Chemicals Division, EPA Region 5, 8th Floor, 77 W. Jackson Blvd., Chicago, IL 60604. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please contact Todd Ramaly at (312) 353–9317.

Instructions: Direct your comments to Docket ID No. EPA–R05–RCRA–2009–0908. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Records Center, EPA Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL 60604. The EPA Record Center is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone Todd Ramaly at (312) 353–9317 before visiting the EPA Record Center. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: Todd Ramaly, Land and Chemicals Division, Mail Code LR–8J, Environmental Protection Agency, EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604; telephone number: (312) 353–9317; fax number: (312) 582–5190; e-mail address: *ramaly.todd@epa.gov*.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
II. Background
A. What Is a Listed Waste?
B. What Is a Delisting Petition?
C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?
III. EPA's Evaluation of the Waste Information and Data
A. What Waste Did PPI Petition EPA To Delist?
B. How Does PPI Generate the Waste?
C. How Did PPI Sample and Analyze the Waste?
D. What Were the Results of PPI's Analysis of the Waste?
E. How Did EPA Evaluate the Risk of Delisting This Waste?
F. What Did EPA Conclude About PPI's Waste?
G. Why Is EPA Using a Direct Final Rule?
IV. Conditions for Exclusion
A. How Will PPI Manage the Waste If It Is Delisted?
B. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?
C. How Frequently Must PPI Test the Waste?
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E. What Happens If PPI Fails To Meet the Conditions of the Exclusion?
F. What Must PPI Do If the Process Changes?
V. How Would This Action Affect States?
VI. Statutory and Executive Order Reviews

I. Overview Information

The U.S. Environmental Protection Agency (EPA) is granting a petition submitted for the Professional Plating, Incorporated (PPI) facility located in Brillion, Wisconsin to exclude or delist an annual volume of 140 cubic yards of F019 wastewater treatment sludges from the lists of hazardous waste set forth in Title 40 of the Code of Federal Regulations (40 CFR) 261.32 and 261.33. PPI claims that the petitioned waste does not meet the criteria for which EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous.

Based on our review described in section III, we agree with the petitioner that the waste is nonhazardous. We reviewed the description of the process which generates the waste and the analytical data submitted by PPI. We believe that the petitioned waste does not meet the criteria for which the waste was listed, and that there are no other factors which might cause the waste to be hazardous.

II. Background

A. What Is a Listed Waste?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of the Resource Conservation and Recovery Act (RCRA). The EPA has amended this list several times and published it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in §§ 261.11(a)(2) or (3).

B. What Is a Delisting Petition?

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be.

A procedure to exclude or delist a waste is provided in 40 CFR 260.20 and 260.22 which allows a person, or a facility to submit a petition to the EPA or to an authorized State, demonstrating that a specific waste from a particular generating facility is not hazardous.

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for us to decide whether any factors in addition to those for which the waste was listed warrant retaining it as a hazardous waste. (*See* § 260.22, 42 U.S.C. 6921(f) and the background documents for the listed wastes.)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* sec. 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). We evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (3).

Besides considering the criteria in 40 CFR 260.22(a), §§ 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which we listed the waste if these additional factors could cause the waste to be hazardous.

Our decision to delist waste from PPI's facility is based on our evaluation of the waste for factors or criteria which could cause the waste to be hazardous. These factors included: (1) Whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

EPA must also consider as hazardous wastes mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did PPI Petition EPA To Delist?

On June 23, 2009, PPI petitioned EPA to exclude an annual volume of 140 cubic yards of F019 wastewater treatment sludges generated at its facility in Brillion, Wisconsin from the list of hazardous wastes contained in 40 CFR 261.31. F019 is defined in § 261.32 as ''Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.'' PPI claims that the petitioned waste does not meet the criteria for which F019 was listed and that there are no other factors which would cause the waste to be hazardous.

B. How Does PPI Generate the Waste?

The F019 is generated from the rinse waters and overflows of two zinc phosphating lines used for conversion coating aluminum parts. The aluminum parts are spray cleaned, immersion cleaned, and cleaned with a phosphoric acid prior to conversion coating. The rinse waters from these steps do not contribute to the petitioned waste. Rinse waters and overflows from the zinc phosphating step and the remaining steps in the treatment line are the only wastewaters contributing to the petitioned waste. Zinc phopshating includes several acids and nickel- and manganese-compounds. The parts are sealed with compounds containing fluorine, zirconium, and ammonium hydroxide. Lastly, epoxy-based and acrylic paint films are cathodically electrodeposited on the aluminum parts.

The combined rinse waters and overflows from these process steps go to an on-site wastewater treatment plant dedicated to the F019 wastewater. The pH of the wastewater is adjusted to 9.0 standard units with either sulfuric acid or sodium hydroxide. Coagulants containing polymers, calcium chloride, and potassium chloride are added to assist in precipitating wastewater contaminants. A polyacrylamide anionic flocculant is added to gather the coagulum into clumps large enough to settle at the bottom of a clarifier. The clarified water is discharged to the sewer and the settled sludge is pumped to a sludge thickening tank and then through a plate and frame filter press.

Process vessels for both zinc phosphating lines (epoxy-coating and acrylic-coating) are periodically cleaned out with the resulting sludges also pressed by the plate and frame filter press dedicated to the F019 water treatment process.

C. How Did PPI Sample and Analyze the Waste?

Six sludge samples were collected each on a monthly basis from April through October 2008. Sludge accumulated in a roll-off box and was sampled representing sludge collected over a period of approximately 4 weeks each. Two sludge samples representing clean-out of the epoxy-coating line were collected on August 25 and on October 20, 2008 in order to characterize sludge generated from clean-out activities. Sludge generated from the clean-out of the acrylic-coating line was sampled on August 11, 2008. PPI collected one composite and one grab sample of sludge from each roll-off box during each sampling event. Composite samples consisted of four individual full-depth core grab samples mixed together to form one sample.

PPI analyzed all composite samples using the following methodology: (1) Total constituent analysis and Toxicity Characteristic Leaching Procedure (TCLP) for metals in Appendix IX of 40 CFR part 264, (*Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*—SW–846—Methods 6010B and 1311 [1]); (2) total constituent and TCLP analysis for sulfide (SW–846 Methods 9030A and 1311); (3) total constituent and TCLP analysis for cyanide (SW–846 Methods 9010 and 1311 [2]); (4) total constituent and TCLP analysis for fluoride (SW–846 Methods 9056 and 1311); (5) flashpoint (SW–846 Method 1010); (6) pH (SW–846 Method 9040); and (7) oil & grease (SW–846 Method 9070).

PPI screened the first two of the six monthly composite samples and one each of the composite samples of clean-out sludges for: (1) Total constituent and

[1] Method 7471 was substituted for Method 6010 for mercury.

[2] Deionized water was used as the extraction fluid instead of the fluid specified in the method.

TCLP analysis for 120 semi-volatile organic compounds (SW–846 Methods 8270 and 1311); (2) total constituent and TCLP analysis for formaldehyde (SW–846 Methods 8315 and 1311); (3) total constituent and TCLP analysis for acrylamide (SW–846 Methods 8032 and 1311); (4) TCLP analysis for metals in Appendix IX of 40 CFR part 264, substituting the TCLP extraction fluid with deionized water in order to assess leachability under pH-neutral conditions (SW–846 Methods 6010B and 1311); and (5) TCLP analysis for metals in Appendix IX of 40 CFR part 264, substituting the TCLP extraction fluid with a buffered alkaline solution in order to assess leachability under alkaline conditions (SW–846 Methods 6010B and 1311). PPI analyzed two of the six monthly full-depth core grab samples and one each of the grab samples of clean-out sludges for total constituent and TCLP analysis for volatile organic compounds (VOCs) (SW–846 Method 8260 and SW–846 Method 1311). This screening analysis was performed to check for unexpected organic compounds in the waste as well as identify pH-dependence of metals in leachate in the event landfill leachates with neutral or alkaline pH result in higher concentrations. Detections of organic compounds were insignificant and the remainder of the sludge samples were not analyzed for these parameters.

Metals of concern were generally preferentially leached by the acidic TCLP test. The exception, barium, leached more in some samples under alkaline conditions. However, detections of all metals, including barium, were so far below concentrations of concern that the remainder of the samples were not tested at neutral and alkaline leaching conditions.

D. What Were the Results of PPI's Analysis of the Waste?

The table below presents the maximum observed total and leachate concentrations for all detected constituents for which maximum allowable total and/or TCLP concentration were available. Total concentrations are expressed in milligrams per kilogram (mg/kg). Leachate concentrations are expressed in milligrams per liter (mg/L). The table also includes the results of analysis for the constituents for which F019 was listed, chromium and cyanide. PPI submitted a signed a statement certifying accuracy and responsibility of the results. *See* 40 CFR 260.22(i)(12).

Constituent detected	Maximum observed concentration		Maximum allowable concentration		GW (mg/L)
	Total (mg/kg)	TCLP (mg/L)	Total (mg/kg)	TCLP (mg/L)	
Volatile Organic Compounds					
acetone	0.33	[V] 0.113	NA	26,300	3.38
acrolein	0.277	<0.5	6,850	NA	0.000504
benzene	0.00142 [I]	<0.05	224,000	[1] 0.05	0.00133
bromomethane	1.16	<0.05	247,000	NA	0.0262
butanol	0.510 [12]	<25	NA	2,920	3.75
carbon disulfide	<12	[IV] 0.0039	NA	2,850	3.17
chloromethane	0.05 [I]	<0.05	NA	306	0.393
ethylbenzene	<1.2	0.0034	NA	549	0.7
formaldehyde	86.1	<10.0	4,150	631	0.811
methyl ethyl ketone	0.0365 [I]	0.0820	NA	200	22.5
methylene chloride	<2.4	0.028	882,000	4.0	0.005
methyl isobutyl ketone	0.644	<0.5	NA	2,340	3.0
trimethylbenzene, 1,2,4-	0.000652 [I]	[I] 0.00530	NA	34.2	0.0448
xylenes	<2.4	[I] 0.0116	NA	484	0.617
Semivolatile Organic Compounds					
benzyl alcohol	27.7	0.036	NA	14,600	18.8
bis(2-ethylhexyl)phthalate	2.82	<0.02	NA	NA	0.00321
Metals					
barium	132	0.26	NA	[1] 100	2.0
boron	114	1.24	NA	6,570	7.5
chromium	153	<1.25	[3] 22,700	[1] 5.0	0.1
cobalt	333	<1.25	30,300	10.4	0.0113
copper	422	0.49	NA	1,180	1.3
lead	54.9	<1.25	NA	[1] 5.0	0.015
manganese	15,100	25.2	NA	815	0.9
mercury	0.0182	<0.0002	98.1	[1] 0.2	0.00145
nickel	7,380	37.1	NA	638	0.75
strontium	10,200	[C] 5.13	NA	19,700	22.5
zinc	89,400	30.2	NA	10,300	11.3
Miscellaneous Parameters					
cyanide	16.3	<0.05	NA	156	200
sulfide	85.1	NR	NA	NA	NA
fluoride	740	22.6	NA	1,980	2,250
pH (corrosivity)	5.9–8.11		2 < pH < 12.5		NA
flashpoint (ignitability)	> 200 °F		< 140 °F		NA

These levels represent the highest concentration of each constituent found in any sample and do not necessarily represent the concentrations found in a single sample.

[1]—Based on the toxicity characteristic in 40 CFR 261 subpart C.
[2]—Includes both n-butanol and t-butanol.
[3]—Based on a mixture at a ratio of 1:6 hexavalent to trivalent chromium.
[V]—Present in blank.
NA—Maximum allowable not calculated or much higher than expected to be present.
<—Denotes that the constituent was not detected at the quantitation level.
[I]—Estimated value, below practicable quantitation limit.
[C]—Calibration check verification or quality control sample exceeded upper control limit.
NR—Analysis not run.

E. How Did EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through ground water, surface water and air. We evaluated PPI's petitioned waste using the Agency's Delisting Risk Assessment Software (DRAS) to predict the concentration of hazardous constituents that might be released from the petitioned waste and to determine if the waste would pose a threat. To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors (DAFs) derived from EPA's Composite Model for leachate migration with Transformation Products (CMTP). From a release to groundwater, the DRAS considers routes of exposure to a human receptor of ingestion of contaminated groundwater, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into storm water run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of particles on residential soil and subsequent ingestion of the contaminated soil by a child.

For a detailed description of the DRAS program and revisions see the Delisting Technical Support Document, DRAS version 3.0 Update Summary, and DRAS version 3.0 User's Guide available in the docket for today's action.

At a target cancer risk of 1×10^{-6} and a target hazard quotient of one, the DRAS program determined maximum allowable concentrations for each constituent in both the waste and the leachate at an annual waste volume of 140 cubic yards. We used the maximum estimated annual waste volume and the maximum reported total and leachate concentrations as inputs for DRAS. If, using an appropriate analytical method, a constituent was not detected in any sample nor in the leachate of any sample, it was considered not to be present in the waste.

F. What Did EPA Conclude About PPI's Waste?

The maximum reported leachate concentrations and the maximum reported total concentrations of the hazardous constituents found in this waste are presented in the table above. The table also presents the maximum allowable concentrations. The concentrations of all constituents in both the waste and the leachate are below the allowable levels of concern calculated by the DRAS program at the target risk levels. We therefore conclude that PPI's wastewater treatment sludge is not a substantial or potential hazard to human health and the environment when disposed of in a Subtitle D landfill. Once the exclusion becomes effective, PPI must dispose of this waste in a Subtitle D landfill permitted or licensed by a State.

G. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. The exclusion applies to a very small waste stream generated at a single facility and rigorous chemical analysis of the waste indicated that concentrations of chemicals and elements in the waste were far below levels of concern. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. Any parties interested in commenting must do so at this time.

IV. Conditions for Exclusion

A. How Will PPI Manage the Waste If It Is Delisted?

If the petitioned waste is delisted, PPI must dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial waste.

B. What Are the Maximum Allowable Concentrations of Hazardous Constituents in the Waste?

The following parameters were selected for ongoing verification because of their prevalence in the waste relative to the maximum allowable concentrations. Concentrations measured in the TCLP (or OWEP, where appropriate) extract of the waste of these constituents must not exceed the following concentrations (mg/l): chromium—5, cobalt—10.4; manganese—815; and nickel—638.

C. How Frequently Must PPI Test the Waste?

PPI must analyze a representative sample of the wastewater treatment sludges on an annual basis to demonstrate that leachate concentrations do not exceed the levels of concern in Section IV.B. above. PPI must use methods with appropriate detection levels with appropriate quality control procedures. SW–846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1% of the waste. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1% or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11.

D. What Data Must PPI Submit?

PPI must submit the data obtained through annual verification testing to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, upon the anniversary of the effective date of this exclusion. PPI must compile, summarize, and maintain on site records of operating conditions and analytical data. PPI must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).

E. What Happens If PPI Fails To Meet the Conditions of the Exclusion?

If PPI violates the terms and conditions established in the exclusion,

the Agency may start procedures to withdraw the exclusion.

If any testing of the waste does not meet the maximum allowable concentrations described in section IV.B. above or other data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicates that any constituent is at a level in the leachate higher than the specified maximum allowable concentration, or is in groundwater at a concentration higher than the groundwater concentrations used in the risk evaluation, PPI must notify the Agency within 10 days of first possessing or being made aware of the data. Maximum allowable groundwater concentrations (mg/L) are as follows: chromium—0.1; cobalt—0.0113; manganese—0.9; and nickel—0.75.

The exclusion will be suspended and the waste managed as hazardous until PPI has received written approval from the Agency to continue the exclusion. PPI may provide sampling results which support the continuation of the delisting exclusion.

The EPA has the authority under RCRA and the Administrative Procedures Act, 5 U.S.C. sec. 551 (1978) *et seq.* to reopen a delisting decision if we receive new information indicating that the conditions of this exclusion have been violated, or are otherwise not being met.

F. What Must PPI Do If the Process Changes?

If PPI significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, PPI may not handle the wastewater treatment sludge generated from the new process under this exclusion until it has demonstrated to the EPA that the waste meets the levels set in section IV.B. and that no new hazardous constituents listed in Appendix VIII of 40 CFR part 261 have been introduced. PPI must manage wastes generated after the process change as hazardous waste until PPI has received written notice from EPA that the delisting is reinstated.

V. How Would This Action Affect the States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This exclusion may not be effective in States which have received our authorization to make their own delisting decisions.

EPA allows States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. We urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If PPI manages the waste in any State with delisting authorization, PPI must obtain delisting authorization from that State before it can manage the waste as nonhazardous in that State.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'', (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this final rule does not have Tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform'', (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 9, 2009.

Margaret M. Guerriero,

Director, Land and Chemicals Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. Table 1 of Appendix IX to Part 261 is amended by adding the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * *
Professional Plating, Incorporated.	Brillion, Wisconsin	Wastewater treatment sludges, F019, which are generated at the Professional Plating, Incorporated (PPI) Brillion facility at a maximum annual rate of 140 cubic yards per year. The sludge must be disposed of in a Subtitle D landfill which is licensed, permitted, or otherwise authorized by a State to accept the delisted wastewater treatment sludge. The exclusion becomes effective as of March 1, 2010. 1. *Delisting Levels:* The constituent concentrations measured in a leachate extract may not exceed the following levels (mg/L): chromium—5, cobalt—10.4; manganese—815; and nickel—638. 2. *Annual Verification Testing:* To verify that the waste does not exceed the specified delisting levels, PPI must collect and analyze, annually, one waste sample for the constituents in Section 1. using methods with appropriate detection levels and elements of quality control. SW–846 Method 1311 must be used for generation of the leachate extract used in the testing of the delisting levels if oil and grease comprise less than 1% of the waste. SW–846 Method 1330A must be used for generation of the leaching extract if oil and grease comprise 1% or more of the waste. SW–846 Method 9071B must be used for determination of oil and grease. SW–846 Methods 1311, 1330A, and 9071B are incorporated by reference in 40 CFR 260.11. 3. *Changes in Operating Conditions:* PPI must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. PPI must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the maximum allowable concentrations in Section 1. and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and it has received written approval from EPA. 4. *Reopener Language*—(a) If, anytime after disposal of the delisted waste, PPI possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a concentration in the waste or waste leachate higher than the maximum allowable concentrations in Section 1. above or is in the groundwater at a concentration higher than the maximum allowable groundwater concentrations in Paragraph (e), then PPI must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing PPI with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. PPI shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days PPI presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (e) Maximum allowable groundwater concentrations (mg/L) are as follows: chromium—0.1; cobalt—0.0113; manganese—0.9; and nickel—0.75.
*	*	* * * * * *

[FR Doc. E9–30994 Filed 12–29–09; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2594; MB Docket No. 09–196; RM–11578]

Television Broadcasting Services; High Point, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Community Television of North Carolina, LLC, the licensee of WGHP(TV), channel 8, High Point, North Carolina, requesting the substitution of channel 35 for channel 8 at High Point.

DATES: This rule is effective December 30, 2009.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–196, adopted December 14, 2009, and released December 15, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under North Carolina, is amended by adding channel 35 and removing channel 8 at High Point.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–31017 Filed 12–29–09; 8:45 am]
BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 74, No. 249

Wednesday, December 30, 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 ENERGY

10 CFR Part 431

[Docket No. EERE–2009–BT–STD–0018]

RIN 1904–AC00

Energy Efficiency Program for Consumer Products: Public Meeting and Availability of the Framework Document for Metal Halide Lamp Fixtures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of the framework document.

SUMMARY: The U.S. Department of Energy (DOE) is initiating the rulemaking and data collection process to establish amended energy conservation standards for certain metal halide lamp fixtures. Accordingly, DOE will hold an informal public meeting to discuss and receive comments on its planned analytical approach and issues it will address in this rulemaking proceeding. DOE welcomes written comments from the public on any subject within the scope of this rulemaking. To inform interested parties and to facilitate this process, DOE has prepared a framework document that details the analytical approach and identifies several issues on which DOE is particularly interested in receiving comment. A copy of the framework document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/metal_halide_lamp_ballasts.html.*

DATES: DOE will hold a public meeting on Tuesday, January 26, 2010, from 9 a.m. to 4 p.m. in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Tuesday, January 12, 2010. DOE must receive a signed original and an electronic copy of the statement to be given at the public meeting before 4 p.m., Tuesday, January 19, 2010. DOE will accept written comments, data, and information regarding the framework document before and after the public meeting, but no later than January 29, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals planning to participate in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Interested parties may submit comments, identified by docket number EERE–2009–BT–STD–0018 and/or Regulation Identifier Number (RIN) 1904–AC00, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: MHLF–2009–STD–0018@ee.doe.gov.* Include docket number EERE–2009–BT–STD–0018 and/or RIN 1904–AC00 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Metal Halide Lamp Fixtures, Docket No. EERE–2009–BT–STD–0018 and/or RIN 1904–AC00, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Please submit one signed paper original.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards first at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Graves, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. E-mail: *Linda.Graves@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–5827. E-mail: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: Part A of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163, (42 U.S.C. 6291–6309) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances. Over time, amendments to EPCA have given DOE expanded authority to regulate the energy efficiency of several other kinds of equipment, including certain metal halide lamp fixtures which are the focus of this notice. Amendments to EPCA in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, established energy conservation standards for certain metal halide lamp fixtures by prescribing minimum performance requirements for metal halide lamp ballasts contained in those fixtures. (42 U.S.C. 6295(hh)(1)) A summary of the standards promulgated by EISA 2007 can be found in section 1.1 of the framework document. The EISA 2007 amendments also require DOE to conduct two rulemaking cycles to determine whether standards should be amended. (42 U.S.C. 6295(hh)(2)–(3)) DOE must publish a final rule for the first amended standards rulemaking by January 1, 2012, which shall apply to products manufactured on or after January 1, 2015. (42 U.S.C. 6295(hh)(2)) This framework document is being published as a first step in meeting this statutory requirement.

Although metal halide lamp fixtures are typically understood to be

equipment used in the commercial and industrial sectors, it is the ''consumer products'' section of the statute that grants authority to DOE to cover and regulate this equipment. In the United States Code, Title 42, ''The Public Health and Welfare,'' chapter 77, ''Energy Conservation,'' subchapter III, ''Improving Energy Efficiency,'' two parts cluster together the group of products DOE regulates. ''Part A—Energy Conservation Program for Consumer Products Other Than Automobiles'' includes a range of consumer products, some of which are used primarily in the residential sector, such as refrigerators, dishwashers, and clothes washers. Part A also includes consumer products that are also used primarily in the commercial sector, such as metal halide lamp fixtures, fluorescent lamp ballasts, and urinals. ''Part A–1—Certain Industrial Equipment'' in subchapter III includes products that are primarily used in the commercial and industrial sectors, such as electric motors and pumps, and packaged terminal air conditioners and heat pumps.

As amended by EISA 2007, EPCA currently regulates metal halide lamp fixtures designed to be operated with lamps rated greater than or equal to 150 watts but less than or equal to 500 watts, subject to certain exclusions discussed below. EPCA prescribes performance requirements for the metal halide lamp ballasts contained in metal halide lamp fixtures. For metal halide lamp fixtures within the specified rated lamp wattage range, the metal halide lamp fixtures must contain: (1) A pulse-start metal halide ballast with a minimum ballast efficiency of 88 percent; (2) a magnetic probe-start ballast with a minimum ballast efficiency of 94 percent; or (3) a nonpulse-start electronic ballast with (a) a minimum ballast efficiency of 92 percent for wattages greater than 250 watts, and (b) a minimum ballast efficiency of 90 percent for wattages less than or equal to 250 watts. (U.S.C. 6292 (hh)(1)(A)) Metal halide lamp fixtures excluded from regulation by the statute include metal halide lamp fixtures: (1) With regulated lag ballasts; (2) that use electronic ballasts that operate at 480 volts; or (3) that (a) are rated only for 150 watt lamps, (b) are rated for use in wet locations, as specified by the National Electrical Code 2002, section 410.4(A), and (c) contain a ballast that is rated to operate at ambient air temperatures above 50 °C, as specified by Underwriters Laboratories (UL) 1029–2001, ''Standard for High-Intensity-Discharge Lamp Ballasts.'' (42 U.S.C. 6292 (hh)(1)(B))

In addition to establishing energy conservation standards for metal halide lamp fixtures, EPCA, as amended by EISA 2007, directs DOE to establish test procedures for metal halide lamp ballasts based on American National Standards Institute (ANSI) Standard C82.6–2005, ''Ballasts for High Intensity Discharge Lamps—Method of Measurement.'' (42 U.S.C. 6293(b)(18)). On July 10, 2009, DOE published a notice of proposed rulemaking for the metal halide lamp ballast test procedure, which included definitions and test procedure requirements. 74 FR 33171. Upon publication of the final rule in this proceeding, DOE will have complied with the EPCA metal halide lamp ballast test procedure statutory requirements.

DOE notes that because of the codification of the metal halide lamp fixture provisions in 42 U.S.C. 6295, a rulemaking for metal halide lamp fixture energy conservation standards, as well as any associated test procedures, are subject to the requirements of the consumer products provisions of Part A of Title III. However, because metal halide lamp fixtures are generally considered to be commercial equipment and consistent with DOE's previous action to incorporate requirements of the Energy Policy Act of 2005 (EPACT 2005) for commercial equipment into 10 CFR part 431 (''Energy Efficiency Program for Certain Commercial and Industrial Equipment''), DOE intends to place the new requirements for metal halide lamp fixtures in 10 CFR part 431 for ease of reference. DOE notes that the location of the provisions within the CFR does not affect either the substance or applicable procedure for metal halide fixtures; as such, DOE plans to place them in the appropriate CFR part based upon the nature or type of those products. Based upon their placement into 10 CFR 431, metal halide lamp fixtures and metal halide lamp ballasts will be referred to as ''equipment'' throughout this notice.

In addition, pursuant to 42 U.S.C. 6295(gg)(3)(A), DOE is directed to incorporate standby mode and off mode energy use in any amended (or new) standard adopted after July 1, 2010. Because this energy conservation standards rulemaking for metal halide lamp fixtures will be completed in 2012, the requirement to incorporate standby mode and off mode energy use into the energy conservation standards analysis is applicable. However, in the proposed metal halide lamp ballast test procedure, DOE tentatively concluded that off mode does not apply to metal halide lamp fixtures. 74 FR 33171, 33175 (July 10, 2009). EISA 2007 also contains relevant definitions for ''ballast,'' ''electronic ballast,'' ''metal halide ballast,'' ''metal halide lamp,'' ''metal halide lamp fixture,'' ''probe-start metal halide ballast,'' and ''pulse-start metal halide ballast.'' These new definitions and standby mode and off mode requirements are fully addressed by the analyses that DOE intends to conduct in the energy conservation standards rulemaking for metal halide lamp fixtures.

To initiate the first rulemaking cycle to consider amended energy conservation standards for metal halide lamp fixtures, DOE has prepared a framework document to explain the issues, analyses, and processes it anticipates using for the development of amended energy conservation standards for certain metal halide lamp fixtures. In the framework document, DOE also presents its initial approach to consider expansion of scope, in order to determine whether the standards should be made applicable to additional metal halide lamp fixtures by establishing efficiency requirements for both fixtures with metal halide lamps outside the wattage range currently set by the statute, as well as fixtures with types of metal halide lamp ballasts currently excluded from coverage by EPCA. The main focus of the public meeting noted above will be to discuss the analyses presented and issues identified in the framework document. At the public meeting, DOE will make a number of presentations, invite discussion on the rulemaking process as it applies to certain metal halide lamp fixtures, and solicit comments, data, and information from participants and other interested parties. DOE will also invite comment on its preliminary determination of the scope of coverage for the metal halide lamp fixtures energy conservation standard. DOE is considering expanding the scope of coverage to include additional metal halide lamp fixtures that would be analyzed in the energy conservation standards rulemaking.

DOE encourages those who wish to participate in the public meeting to obtain the framework document and to be prepared to discuss its contents. A copy of the draft framework document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/metal_halide_lamp_ballasts.html.*

Public meeting participants need not limit their comments to the issues identified in the framework document. DOE is also interested in comments on other relevant issues that participants believe would affect energy conservation standards for this equipment, applicable test procedures,

or the preliminary determination on the scope of coverage. DOE invites all interested parties, whether or not they participate in the public meeting, to submit in writing by January 29, 2010, comments and information on matters addressed in the framework document and on other matters relevant to DOE's consideration of amended standards for metal halide lamp fixtures.

The public meeting will be conducted in an informal, facilitated, conference style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the proceedings of the public meeting, after which a transcript will be available for purchase from the court reporter and placed on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/metal_halide_lamp_ballasts.html.*

After the public meeting and the close of the comment period on the framework document, DOE will begin collecting data, conducting the analyses as discussed in the framework document and at the public meeting, and reviewing the public comments it receives.

DOE considers public participation to be a very important part of the process for setting energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Beginning with the framework document, and during each subsequent public meeting and comment period, interactions with and between members of the public provide a balanced discussion of the issues to assist DOE in the standards rulemaking process. Accordingly, anyone who wishes to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via e-mail at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on December 23, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–30885 Filed 12–29–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1223; Directorate Identifier 2009–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

During final Acceptance Test Procedure (ATP), a small oil leak was discovered on the Spoiler Unload Valve and Rudder Shutoff Valve bodies. Investigation revealed that a number of valves were manufactured with an incorrect wall thickness. This thin wall condition caused cracking, subsequent external weeping and pressure loss from the subject valves.

This condition, if not corrected, will cause a loss of hydraulic fluid and subsequent loss of spoiler and/or rudder control.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 16, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1223; Directorate Identifier 2009–NM–114–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–25R1, dated July 23, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During final Acceptance Test Procedure (ATP), a small oil leak was discovered on the Spoiler Unload Valve and Rudder Shutoff Valve bodies. Investigation revealed that a number of valves were manufactured with an incorrect wall thickness. This thin wall condition caused cracking, subsequent external weeping and pressure loss from the subject valves.

This condition, if not corrected, will cause a loss of hydraulic fluid and subsequent loss of spoiler and/or rudder control.

Revision 1 of this directive mandates a new interval for the initial inspection, clarifies the time for replacement of the valve(s) specified in Paragraphs 1.2 and 2.2, and clarifies the labeling of the inspected valves in Paragraph 3 of this directive.

Required actions include doing detailed inspections of the left-hand and right-hand spoiler unload and rudder shutoff valve for leaking and weeping, replacing discrepant left-hand and right-hand spoiler unload and rudder shutoff valves with new or serviceable valves, and eventually replacing all valves having a certain part number. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletins 84–27–37 and 84–27–39, both dated February 5, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences between this AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 61 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $14,640, or $240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BOMBARDIER, INC. (Formerly de Havilland, Inc.): Docket No. FAA–2009–1223; Directorate Identifier 2009–NM–114–AD.

Comments Due Date

(a) We must receive comments by February 16, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, DHC–8–401, and DHC–8–402 series airplanes, certificated in any category, serial numbers 4105 through 4179 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

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

During final Acceptance Test Procedure (ATP), a small oil leak was discovered on the Spoiler Unload Valve and Rudder Shutoff Valve bodies. Investigation revealed that a number of valves were manufactured with an incorrect wall thickness. This thin wall condition caused cracking, subsequent

external weeping and pressure loss from the subject valves.

This condition, if not corrected, will cause a loss of hydraulic fluid and subsequent loss of spoiler and/or rudder control.

Revision 1 of this directive mandates a new interval for the initial inspection, clarifies the time for replacement of the valve(s) specified in Paragraphs 1.2 and 2.2, and clarifies the labeling of the inspected valves in Paragraph 3 of this directive.

Required actions include doing detailed inspections of the left-hand and right-hand spoiler unload and rudder shutoff valve for leaking and weeping, replacing discrepant left-hand and right-hand spoiler unload and rudder shutoff valves with new or serviceable valves, and eventually replacing all valves having a certain part number.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Do the actions in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable.

(1) For airplanes having serial numbers 4105 through 4172 inclusive: Within 750 flight hours after the effective date of this AD, do a detailed inspection of the left-hand and right-hand spoiler unload valves having part number (P/N) 396000–1005 for leaking and weeping, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–37, dated February 5, 2009.

(i) If any leaking or weeping is found, prior to further flight, replace the affected spoiler unload valve with a new or serviceable valve, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–37, dated February 5, 2009.

(ii) If no leaking and no weeping are found, replace the valves with new or serviceable valves within 6,000 flight hours after the initial inspection required by paragraph (g)(1) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–37, dated February 5, 2009.

(2) For airplanes having serial numbers 4113 through 4179 inclusive: Within 750 flight hours after the effective date of this AD, do a detailed inspection of the left-hand and right-hand rudder shutoff valves having P/N 412700–1001 for leaking and weeping, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–39, dated February 5, 2009.

(i) If any leaking or weeping is found, prior to further flight, replace the affected rudder shutoff valve with a new or serviceable valve, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–39, dated February 5, 2009.

(ii) If no leaking and no weeping are found, replace the valves with new or serviceable valves within 6,000 flight hours after the initial inspection required by paragraph (g)(2) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–39, dated February 5, 2009.

(3) As of the effective date of this AD, no person may install a spoiler unload valves assembly having (P/N) 396000–1005, having a serial number 0289 through 0424 inclusive, or rudder shutoff valve having (P/N) 412700–1001, having a serial number from 0239 through 0384 inclusive, on any airplane, unless the valve has been inspected by the manufacturer and labeled with a suffix ''A'' after the serial number.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF–2009–25R1, dated July 23, 2009; Bombardier Service Bulletin 84–27–37, dated February 5, 2009; and Bombardier Service Bulletin 84–27–39, dated February 5, 2009; for related information.

Issued in Renton, Washington, on December 21, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30905 Filed 12–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1224; Directorate Identifier 2009–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–200, –300, –400, and –500 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Model 737–300, –400, and –500 series airplanes. The existing AD currently requires an inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service unit and the lavatory and attendant box assemblies, corrective action if necessary, and other specified action. This proposed AD would expand the applicability in the existing AD. This AD results from a determination indicating that additional airplanes may be subject to the identified unsafe condition. We are proposing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

DATES: We must receive comments on this proposed AD by February 16, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707,

MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1224; Directorate Identifier 2009–NM–118–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On March 9, 2008, we issued AD 2008–06–24, Amendment 39–15436 (73 FR 14666, March 19, 2008), for certain Model 737–300, –400, and –500 series airplanes. That AD requires an inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service unit and the lavatory and attendant box assemblies, corrective action if necessary, and other specified actions. That AD resulted from a report that several passenger masks with broken in-line flow indicators were found following a mask deployment. We issued that AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

Actions Since Existing AD Was Issued

Since we issued AD 2008–06–24, we have determined that the oxygen masks on the affected Model 737–300, –400, and –500 series airplanes have the same flow indicators as those installed on certain Model 737–200 series airplanes; therefore, Model 737–200 series airplanes may be also subject to the identified unsafe condition.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–35–1099, Revision 1, dated April 23, 2009. The specified actions are essentially identical to those specified in Boeing Special Attention Service Bulletin 737–35–1099, dated April 9, 2007 (which we cited in the existing AD). Revision 1 of Boeing Special Attention Service Bulletin 737–35–1099 expands the effectivity of the service bulletin by adding Model 737–200 series airplanes that may have been delivered with B/E Aerospace oxygen assemblies, identified in B/E Aerospace Service Bulletin 174080–35–01, before January 1, 2002, and that have had the oxygen mask assemblies replaced with assemblies manufactured between January 1, 2002, and March 1, 2006. B/E Aerospace Service Bulletin 174080–35–01 was referred to in the existing AD as an additional source of guidance for modifying the oxygen mask assembly.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other products of the same type design. For this reason, we are proposing this AD, which would supersede AD 2008–06–24 and would retain the requirements of the existing AD. This proposed AD would expand the applicability to include Model 737–200 series airplanes.

Costs of Compliance

There are about 1,981 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 666 airplanes of U.S. registry.

The actions that are required by AD 2008–06–24 and retained in this proposed AD affect about 646 airplanes of U.S. registry. The required actions take about 16 work hours per airplane, for an average of 180 oxygen masks per airplane distributed in about 45 PSUs/oxygen boxes, at an average labor rate of $80 per work hour. Required parts cost about $6 per oxygen mask, or $1,080 per airplane. Based on these figures, the estimated cost of the existing AD for U.S. operators is $1,524,560, or $2,360 per airplane.

This proposed AD would be applicable to approximately 20 additional airplanes. Based on the figures discussed above, we estimate the costs for the additional airplanes imposed by this proposed AD on U.S. operators to be $47,200, or $2,360 per airplane. This figure is based on assumptions that no operator of these additional airplanes has yet done any of the proposed requirements of this AD, and that no operator would do those actions in the future if this AD were not adopted.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15436 (73 FR 14666, March 19, 2008) and adding the following new AD:

The Boeing Company: Docket No. FAA–2009–1224; Directorate Identifier 2009–NM–118–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by February 16, 2010.

Affected ADs

(b) This AD supersedes AD 2008–06–24, Amendment 39–15436.

Applicability

(c) This AD applies to The Boeing Company Model 737–200, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–35–1099, Revision 1, dated April 23, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) The existing AD results from a report of a sudden decrease in cabin pressure and deployment of the passenger oxygen mask assemblies; several masks had broken in-line flow indicators. The Federal Aviation Administration is issuing this AD to prevent the in-line flow indicators of the passenger oxygen masks from fracturing and separating, which could inhibit oxygen flow to the masks and consequently result in exposure of the passengers and cabin attendants to hypoxia following a depressurization event.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2008–06–24, with New Service Information

Inspection and Related Investigative/Corrective Actions if Necessary

(g) For airplanes identified in Boeing Special Attention Service Bulletin 737–35–1099, dated April 9, 2007: Within 60 months after April 23, 2008 (the effective date of AD 2008–06–24), do a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service unit and the lavatory and attendant box assemblies, and do the applicable corrective action and other specified action, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–35–1099, dated April 9, 2007; or Revision 1, dated April 23, 2009; except where the service bulletin specifies repairing the oxygen mask assembly, replace it with a new or modified oxygen mask assembly having an improved flow indicator. The corrective action and other specified action must be done before further flight. As of the effective date of this AD, use only Revision 1 of Boeing Special Attention Service Bulletin 737–35–1099.

New Requirements of This AD

Inspection and Related Investigative/Corrective Actions if Necessary

(h) For airplanes other than those identified in paragraph (g) of this AD: Within 60 months after the effective date of this AD, do a general visual inspection to determine the manufacturer and manufacture date of the oxygen masks in the passenger service unit and the lavatory and attendant box assemblies, and do the applicable corrective action and other specified action, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–35–1099, Revision 1, dated April 23, 2009; except where the service bulletin specifies repairing the oxygen mask assembly, replace it with a new or modified oxygen mask assembly having an improved flow indicator. The corrective action and other specified action must be done before further flight.

Note 1: Boeing Special Attention Service Bulletin 737–35–1099, dated April 9, 2007; and Revision 1, dated April 23, 2009; refer to B/E Aerospace Service Bulletin 174080–35–01, dated February 6, 2006; Revision 1, dated May 1, 2006; and Revision 2, dated May 28, 2008; as additional sources of guidance for modifying the oxygen mask assembly by replacing the flow indicator with an improved flow indicator.

Parts Installation

(i) As of the effective date of this AD, no person may install a B/E Aerospace oxygen mask assembly having a part number in the 174080 series or 174095 series with a manufacturing date after January 1, 2002, and before March 1, 2006, on any airplane, unless it has been modified in accordance with the requirements of paragraph (g) or (h) of this AD.

Credit for Actions Done In Accordance With Previous Issue of the Service Bulletin

(j) Actions done before the effective date of this AD, in accordance with Boeing Special Attention Service Bulletin 737–35–1099, dated April 9, 2007, are acceptable for compliance with the requirements of paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Issued in Renton, Washington, on December 21, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–30902 Filed 12–29–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132232–08]

RIN 1545–BI13

Use of Controlled Corporations To Avoid the Application of Section 304

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations under section 304 of the Internal Revenue Code (Code). The temporary regulations apply to certain transactions that are subject to section 304 but that are entered into with a principal purpose of avoiding the application of section 304 to a corporation controlled by the issuing corporation in the transaction, or to a corporation that controls the acquiring corporation in the transaction. The temporary regulations affect shareholders treated as receiving distributions in redemption of stock by reason of section 304. The text of temporary regulations published in this issue of the **Federal Register** serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by March 30, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–132232–08), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–132232–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–132232–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sean W. Mullaney, (202) 622–3860; concerning submissions of comments or requests for a public hearing, Richard Hurst at (202) 622–7180 (not toll-free numbers) or *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 304 of the Code. The text of the temporary regulations serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These regulations primarily will affect United States persons that are large corporations engaged in corporate transactions among their controlled corporations. Thus, the number of affected small entities—in whichever of the three categories defined in the Regulatory Flexibility Act (small businesses, small organizations, and small governmental jurisdictions)—will not be substantial. The IRS and the Treasury Department estimate that small organizations and small governmental jurisdictions are likely to be affected only insofar as they transfer the stock of a controlled corporation to a related corporation. While a certain number of small entities may engage in such transactions, the IRS and the Treasury Department do not anticipate the number to be substantial. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. Comments are also requested as to whether the regulations should include factors that are indicative of a principal purpose, or lack of a principal purpose, to avoid the application of section 304. If such factors should be included, specific examples are requested. See, for example, Prop. Treas. Reg. § 1.987–2(b)(3)(ii) and (iii).

All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Sean W. Mullaney of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.304–4 is revised to read as follows:

§ 1.304–4 Special rule for the use of related corporations to avoid the application of section 304.

[The text of proposed § 1.304–4 is the same as the text of § 1.304–4T(a) through (d) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–30863 Filed 12–29–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0965]

RIN 1625–AA08

Special Local Regulation; Ironman 70.3 California; Oceanside Harbor, Oceanside, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes temporary Special Local Regulation within the navigable waters of Oceanside Harbor for the Ironman 70.3 California. This temporary Special Local Regulation is necessary to provide safety for the swimmers, crew, spectators, vessels and other users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this Special Local Regulation unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before January 29, 2010. Requests for public meetings must be received by the Coast Guard on or before January 20, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0965 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0965), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2009–0965'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0965'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Background and Purpose

World Triathlon Corporation is sponsoring the Ironman 70.3 California. The event will consist of 2,200 participants. The waterside swim course consists of a 1.2 mile loop in the South Oceanside Harbor. The course requires a Special Local Regulation while the swimmers are on the course, thus restricting vessel traffic within the Oceanside Harbor for three hours. There will be 25 to 30 safety vessels provided by the sponsor to enforce the Special Local Regulation.

Discussion of Proposed Rule

The Coast Guard proposes to establish a Special Local Regulation from 6:40 a.m. to 9:30 a.m. on Saturday, March 27, 2010 for the Ironman 70.3 California. This temporary Special Local Regulation is necessary for the safety of the swimmers and staff and will affect the use of the waterway during the

period of the event. The limits of this temporary Special Local Regulation are the waters of Oceanside Harbor encompassed by the following coordinates:

33°12.54′ N, 117°24.12′ W;
33°12.52′ N, 117°23.75′ W;
33°12.49′ N, 117°23.66′ W;
33°12.37′ N, 117°23.54′ W;
33°12.32′ N, 117°23.55′ W;
33°12.43′ N, 117°23.69′ W;
33°12.46′ N, 117°23.79′ W;
33°12.41′ N, 117°23.96′ W;
33°12.44′ N, 117°23.98′ W;
33°12.45′ N, 117°24.12′ W;
33°12.54′ N, 117°24.12′ W.

The Coast Guard will enforce the Special Local Regulation and may be assisted by other Federal, State, or local agencies, including the Coast Guard Auxiliary. The Special Local Regulation is necessary to provide for the safety of the swimmers, spectators, vessels and other users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this Special Local Regulation unless authorized by the Captain of the Port, or his designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size, location, and duration of the Special Local Regulation. Commercial vessels will not be hindered by the Special Local Regulation. Recreational vessels will not be allowed to transit through the designated Special Local Regulation during the specified times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Oceanside Harbor from 6:40 a.m. to 9:30 a.m. on March 27, 2010.

This Special Local Regulation would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for less than 3 hours early in the day when vessel traffic is low. Although the Special Local Regulation would apply to the entire width of the south harbor, traffic would be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the Special Local Regulation is enforced.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard at (619) 278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. The proposed rule involves a special local regulation for a swimming race and is categorically excluded under paragraph 34(h) of COMDTINSTM 16475.1D, figure 2–1. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a new temporary Special Local Regulation § 100.35T11–254 to read as follows:

§ 100.35T11–254 Special Local Regulation; Ironman 70.3 California; Oceanside Harbor, Oceanside, CA.

(a) *Location.* The limits of this temporary Special Local Regulation are the waters of Oceanside Harbor encompassed by drawing a line from point to point along the following coordinates:

33°12.54′ N, 117°24.12′ W;
33°12.52′ N, 117°23.75′ W;
33°12.49′ N, 117°23.66′ W;
33°12.37′ N, 117°23.54′ W;
33°12.32′ N, 117°23.55′ W;
33°12.43′ N, 117°23.69′ W;
33°12.46′ N, 117°23.79′ W;
33°12.41′ N, 117°23.96′ W;
33°12.44′ N, 117°23.98′ W;
33°12.45′ N, 117°24.12′ W;
33°12.54′ N, 117°24.12′ W.

(b) *Enforcement Period.* This section will be enforced from 6:40 a.m. to 9:30 a.m. on March 27, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this Special Local Regulation and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board a Coast Guard or Coast Guard Auxiliary vessel, or onboard a local, State, or Federal law enforcement vessel who have been authorized to act on the behalf of the Captain of the Port.

(d) *Special Local Regulations.* (1) All persons and/or vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The official patrol consists of any Coast Guard vessels, any Federal, State or local law enforcement vessels and any sponsor provided vessels assigned by or approved by the Captain of the Port, San Diego, to patrol the events.

(2) No spectators shall anchor, block, loiter in, or impede the transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such by or through an official patrol vessel.

(3) When hailed by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given. Failure to do so may result in a citation.

(4) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. The Patrol Commander shall be designated by the Captain of the Port, San Diego, and as his or her representative and may terminate the event for the protection of life and property. He or she may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign ''PATCOM''

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: December 3, 2009.

D.L. LeBlanc,

Commander, U.S. Coast Guard, Acting Captain of the Port, San Diego.

[FR Doc. E9–30936 Filed 12–29–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0370]

RIN 1625–AA11

Regulated Navigation Areas; Port of Portland Terminal 4, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of two Regulated Navigation Areas (RNA) at the Port of Portland Terminal 4 on the Willamette River in Portland, Oregon. The RNAs are necessary to preserve the integrity of engineered sediment caps placed within Slip 3 and Wheeler Bay at the Portland Harbor Superfund Site as part of a removal action at that site. The RNAs will do so by prohibiting activities that could disturb or damage the engineered sediment caps in that area.

DATES: Comments and related material must be received by the Coast Guard on or before January 29, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0370 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail MST1 Jaime Sayers, Waterways Management, USCG Sector Portland; telephone 503–240–9319, e-mail *Jaime.A.Sayers@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0370), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0370'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0370 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Background and Purpose

As part of a removal action at the Portland Harbor Superfund Site in 2008, engineered sediment caps were placed within Slip 3 and Wheeler Bay at the Port of Portland Terminal 4 Facility in order to contain underlying contaminated sediment and shoreline soil. The Port of Portland Terminal 4 Facility is located between River Miles 4.1 and 4.5 on the Willamette River.

The engineered sediment caps are designed to be compatible with normal port operations, but could be damaged by other maritime activities including anchoring, dragging, dredging, or trawling. Such damage could disrupt the function or affect the integrity of the caps to contain the underlying contaminated sediment and shoreline soil in these areas. As such, the RNAs are necessary to help ensure the engineered sediment caps are protected and will do so by prohibiting certain maritime activities that could disturb or damage them.

Discussion of Proposed Rule

The proposed rule would create RNAs covering portions of Slip 3 and Wheeler Bay at the Port of Portland Terminal 4 where engineered sediment caps are in place. Within the RNAs, vessels will be prohibited from anchoring, dragging, dredging, or trawling. The prohibitions are necessary to help ensure the engineered sediment caps are protected from damage.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that the RNAs cover a relatively small area and that area can still be used for most maritime activities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels operating in the areas covered by the RNAs. The RNAs would not have a significant economic impact on a substantial number of small entities, however, because the RNAs cover a relatively small area and that area can still be used for most maritime activities.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MST1 Jaime Sayers, Waterways Management, USCG Sector Portland; telephone 503–240–9319, e-mail *Jaime.A.Sayers@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.1326 to read as follows:

§ 165.1326 Regulated Navigation Areas; Port of Portland Terminal 4, Willamette River, Portland, OR

(a) *Regulated navigation areas.* Each of the following areas is a regulated navigation area:

(1) All waters of the Willamette River in the head of the Port of Portland's Terminal 4 Slip 3, encompassed by a line commencing at 45°36′01.861″ N/122°46″20.995″ W thence to 45°36′01.455″ N/122°46′20.887″ W thence to 45°36′00.993″ N/122°46′20.714″ W thence to 45°36′00.725″ N/122°46′20.923″ W thence to 45°36′00.731″ N/122°46′21.262″ W thence to 45°36′00.712″ N/122°46′21.823″ W thence to 45°36′01.230″ N/122°46′22.048″ W thence to 45°36′01.651″ N/122°46′22.168″ W thence to 45°36′01.684″ N/122°46′22.372″ W thence to 45°36′01.873″ N/122°46′22.303″ W thence to 45°36′02.065″ N/122°46′21.799″ W thence to 45°36′01.989″ N/122°46′21.574″ W thence to 45°36′01.675″ N/122°46′21.483″ W thence to 45°36′01.795″ N/122°46′21.442″ W thence to 45°36′01.861″ N/122°46′20.995″ W.

(2) All waters of the Willamette River in Wheeler Bay between Slip 1 and Slip 3 in the Port of Portland's Terminal 4, encompassed by a line commencing at 45°36′10.634″ N/122°46′39.056″ W thence to 45°36′10.269″ N/122°46′37.140″ W thence to 45°36′10.027″ N/122°46′6.050″ W thence to 45°36′09.722″ N/122°46′34.181″ W thence to 45°36′09.425″ N/122°46′33.118″ W thence to 45°36′08.960″ N/122°46′32.150″ W thence to 45°36′08.653″ N/122°46′31.681″ W thence to 45°36′08.191″ N/122°46′31.341″ W thence to 45°36′07.886″ N/122°46′31.269″ W thence to 45°36′07.517″ N/122°46′31.038″ W thence to 45°36′07.235″ N/122°46′31.066″ W thence to 45°36′07.040″ N/122°46′30.941″ W thence to 45°36′06.697″ N/122°46′30.987″ W thence to 45°36′06.509″ N/122°46′31.251″ W thence to 45°36′06.201″ N/122°46′31.517″ W thence to 45°36′06.081″ N/122°46′31.812″ W thence to 45°36′06.550″ N/122°46′32.124″ W thence to 45°36′06.970″ N/122°46′31.895″ W thence to 45°36′07.172″ N/122°46′31.868″ W thence to 45°36′07.883″ N/122°46′32.316″ W thence to 45°36′08.370″ N/122°46′32.927″ W thence to 45°36′08.775″ N/122°46′33.888″ W thence to 45°36′09.121″ N/122°46′35.337″ W thence to 45°36′09.230″ N/122°46′36.166″ W thence to 45°36′09.442″ N/122°46′37.759″ W thence to 45°36′09.865″ N/122°46′39.511″ W thence to 45°36′10.421″ N/122°46′39.469″ W thence to 45°36′10.634″ N/122°46′39.056″ W.

(b) *Regulations.* All vessels are prohibited from anchoring, dragging, dredging, or trawling in the regulated navigation areas established in paragraph (a) of this section.

Dated: December 11, 2009.

G.T. Blore,

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

[FR Doc. E9–30935 Filed 12–29–09; 8:45 am]

BILLING CODE 9110–04–P

U.S. POSTAL SERVICE

39 CFR Part 111

Unpaid and Shortpaid Information-Based Indicia Postage Meters and PC Postage Products—Comment Period Extended

AGENCY: Postal Service™.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On November 18, 2009, the Postal Service published in the **Federal Register** (74 FR 59494) a proposed rule to implement revenue assurance procedures for information-based indicia (IBI) postage generated from postage evidencing systems. An automated process will be implemented to detect mailpieces with unpaid or shortpaid IBI postage.

Comments were originally requested by December 18, 2009. Based on feedback from the mailing community, the Postal Service has decided to extend the current comment period an additional 60 days.

DATES: Comments on this proposed rule must be received on or before February 17, 2010.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington DC 20260–3436. You may inspect and photocopy all written comments, Monday through Friday, 9 a.m. to 4 p.m., USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC, 20260.

FOR FURTHER INFORMATION CONTACT: C. Scot Atkins, 703–280–7841 or Carol A. Lunkins, 202–268–7262.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–30867 Filed 12–29–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0013; FRL–9097–7]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Redesignation Request and Maintenance Plan for Salt Lake County; Utah County; Ogden City PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a document published on December 1, 2009 (74 FR 62717). In the December 1, 2009 document, EPA proposed to disapprove the State of Utah's requests under the Clean Air Act to redesignate the Salt Lake County, Utah County, and Ogden City PM_{10} nonattainment areas to attainment, and to approve some and disapprove other associated State Implementation Plan (SIP) revisions. The Governor of Utah submitted the redesignation requests and associated SIP revisions on September 2, 2005. EPA proposed to disapprove the redesignation requests because the areas do not meet all Clean Air Act requirements for redesignation. At the request of several commentors, EPA is extending the comment period through March 1, 2010.

DATES: Comments must be received on or before March 1, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0013, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *videtich.callie@epa.gov*

• Fax: (303) 312–6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

• Mail: Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129.

• Hand Delivery: Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

• For additional information on submitting comments, see the December 1, 2009 (74 FR 62717) notice.

FOR FURTHER INFORMATION CONTACT: Catherine Roberts, Air Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129, (303) 312–6025, *roberts.catherine@epa.gov*.

Dated: December 18, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E9–30993 Filed 12–29–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[EPA–HQ–OAR–2006–0735; FRL–9098–2]

RIN 2060–AP77

Revisions to Lead Ambient Air Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA issued a final rule on November 12, 2008, (effective date January 12, 2009) that revised the National Ambient Air Quality Standards (NAAQS) for lead and associated monitoring requirements. This action proposes revisions to the monitoring requirements in that final rule pertaining to where state and local monitoring agencies (''monitoring agencies'') would be required to conduct lead monitoring.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0735 by one of the following methods:

• *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

• E-mail: *a-and-r-Docket@epa.gov*.

• Fax: 202–566–9744.

• Mail: Docket No. EPA–HQ–OAR–2006–0735, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

• Hand Delivery: Docket No. EPA–HQ–OAR–2006–0735, Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0735. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Kevin Cavender, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304–06, Research Triangle Park, NC 27711; telephone: 919–541–2364; fax: 919–541–1903; e-mail: *cavender.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).

• Follow directions—the agency may ask you to respond to specific questions

or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

B. Availability of Related Information

A number of documents relevant to this rulemaking, including the notice of final rulemaking (73 FR 66964), the notice of proposed rulemaking (73 FR 29184), the advance notice of proposed rulemaking (72 FR 71488), the *Air Quality Criteria for Lead* (Criteria Document) (USEPA, 2006), the Staff Paper, and other related technical documents are available on EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/lead/s_lead_index.html*. These and other related documents are also available for inspection and copying in the EPA docket identified above.

C. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning this proposed rule by January 11, 2010, we will hold a public hearing on January 14, 2010. If January 14, 2010 falls on a Friday, Saturday, or Sunday, the hearing will be held on the following Monday. Persons interested in presenting oral testimony at the hearing, or inquiring as to whether a hearing will be held, should contact Kevin A. Cavender at (919) 541–2364 at least 2 days in advance of the hearing. If a public hearing is held, it will be held at 10 a.m. at the EPA's campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. Under CAA section 307(d)(1)(V), the Administrator determines that the provisions of section 307(d) are applicable to this proposal and all the procedural requirements of section 307(d) will apply to it.

D. How is this document organized?

The information presented in this document is organized as follows:

I. General Information
A. What should I consider as I prepare my comments for EPA?
B. Availability of Related Information
C. When would a public hearing occur?
D. How is this document organized?
II. Background
III. Source-Oriented Monitoring Requirements
A. Background on Source-Oriented Monitoring Requirements
B. Issues With Source-Oriented Monitoring Requirements
C. Reconsideration of Source-Oriented Monitoring Requirements
IV. Monitoring of Airports
V. Non-Source-Oriented Monitoring Requirements
A. Background on Non-Source-Oriented Monitoring Requirements
B. Issues With Non-Source-Oriented Monitoring Requirements
C. Reconsideration of Non-Source-Oriented Monitoring Requirements
VI. Increase in Lead Monitors and Timeline for Deploying New Monitors
VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
VIII. References

II. Background

The EPA issued a final rule on November 12, 2008, that revised the NAAQS for lead and associated ambient air lead monitoring requirements (73 FR 66964, codified at 40 CFR part 58). As part of the lead monitoring requirements, monitoring agencies are required to monitor ambient air near lead sources which are expected to or have been shown to have a potential to contribute to a 3-month average lead concentration in ambient air in excess of the level of the NAAQS. At a minimum, monitoring agencies must monitor near lead sources that emit 1.0 ton per year (tpy) or more. However, this requirement can be waived by the EPA Regional Administrator if the monitoring agency can demonstrate that the source will not contribute to a 3-month average lead concentration in ambient air in excess of 50 percent of the level of the NAAQS (based on historical monitoring data, modeling, or other means).

Monitoring agencies are also currently required to conduct lead monitoring in large urban areas (identified as Core Based Statistical Areas, or CBSAs, as defined by the OMB) with a population of 500,000 people or more. The locations for these monitoring sites are intended to measure neighborhood-scale lead concentrations in urban areas impacted by resuspended dust from roadways, closed industrial sources which previously were significant sources of lead, hazardous waste sites, construction and demolition projects, or other fugitive dust sources of lead.

Following promulgation of the revised lead NAAQS and monitoring requirements, the Natural Resources Defense Council (NRDC), the Missouri Coalition for the Environment Foundation, the Physicians for Social Responsibility, and the Coalition to End Childhood Lead Poisoning (''the Petitioners'') petitioned (NRDC, 2009) for a reconsideration of the lead emission rate at which monitoring is required (the ''emission threshold,'' currently 1.0 tpy). On July 22, 2009, the EPA granted the petition to reconsider aspects of the monitoring requirements (Jackson, 2009). In response to the petition, the EPA reviewed and reconsidered the monitoring requirements and is proposing revisions to the requirements for both source-oriented and non-source-oriented monitoring for lead.

III. Source-Oriented Monitoring Requirements

The EPA is proposing to change the lead emission threshold at which monitoring agencies are presumptively required to conduct lead monitoring near a lead source to 0.50 tpy from an emissions threshold of 1.0 tpy. The EPA is also seeking comments on alternative emission thresholds between 0.50 tpy to 1.0 tpy. The following paragraphs discuss the issues considered, the proposed changes, and our rationale for the proposed changes to the source-oriented monitoring requirements.

A. Background on Source-Oriented Monitoring Requirements

In the final revisions to the lead NAAQS, the EPA noted that, due to the dramatic drop in lead concentrations since the phase-out of lead in motor vehicle gasoline, we expected concentrations of lead to approach the revised level of the lead NAAQS

primarily near sources of lead. Accordingly, the EPA required monitoring near lead emission sources such as lead smelters, metallurgical operations, battery manufacturing, and other source categories that emit lead.

The EPA also noted in the final NAAQS rulemaking that it is not practical to conduct monitoring at every lead emission source, nor is it likely that very small lead emission sources will cause ambient concentrations to exceed the promulgated NAAQS. Therefore, the EPA performed an analysis to determine at what level of lead emissions (the ''emissions threshold'') it may be possible for an emission source to cause ambient lead concentrations to exceed the lead NAAQS (Cavender, 2008). This analysis looked at a range of levels and indicated that, under reasonable worst-case conditions, a 0.50 tpy lead source could cause ambient lead concentrations to exceed the revised lead NAAQS. The EPA also noted that, by basing the monitoring requirements on worst-case conditions, the EPA would be ''placing an unnecessary burden on monitoring agencies to evaluate or monitor around sources that may not have a significant potential to exceed the NAAQS.'' As such, the EPA required monitoring agencies to take into account lead sources which are expected to or have been shown to contribute to a maximum lead concentration in ambient air in excess of the NAAQS including, and, at a minimum, to conduct lead monitoring [or request monitoring waivers as allowed for under 40 CFR part 58, Appendix D, paragraph 4.5(a)(ii)] near lead sources emitting 1.0 or more tpy. To account for lead sources emitting less than 1.0 tpy of lead that may have the potential to cause lead concentrations to exceed the lead NAAQS, the November 12, 2008, final rule provided the EPA Regional Administrators the authority to require additional monitoring beyond the minimum monitoring requirements where the likelihood of lead air quality violations is significant or where the emissions density, topography, or population locations are complex and varied. The EPA projected the source-oriented portion of the network to be up to 135 monitors based on these requirements and on information available at the time the final rule was published (*i.e.*, the 2002 National Emissions Inventory (NEI)).[1]

B. Issues With Source-Oriented Monitoring Requirements

The Petitioners cited several reasons for EPA to reconsider the lead monitoring emission threshold (NRDC, 2009). They noted that the finalized emission threshold of 1.0 tpy was above the proposed range of 200 to 600 kilograms per year and, therefore, argued that the EPA failed to provide for proper public comment on the 1.0 tpy threshold. They also argued that the selection of the 1.0 tpy emission threshold was arbitrary and capricious and that the EPA did not follow its own analysis. Finally, they argued that the 1.0 tpy emission threshold would not provide for an adequate margin of safety as required by the Clean Air Act. The EPA granted the petition to reconsider the monitoring emission threshold (Jackson, 2009), and this proposed rule reflects our reconsideration of the emission threshold.

C. Reconsideration of Source-Oriented Monitoring Requirements

The monitoring emission threshold was intended to identify lead sources which may have the potential to contribute to or approach an exceedance of the lead NAAQS and near which lead monitoring should be conducted (or where a site-specific evaluation of the potential for the lead source to contribute to an exceedance of the lead NAAQS should be performed). The EPA's analysis to determine the emission threshold relied on three different approaches.

One of the three approaches relied on the use of existing lead monitoring data near lead sources. The EPA believes this approach provides the best information on the potential impact of lead sources on ambient lead concentrations because it uses actual source-oriented lead monitoring data from lead sources. As such, this approach was reevaluated as part of the EPA's reconsideration using updated design-values based on the final data handling procedures contained in 40 CFR part 50 Appendix R. Under this approach, source-oriented lead monitors within 1 mile of a lead source (identified from the 2002 NEI) were identified. This group of sites was then narrowed down to sites near facilities emitting 1 tpy or more of lead into the ambient air, and then to sites which were only impacted by one lead emitting facility. Also, in cases where more than one monitor was identified within 1 mile of the same facility emitting 1 tpy or more of lead annually, the EPA only used the monitor measuring the maximum lead concentration in the analysis. In this manner, the EPA identified seven monitor-facility pairs meeting the emissions and distance criteria. Using data in the Air Quality System (AQS) database (*http://www.epa.gov/ttn/airs/airsaqs/*) for the years 2001–2003, the EPA developed an estimate of the maximum 3-month average lead concentration for each monitoring site.[2] Next, EPA calculated a ratio of the maximum 3-month average concentration to the facility annual emissions (as identified in the 2002 NEI) to provide an estimate of the impact from the facility in units of micrograms per meter cubed ($\mu g/m^3$) per tpy. Dividing the level of the lead NAAQS (0.15 $\mu g/m^3$) by this ratio provides an estimate of the annual emission level for the facility which would result in ambient lead concentrations just meeting the lead NAAQS, referred to here as a ''site-specific emission threshold'' (see Table 1).

TABLE 1—DATA USED TO ESTIMATE FACILITY IMPACTS BASED ON MONITORING DATA

AQS site Id	Maximum 3-month average lead concentration ($\mu g/m^3$)	NEI 2002 facility emission rate (tpy)	Ratio ($\mu g/m^3$–tpy)	Site-specific emission threshold (tpy)
011090003	1.2	4.5	0.27	0.56
171190010	0.33	1.3	0.25	0.59
290990013	1.8	58.8	0.03	4.90

[1] Note that the 2005 NEI is now available and the EPA has used the lead emission estimates in the 2005 NEI for estimating the impact of these proposed revisions. Based on the 2005 NEI, 111 source-oriented monitoring sites would be required under the existing monitoring requirements.

[2] The estimate of the maximum 3-month average lead concentration for this analysis was completed prior to promulgation of the final data handling rules contained in 40 CFR Part 50 Appendix R. As such, minor differences in the estimated maximum 3-month average lead concentration appear in the estimates presented below for the same time period.

TABLE 1—DATA USED TO ESTIMATE FACILITY IMPACTS BASED ON MONITORING DATA—Continued

AQS site Id	Maximum 3-month average lead concentration (μg/m³)	NEI 2002 facility emission rate (tpy)	Ratio (μg/m³–tpy)	Site-specific emission threshold (tpy)
340231003	0.23	1.7	0.14	1.11
420110717	0.24	4.8	0.05	3.00
471870100	0.93	2.6	0.36	0.42
480850009	0.75	3.2	0.23	0.64

This analysis shows that four of these seven lead sources support an emission threshold less than the emission threshold of 1.0 tpy set by the final rule on the revised lead NAAQS.

As part of this reconsideration, the EPA evaluated the stability and sensitivity of the above analysis. To evaluate the stability of the site-specific emission threshold calculation, the EPA performed the same analysis for these same seven facilities based on the emission estimates from the 2002 and 2005 NEI (Table 2) and estimated design values over the periods 2001–2003 and 2004–2006 (Table 3). Table 4 summarizes the site-specific emission thresholds calculated for these periods.

TABLE 2—NEI EMISSION ESTIMATES

AQS site Id	NEI facility Id	Facility name	2002 NEI facility emission rate (tpy)	2005 NEI facility emission rate (tpy)
011090003	NEI18383	Sanders Lead Co	4.5	4.44
171190010	NEI55848	National Steel Corp—Granite City Div	1.3	0.90
290990013	NEI34412	Doe Run Company, Herculaneum Smelter	58.8	28.09
340231003	NEINJ16031	Johnson Controls Battery Group Inc	1.7	1.34
420110717	NEI117	East Penn Mfg	4.8	1.88
471870100	NEI715	Metalico-College Grove, Inc.	2.6	2.55
480850009	NEI6493	Gnb Metals Div	3.2	3.18

TABLE 3—ESTIMATED DESIGN VALUES BASED ON ALTERNATIVE YEARS

AQS site Id	2001–2003 Design value (μg/m³)	2004–2006 Design value (μg/m³)
011090003	1.2	1.16
171190010	0.33	0.43
290990013	1.8	1.44
340231003	0.23	0.32
420110717	0.24	0.20
471870100	0.93	([3])
480850009	0.75	0.77

TABLE 4—ESTIMATED SITE-SPECIFIC EMISSION THRESHOLDS BASED ON ALTERNATIVE YEARS

AQS site Id	Site-specific emission threshold	
	2002	2005
011090003	0.56	0.57
171190010	0.59	0.32
290990013	4.90	[3] 2.93
340231003	1.11	0.63
420110717	3.00	1.41
471870100	0.42	([4])
480850009	0.64	0.62
Minimum	0.42	0.32
Median	0.64	0.62
Maximum	4.90	2.93

[3] The EPA notes that, for facilities where emissions have dramatically decreased in recent years, re-entrained lead from historical deposits may influence the emission threshold calculation to a greater extent than for facilities where lead emissions have remained constant.

[4] Monitoring data at this site did not meet the minimum completeness requirements of 40 CFR part 50 Appendix R for this time period. No design value or site-specific emission factor was calculated for this time period.

Table 4 shows that, in most cases, the calculated emission threshold remained fairly constant for a given facility over time, in general, varying by a factor of 2 or less. Site-specific emission thresholds varied from 0.32 tpy to 4.9 tpy with a median of 0.63 tpy.

The EPA notes that these metrics may be exaggerated by outliers due to the limited number of facilities being evaluated. As such, the EPA looked at how these metrics changed when the extreme sites (*i.e.*, the highest and lowest emitting sources) were removed. Excluding site 290990013 resulted in a lowering of the upper range to 3 tpy and the median to 0.62 tpy, but did not affect the minimum (0.32 tpy). Excluding site 171190010 increases the minimum to 0.42 and the median to 0.64 tpy, but does not affect the maximum.

In the final rule, the EPA stated that an emission threshold of 1.0 tpy ''is more likely to clearly identify sources that would contribute to exceedances of the NAAQS'' as compared to a lower emission threshold. Upon further consideration and based on the site-specific emission thresholds estimated above, the EPA has decided to propose a revision to the emission threshold. Based on this sample of lead sources, it appears that lead sources that emit less than 1.0 tpy have the potential to cause ambient lead concentrations to exceed or approach the lead NAAQS. Monitoring agencies would not identify these sources based on a 1.0 tpy emission threshold. This could result in a number of areas with the potential to have lead concentrations above the lead NAAQS not being properly monitored and could result in some areas where the NAAQS is exceeded not being identified as nonattainment for lead.

The EPA has reconsidered the emission threshold and proposes to lower the emission threshold to a level of 0.50 tpy, which the EPA believes is consistent with the analysis documented for the final rule (Cavender, 2008) and the findings of this reconsideration. If this proposal is finalized, monitoring agencies would be required to conduct monitoring near lead sources that emit 0.50 tpy or greater, or request a waiver as allowed by 40 CFR part 58, Appendix D, paragraph 4.5(a)(ii). The EPA believes an emission threshold of 0.50 tpy would adequately identify those sources with the potential to exceed the NAAQS without placing undue burden on monitoring agencies. The EPA is also seeking comments and supporting information that could be used in setting an emission threshold lower than 0.5 tpy as well as higher than 0.5 tpy.

In addition, the EPA is proposing to edit the wording of the source-oriented monitoring requirement [40 CFR part 58, Appendix D, paragraph 4.5(a)] for clarity. The EPA believes the edits are merely editorial and do not change the purpose and intent of the existing requirement.

IV. Monitoring of Airports

In addition to the petition to reconsider, the EPA has received informal feedback from members of the National Association of Clean Air Agencies (NACAA) monitoring subcommittee regarding monitoring of airports from which lead is emitted as a result of the use of leaded aviation fuel (Cavender, 2009a). These NACAA members believe that the final lead NAAQS rulemaking inappropriately treats airports in the same manner as industrial lead sources and claim that lead emissions at airports will have a lesser impact on ambient lead concentrations since the lead emissions from airplanes taking off from or landing at airports are spread out over a larger area, unlike industrial sources where the emissions may be emitted from a few stacks.

The EPA has limited quantitative information with which to evaluate the impact on either on-airport or off-airport ambient lead concentrations from airports. One study conducted near the Santa Monica airport measured a maximum 3-month average lead concentration of 0.1 $\mu g/m^3$ near the runway blast fence (Cavender, 2009b). Based on the 2002 lead emission estimate for the Santa Monica airport of 0.4 tpy (USEPA, 2008a), an estimated site-specific emission threshold of 0.6 tpy can be calculated using the same procedures used to estimate a site-specific emission threshold as above [*i.e.,* 0.15 $\mu g/m^3$/(0.1 $\mu g/m^3$/0.4 tpy) = 0.6 tpy]. This site-specific emission threshold (0.6 tpy) falls within the lower end of the range of specific emission thresholds calculated for industrial sources above (0.32 to 4.9 tpy) and does not support the case for different treatment of airports.[5] The EPA is not aware of similar studies where lead was monitored at or near the maximum impact area and does not believe there are sufficient data to develop or justify a separate emission threshold for airports.[6] As such, the EPA proposes to treat airports identically to other sources of lead, and require monitoring agencies to conduct lead monitoring [or request a monitoring waiver as allowed under 40 CFR part 58, Appendix D, paragraph 4.5(a)(ii)] at or near airports that emit 0.50 tpy of lead, as is required for other sources of lead.

The EPA estimates airport-specific lead inventories using a method similar to that used by the Federal Aviation Administration (FAA) to estimate inventories of other criteria pollutants emitted by aircraft at airport facilities in its Emissions and Dispersion Modeling System (EDMS). The method EPA uses to calculate airport-specific lead inventories is briefly described here and a more complete description is available in other documents (USEPA 2008a). The EPA's method for calculating airport-specific lead inventories requires as input the following data: The activity of piston-engine aircraft at a facility, fuel consumption rates by these aircraft during the various modes of the landing and takeoff cycle (LTO), time in each mode (taxi/idle-out, takeoff, climb-out, approach, and taxi/idle-in), the concentration of lead in the fuel, and the retention of lead in the engine and oil. We use information from national databases to supply this information. The data inputs for which states or local authorities may be able to obtain airport-specific data are:

(1) Airport-specific LTO activity for piston-powered aircraft, including the fraction of piston-engine activity conducted by single versus twin-engine aircraft. There are no national databases that provide airport-specific LTO activity data for piston-engine aircraft separately from turbojet and turboprop aircraft (turboprop and turbojet powered aircraft use jet fuel, which does not contain lead). Some airport facilities

[5] The EPA notes that ''urban background lead'' (typically 0.02–0.03 $\mu g/m^3$) may have a higher impact on this estimate of the site-specific emission threshold than in the estimates made for industrial facilities since the urban background represents a higher percentage of the total lead concentration. Basing the calculation on just the impact from the airport would result in a higher site-specific emission threshold estimate.

[6] EPA notes that additional information may become available regarding the Santa Monica airport lead study, or other similar studies, prior to the issuance of a final rule. If additional information does become available before this rule is finalized (*e.g.,* a final study report on the Santa Monica airport), EPA will take such information into account.

collect this information and states may use these data to calculate airport-specific lead inventories.

(2) The time spent in each mode of the LTO cycle. EPA uses the EDMS scenario property of International Civil Aviation Organization/USEPA Default—Times in Mode, with a 16-minute taxi-in/taxi-out time according to EPA's Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources, 1992. We are requesting airport-specific information for these times in each mode of the LTO cycle. We also request information regarding the time spent in run-up checks conducted by piston-engine aircraft prior to take-off. This mode of operation is not currently included in EPA's airport-specific lead inventories.

(3) Other data inputs for the airport-specific lead inventory calculation for which states or local authorities may provide airport-specific information include the concentration of lead in the aviation gasoline supplied at an airport, and the fraction of lead in fuel that is retained in the engine and oil, and actual fuel consumption rates by the piston-engine aircraft operating at specific airports.

The EPA identified 55 airports that may exceed the proposed 0.50 tpy emission threshold. Under this proposed rule, state and local monitoring agencies would be required to monitor these airports, request a waiver as allowed under 40 CFR part 58 Appendix D (by performing dispersion modeling to demonstrate that estimated maximum lead concentrations would be less than 50 percent of the lead NAAQS), or demonstrate that the actual emissions from a given airport are less than 0.50 tpy (by using site-specific values for the factors identified above in lieu of the national average values used by the EPA). The EPA is requesting airport-specific data inputs that states or other local authorities could provide to EPA, particularly for airports that would be subject to lead monitoring in the context of this proposed rule.

The EPA solicits comments on the availability of other data that may be useful in considering an alternative emission threshold for airports. The Agency also seeks comment on whether EPA should consider other factors or criteria that might be useful in determining if a different approach is appropriate for identifying those airports that have the potential to approach or contribute to violations of the lead NAAQS. For example, the EPA could require monitoring at airports that the EPA determines have the potential to cause increased ambient lead concentrations approaching or contributing to violations of the NAAQS based on criteria including the estimated lead emissions and other factors such as the number of runways where piston-engine aircraft operate. However, we do not currently have information regarding the impact of airport-specific attributes on ambient lead concentrations. The EPA solicits comments on alternative approaches including the factors that could be considered in identifying airports that may require monitoring. We also request data to support the relationship between airport-specific factors or attributes and ambient lead concentrations.

V. Non-Source-Oriented Monitoring Requirements

The EPA is proposing to replace the current non-source-oriented monitoring approach with the requirement for lead monitoring at the national multi-pollutant monitoring network known as NCore. The following paragraphs discuss the issues considered, the proposed changes, and our rationale for the proposed changes to the non-source-oriented monitoring requirements.

A. Background on Non-Source-Oriented Monitoring Requirements

As part of the November 2008 revisions to the lead NAAQS, the EPA required one lead monitor site in each CBSA with a population of 500,000 people or more—leading to 101 monitors. These monitors are to be located to measure neighborhood scale (as described in 40 CFR part 58, Appendix D, paragraph 1.2(b)(3)) lead concentrations in urban areas impacted by re-suspended dust from roadways, closed industrial sources which previously were significant sources of lead, hazardous waste sites, construction and demolition projects, or other fugitive dust sources of lead.

The EPA had proposed (73 FR 29184) and taken comment on a smaller non-source-oriented lead monitoring network that included 1 monitor in each CBSA with a population of 1,000,000 or more people, located to measure typical neighborhood scale lead concentrations in urban areas—which would have required 50 monitors. The EPA noted that data from these non-source-oriented monitors would be helpful in better characterizing population exposure to ambient air related lead and may assist in determining nonattainment boundaries.

Concerns were raised during review of the draft final notice that non-inventoried lead sources in urban areas, such as closed industrial sources, hazardous waste sites, and construction and demolition projects could potentially result in ambient lead concentrations in excess of the lead NAAQS. To address these concerns, the EPA modified the siting criteria to require non-source-oriented monitors to be sited to evaluate these non-inventoried lead sources. The EPA also lowered the population threshold from requiring monitoring at CBSAs with a population of 1,000,000 people or more to requiring monitoring at CBSAs with a population of 500,000 people or more.

B. Issues With Non-Source-Oriented Monitoring Requirements

Some sources of lead which are not in the current NEI that could result in ambient lead concentrations in excess of the lead NAAQS have been identified (USEPA, 2008b). However, as currently written, it is not clear that the non-source-oriented monitoring requirements would result in monitors near such non-inventoried sources. The non-source-oriented monitors are to be sited as neighborhood scale monitors. Yet, lead concentrations drop off rapidly with distance away from a source, such that it is unlikely that non-source-oriented monitors would identify the maximum lead concentration near non-inventoried sources where the lead NAAQS could be exceeded. Furthermore, locations near non-inventoried sources outside of CBSAs with a population of 500,000 people or more would not be addressed by the current non-source-oriented requirements and, as such, these sources would not necessarily be monitored. The final siting requirements also would not support the measurement of trends in typical urban lead concentrations, one of EPA's original objectives.

C. Reconsideration of Non-Source-Oriented Monitoring Requirements

After further consideration, the EPA believes the most appropriate approach to achieve the placement of monitors near non-inventoried sources that have the potential to cause an exceedance of the NAAQS is through the existing source-oriented monitoring network requirements (paragraph 4.5(a) of Appendix D to 40 CFR part 58) which require monitoring agencies to conduct lead monitoring at sources ''which are expected to or have been shown to contribute to a maximum lead concentration in ambient air in excess of the NAAQS'' and the EPA Regional Administrators' authority to require monitoring ''where the likelihood of lead air quality violations is significant.'' These non-inventoried lead sources may be identified by monitoring agencies, the EPA, or concerned citizens as part of the network plan review and

approval requirements. Furthermore, monitors sited under the source-oriented monitoring requirements are required to be sited at the location of estimated maximum concentration and, as such, better serve the purpose of identifying violations of the lead NAAQS.

The EPA believes it is appropriate to re-emphasize the objectives identified in the prior proposed rule for non-source-oriented monitors, *i.e.,* measuring typical neighborhood-scale lead concentrations in urban areas so we can better understand the risk posed by lead to the general population, and to provide information that could assist with the determination of nonattainment boundaries. In addition, the EPA believes non-source-oriented sites are important to support the development of long-term trends at typical concentrations sites.

The EPA notes that these objectives match those of the multi-pollutant NCore network required under section 3 of Appendix D to 40 CFR part 58 and also believes that EPA's increasing support for multi-pollutant measurements should be considered in the design of the lead network. The NCore network is intended to be a long-term, multi-pollutant, monitoring network that not only provides information useful to NAAQS attainment decisions, but also provides data needed to broaden the understanding of air quality conditions and pollutant interactions, evaluate air quality models, develop emission control strategies, and support long-term health studies. We also note that lead monitoring is already required in at least one NCore site per EPA Region. As such, one option for implementing lead non-source-oriented monitoring is to require lead monitoring at all NCore sites rather than the population-based approach currently used. This option provides a similar result to that of basing the non-source-oriented monitoring requirements on population (as was established in the November 2008 final rule) and has additional similarities with the provisions adopted in the final rule on the revised lead NAAQS including:

- The size of the network would be approximately the same as the original proposal but would span a wider range of populations. The NCore network will consist of approximately 80 sites, with approximately 50 of these being in urban areas with a population of 500,000 people or more.
- NCore sites will be neighborhood-scale sites.
- NCore sites are long-term trends sites suitable for long-term population exposure studies.

In addition, many NCore sites will have the low-volume PM_{10} sampler necessary to conduct lead monitoring, reducing the cost and time necessary to implement the non-source-oriented monitoring requirements.[7] Additional information on the objectives and specific sites for NCore can be obtained online at *http://www.epa.gov/ttn/amtic/ncore/index.html*. Due to the many advantages of including lead monitoring at NCore sites rather than having separate non-source-oriented monitoring requirements, the EPA is proposing to revise the existing non-source-oriented monitoring requirements (paragraph 4.5(b) of Appendix D to 40 CFR part 58) to require lead monitoring at all NCore sites in place of the current CBSA population-based requirements. The EPA seeks comments on the use of the NCore network to meet the non-source-oriented monitoring objectives for lead. The EPA also seeks comments on whether lead monitoring should be required at all NCore sites, or only NCore sites in large urban areas (*e.g.,* in CBSAs with a population greater than 500,000 people).

The EPA is also proposing to make a minor edit to the existing monitoring requirements. Paragraph 3(c) of Appendix D to 40 CFR part 58 requires lead monitoring at 10 NCore sites, located in the most populated MSA/CSA in each of the 10 EPA Regions. This requirement was added prior to the recent lead monitoring revisions and was intended to provide for measurement of long-term lead trends away from lead sources. Since lead monitoring would be required at all NCore sites if this proposal is finalized, paragraph 3(c) of Appendix D to 40 CFR part 58 is redundant and, as such, the EPA proposes to delete this paragraph.

VI. Increase in Lead Monitors and Timeline for Deploying New Monitors

These proposed revisions to the monitoring requirements will result in an increase in the number of lead monitors that monitoring agencies must deploy and operate relative to the estimated number of monitors for the November 2008 final rule. Based on the 2005 NEI and the 2002 estimates for lead emissions from airports (EPA, 2008a), the current monitoring requirements would require up to 212 lead monitors—111 source-oriented monitors[8] (106 industrial and 5 airport) and 101 non-source-oriented monitors. Based on the monitoring requirements proposed here, the number of total required monitors increases to 352 monitors with 272 source-oriented monitors (217 industrial and 55 airport) and 80 non-source-oriented monitors. However, we expect that the number of actual lead monitors will likely be less than 352 since these numbers do not take into account the probability that monitoring agencies will request and attain waivers from source-oriented monitoring requirements for some of the lead sources identified as emitting more than 0.50 tpy of lead.

This proposal does not change the current requirement for monitoring agencies to have lead monitors installed and operating near sources emitting 1.0 tpy of lead or more by January 1, 2010 (*i.e.,* the deadline specified in the November 2008 final rule). The EPA proposes that if we revise the monitoring requirements, monitoring agencies would have 6 months from the effective date of the final rule to update their annual monitoring network plans. The update would incorporate plans for source-oriented monitors near lead sources emitting 0.50 tpy or more, but less than 1.0 tpy. The EPA is also proposing to allow 1 year from the date of the final rule for monitoring agencies to install and begin operation of source-oriented monitors near lead sources emitting 0.50 tpy or more, but less than 1.0 tpy.

The EPA notes that the timeline described above would require monitoring agencies to evaluate, site, and install up to 161 source-oriented monitoring sites within 1 year of promulgation of the revised monitoring requirements. While the EPA believes this is feasible, the EPA seeks comments on the appropriateness of allowing deployment in phases requiring half of the sites for sources between 0.50 and 1.0 tpy to be installed during the first year following promulgation of the final monitoring requirements, and for the remaining half to be installed during the second year following promulgation of the final monitoring requirements. The

[7] EPA expects that low-volume PM_{10} samplers will be used at many NCore sites in order to meet the existing requirement for $PM_{10-2.5}$ measurements. However, EPA notes that some NCore sites may use a dichotomous sampler or a continuous $PM_{10-2.5}$ sampler that would not be compatible with lead-PM_{10} sampling such that these sites would need to add an additional low-volume PM_{10} sampler to perform lead-PM_{10} sampling. In addition, if lead-PM_{10} concentrations are found to be greater than 0.10 $\mu g/m^3$, a lead-TSP sampler would be required at the NCore site according to paragraph 2.10.1.1 of Appendix C to 40 CFR part 58, within 6 months.

[8] Note that the current estimate of the required source-oriented sites is lower than the estimate identified in the final rule (135 sites) because the current estimate is based on the 2005 NEI rather than the 2002 NEI.

EPA solicits comments on what factors should be considered when prioritizing which sites should be installed during the first year versus the second. The EPA specifically solicits comments on an alternative deployment schedule that would allow for monitors near airports to be deployed over 2 years, and on what factors should be considered when prioritizing airports to receive monitors in the first year of deployment.

Monitoring agencies must have installed and begun operation of required NCore sites and monitors (other than lead) by January 1, 2011. Because the necessary siting and site installation will already be in place at NCore sites, the EPA does not believe any additional time beyond that of the existing NCore schedule is required for monitoring agencies to install any necessary lead monitors and begin lead sampling at NCore sites. As such, the EPA is proposing to require monitoring agencies to commence lead sampling at NCore sites when NCore sites are to become operational, no later than January 1, 2011.

The EPA recognizes that these proposed requirements will not be finalized until spring 2010 at the earliest which is just a few months before monitoring agencies are currently required to submit their lead network plans for non-source-oriented monitors (July 1, 2010). Because this reconsideration may affect where non-source-oriented monitors may be required, the EPA is advising monitoring agencies to not site or install non-source-oriented monitors until after this reconsideration is complete and the final revisions are promulgated.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it was deemed to ''raise novel legal or policy issues.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2378.01.

The monitoring, recordkeeping, and reporting requirements in 40 CFR parts 58 are specifically authorized by sections 100, 301(a), and 319 of the Clean Air Act (CAA). All information submitted to EPA pursuant to the monitoring, recordkeeping, and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The information collected and reported under 40 CFR part 58 is needed to determine compliance with the NAAQS, to characterize air quality and associated health and ecosystem impacts, to develop emissions control strategies, and to measure progress for the air pollution program. The proposed amendments would revise the technical requirements for lead monitoring sites, require the siting and operation of additional lead ambient air monitors, and require the reporting of the collected ambient lead monitoring data to EPA's AQS. The annual average reporting burden for the collection under 40 CFR part 58 (averaged over the first 3 years of this ICR) for 105 respondents is estimated to increase by a total of 19,551 labor hours per year with an increase of $1,849,264 per year. Burden is defined at 5 CFR 1320.3(b). State, local, and tribal entities are eligible for state assistance grants provided by the federal government under the CAA which can be used for monitors and related activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2006–0735. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 30, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by January 29, 2010. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, this rule establishes monitoring requirements for state and local (where applicable) monitoring agencies. The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. The proposed amendments to 40 CFR part 58 are estimated to increase the ambient air monitoring costs by $1.8 million and 19,551 labor hours from present levels. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments that may be affected

by the proposed amendments are already meeting similar requirements under the existing rules, and the costs of changing the network design requirements would be borne, in part, by the federal government through state assistance grants.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule does not alter the relationship between the federal government and the states regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, CAA section 116 preserves the rights of states to establish more stringent requirements if deemed necessary by a state. Furthermore, this rule does not impact CAA section 107 which establishes that the states have primary responsibility for implementation of the NAAQS. Finally, as noted in section D (above) on UMRA, this rule does not impose significant costs on state, local, or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

However, EPA recognizes that states will have a substantial interest in this rule and any corresponding revisions to associated air quality surveillance requirements, 40 CFR part 58. Therefore, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It does not have a substantial direct effect on one or more Indian Tribes, since Tribes are not obligated to adopt or implement any NAAQS. Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule would result in an insignificant increase in power consumption associated with the additional power required to run 140 additional monitors nationwide.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

VIII. References

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Cavender, K. (2009b). Review of Pb Monitoring Conducted Near General Aviation Airports. Memorandum to the Lead NAAQS Review Docket. EPA–HQ–OAR–2006–0735.

Fine, Philip (2007). Community-Scale Air Toxics Monitoring—Sun Valley Neighborhood and General Aviation Airports. Presented at the U.S. EPA Air Toxics Data Analysis Workshop—Chicago, IL, October 2–4, 2007. EPA–HQ–OAR–2006–0735. Available online at: *http://www.epa.gov/ttn/amtic/files/ambient/airtox/2007-workshop/07_100307_fine.pdf.*

Jackson, L. (2009). Letter to petitioners. EPA–HQ–OAR–2006–0735. Available online at: *http://www.epa.gov/air/lead/pdfs/OAR.09.000.7687.pdf.*

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(Second External Review Draft). Washington, DC, EPA/600/R–05/144aB–bB. Available online at: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=158823*.

U.S. Environmental Protection Agency. (2008a). Lead Emissions from the Use of Leaded Aviation Gasoline in the United States. EPA420–R–08–020. Available online at: *http://www.epa.gov/ttn/chief/net/tsd_avgas_lead_inventory_2002.pdf*.

U.S. Environmental Protection Agency. (2008b). Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Lead. EPA–HQ–OAR–2006–0735.

List of Subjects in 40 CFR Part 58

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

Dated: December 23, 2009.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 58 of the Code of Federal Regulations is proposed to be amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7403, 7410, 7601(a), 7611, and 7619.

Subpart B—[Amended]

2. Section 58.10 is amended by revising paragraph (a)(4) to read as follows:

§ 58.10 Annual monitoring network plan and periodic network assessment.

(a) * * *

(4) A plan for establishing source-oriented lead monitoring sites in accordance with the requirements of appendix D to this part for lead sources emitting 1.0 tpy or greater shall be submitted to the EPA Regional Administrator no later than July 1, 2009, as part of the annual network plan required in paragraph (a)(1) of this section. The plan shall provide for the required source-oriented lead monitoring sites for lead sources emitting 1.0 tpy or greater to be operational by January 1, 2010. A plan for establishing source-oriented lead monitoring sites in accordance with the requirements of appendix D to this part for lead sources emitting greater than 0.50 tpy but less than 1.0 tpy shall be submitted to the EPA Regional Administrator no later than June 30, 2010. The plan shall provide for the required source-oriented lead monitoring sites for lead sources emitting greater than 0.50 tpy but less than 1.0 tpy to be operational by December 30, 2010.

* * * * *

3. Appendix D to Part 58 is amended as follows:

a. By revising paragraph 3.(b),

b. By removing and reserving paragraph 3.(c),

c. By revising 4.5.(a), and

d. By revising paragraph 4.5.(b).

Appendix D to Part 58—Network Design Criteria for Ambient Air Quality Monitoring

* * * * *

3. * * *

(b) The NCore sites must measure, at a minimum, $PM_{2.5}$ particle mass using continuous and integrated/filter-based samplers, speciated $PM_{2.5}$, $PM_{10-2.5}$ particle mass, speciated $PM_{10-2.5}$, O_3, SO_2, CO, NO/NO_y, lead, wind speed, wind direction, relative humidity, and ambient temperature.

(c) [Reserved.]

* * * * *

4.5 * * * (a) State and, where appropriate, local agencies are required to conduct ambient air lead monitoring near lead sources which are expected to or have been shown to contribute to a maximum lead concentration in ambient air in excess of the NAAQS, taking into account the logistics and potential for population exposure. At a minimum, there must be one source-oriented SLAMS site located to measure the maximum lead concentration in ambient air resulting from each lead source which emits 0.50 or more tons per year based on either the most recent National Emission Inventory (*http://www.epa.gov/ttn/chief/eiinformation.html*) or other scientifically justifiable methods and data (such as improved emissions factors or site-specific data) taking into account logistics and the potential for population exposure.

(i) One monitor may be used to meet the requirement in paragraph 4.5(a) for all sources involved when the location of the maximum lead concentration due to one lead source is expected to also be impacted by lead emissions from a nearby source (or multiple sources). This monitor must be sited, taking into account logistics and the potential for population exposure, where the lead concentration from all sources combined is expected to be at its maximum.

(ii) The Regional Administrator may waive the requirement in paragraph 4.5(a) for monitoring near lead sources if the state or, where appropriate, local agency can demonstrate the lead source will not contribute to a maximum lead concentration in ambient air in excess of 50 percent of the NAAQS (based on historical monitoring data, modeling, or other means). The waiver must be renewed once every 5 years as part of the network assessment required under § 58.10(d).

(b) State and, where appropriate, local agencies are required to conduct non-source-oriented lead monitoring at each NCore site required under paragraph 3 of this appendix.

* * * * *

[FR Doc. E9–31049 Filed 12–29–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2605; MB Docket No. 09–230; RM–11586]

Television Broadcasting Services; Seaford, DE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes the allotment of channel 5 to Seaford, Delaware. The Commission is waiving the freeze on the filing of new DTV allotments to initiate this proceeding and to advance the policy, as set forth in Section 331(a) of the Communications Act of 1934, as amended, to allocate not less than one very high frequency (''VHF'') commercial television channel to each State, if technically feasible.

DATES: Comments must be filed on or before January 29, 2010, and reply comments on or before February 16, 2010.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–230, adopted December 17, 2009, and released December 18, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this

document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Delaware, is amended by adding channel 5 at Seaford.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau, Federal Communications Commission.

[FR Doc. E9–31011 Filed 12–29–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2606; MB Docket No. 09–231; RM–11587]

Television Broadcasting Services; Atlantic City, NJ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes the allotment of channel 4 to Atlantic City, New Jersey. The Commission is waiving the freeze on the filing of new DTV allotments to initiate this proceeding and to advance the policy, as set forth in Section 331(a) of the Communications Act of 1934, as amended, to allocate not less than one very high frequency (''VHF'') commercial television channel to each State, if technically feasible.

DATES: Comments must be filed on or before January 29, 2010, and reply comments on or before February 16, 2010.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–231, adopted December 17, 2009, and released December 18, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under New Jersey, is amended by adding channel 4 at Atlantic City.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. E9–31015 Filed 12–29–09; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 74, No. 249

Wednesday, December 30, 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 COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Census Coverage Measurement Person Follow-Up and Person Follow-Up Reinterview Operations

AGENCY: U.S. Census Bureau, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before March 1, 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(s) and instructions should be directed to Gia F. Donnalley, U.S. Census Bureau, 4600 Silver Hill Road, Room 4K067, Washington, DC 20233, 301–763–4370 (or via the Internet at *Gia.F.Donnalley@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The 2010 Census Coverage Measurement (CCM) Person Follow-up and Person Follow-up Reinterview Operations will be conducted in the U.S. (excluding remote Alaska) and in Puerto Rico in select CCM sampled areas. The primary sampling unit is a block cluster, which consists of one or more geographically contiguous census blocks. As in the past, the CCM operations and activities will be conducted independent of and not influence the 2010 Census operations.

CCM will be conducted to provide estimates of both net coverage error and coverage error components for omissions and erroneous enumerations for housing units and persons in housing units (*see* Definition of Terms) in order to gather information necessary to improve future censuses. The data collection and matching methodologies for previous coverage measurement programs were designed only to measure net coverage error, which measures the net difference between omissions and erroneous enumerations.

The 2010 CCM sample is a multi-phase probability sample of housing units comprising a number of distinct processes, ranging from forming block clusters, selecting the block clusters where the CCM survey will be conducted, to eventually selecting addresses for interviewing. Two samples will be selected to measure census coverage of housing units and household population: the population sample (P Sample) and the enumeration sample (E sample). These two samples have traditionally defined the samples for dual system estimation, a statistical technique for measuring net coverage error. The P Sample is a sample of housing units and persons obtained and independently enumerated from the census for a sample of block clusters, while the E Sample is a sample of census housing units and enumerations in the same block clusters as the P sample.

The independent list of housing units is obtained during the CCM Independent Listing Operation, the results of which will be matched to census housing units in the sample block clusters and surrounding blocks. After the CCM Independent Listing and matching operations have taken place, some cases with discrepancies between the CCM Independent Listing and the Census will be identified to receive the CCM Housing Unit Follow-up interview. The results of this interview will again be matched to the list of census housing units. The results of the housing unit matching operations will be used to determine which CCM and Census addresses will be eligible to go to the CCM Person Interview Operation. After data collected from the CCM Person Interview is matched to data collected by the Census, some cases with discrepancies between the CCM Person Interview and Census will be sent for another CCM interview called the CCM Person Follow-up Operation. A separate **Federal Register** Notice has already been issued for the CCM Independent Listing, CCM Housing Unit Follow-up, and CCM Person Interview operations.

For each case identified during matching, we will conduct a CCM Person Follow-up for selected persons in the household. During CCM Person Follow-up, interviewers will use a paper data collection instrument to obtain information about the selected persons.

The CCM Person Follow-up operation will collect the information needed to determine where each selected person should be counted on Census Day (according to Census residence rules). For example, interviewers will probe for additional addresses where the person may have stayed during the year and dates of stay for each address.

The CCM Person Follow-up Reinterview is a quality control operation that will be conducted on 15 percent of the Person Follow-up cases. The purpose of the Person Follow-up Reinterview is to confirm that the CCM Person Follow-up interviewer conducted a CCM Person Follow-up interview with a household member or a proxy respondent and to conduct the complete CCM Person Follow-up interview as needed if the original interview seems questionable.

II. Method of Collection

The CCM Person Follow-up and Person Follow-up Reinterview operations will be conducted using a paper questionnaire. The CCM Person Follow-up will be conducted through personal interviews while Person Follow-up Reinterview will be conducted through personal and telephone interviews. The CCM Person Follow-up and Person Follow-up Reinterview operations will occur starting January 28, 2011 through March 26, 2011.

Definition of Terms

Components of Coverage Error—The two components of census coverage error are census omissions (missed persons or housing units) and erroneous enumerations (persons or housing units enumerated in the census that should not have been). Examples of erroneous enumerations are persons or housing units enumerated in the census that should not have been enumerated at all, persons or housing units enumerated in an incorrect location, and persons or housing units enumerated more than once (duplicates).

Net Coverage Error—Net Coverage Error is a measure of the difference between census omissions and erroneous enumerations. A positive net error indicates an undercount, while a negative net error indicates an overcount.

For more information about the Census 2010 Coverage Measurement Program, please visit the following page of the Census Bureau's Web site: *http://www.census.gov/cac/www/pdf/coverage-measurement-program.pdf.*

III. Data

OMB Control Number: None.

Form Number: D–1301, D–1301(PR), D–1301.2, D–1301.2(PR).

Type of Review: Regular submission.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 57,776 sample addresses for PFU and 8,667 sample addresses for PFU RI.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 16,611 hours.

Estimated Total Annual Cost: No cost to the respondents except for their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S. Code, Sections 141, 193, and 221.

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 24, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–30954 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Cook Inlet Beluga Whale Pilot Economic Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), 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 March 1, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 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 Dr. Dan Lew, (530) 752–1746 or *Dan.Lew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The population of Cook Inlet beluga whales found in the Cook Inlet of Alaska is one of five distinct population segments in United States (U.S.) waters. It was listed as endangered under the *Endangered Species Act* on October 22, 2008 (73 FR 62919). The public benefits associated with the results of protective actions on the Cook Inlet beluga whale, such as population increases, are primarily the result of the non-consumptive value people attribute to such protection (*e.g.,* active use values associated with being able to view beluga whales and passive use values unrelated to direct human use). Little is known about these values, yet such information is needed for decision makers to more fully understand the trade-offs involved in choosing among potential protection alternatives and to complement other information available about the costs, benefits, and impacts of protection alternatives.

The National Marine Fisheries Service plans to conduct a pilot survey to test a survey instrument that will be used to collect data for measuring the economic benefits the public receives for providing additional protection, beyond current levels, to the Cook Inlet beluga whale. These preferences are currently not known, but are needed to assist in the evaluation of alternative measures to further protect and recover the species' population, such as in the evaluation of critical habitat designations. The pilot survey consists of conducting a small-scale mail-telephone survey of U.S. households that will collect information needed to evaluate the survey instrument and implementation procedures.

II. Method of Collection

Data will be collected primarily through a mail survey of a random sample of U.S. households with an oversampling of Alaska households. Additional data will be collected in telephone interviews with individuals who do not respond to the mail survey.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Households.

Estimated Number of Respondents: 240.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 34.

Estimated Total Annual Cost to Public: $0.

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.C

Dated: December 23, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–30924 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Quarterly Survey of State and Local Tax Revenues

AGENCY: U.S. Census Bureau, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before March 1, 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(s) and instructions should be directed to Cheryl Lee, Chief, State Finance and Tax Statistics Branch, Governments Division, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233 (301–763–5635).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the Quarterly Summary of State and Local Tax Revenue, using the F–71 (Quarterly Survey of Property Tax Collection), F–72 (Quarterly Survey of State Tax Collections), and F–73 (Quarterly Survey of Non-Property Taxes) forms. The Census Bureau is requesting a revision to the F–73 form, which surveys local governments on the non-property taxes they collect. The revised form will collect additional information about local government revenue, covering areas such as motor fuel sales, public utilities, alcohol sales, tobacco sales, motor vehicle licenses and operator's licenses corporate income and all other non-property taxes. The Census Bureau needs local tax data to publish benchmark statistics on public sector taxes, to provide data to the Bureau of Economic Analysis for Gross Domestic Product (GDP) calculations and other economic indicators, and to provide data for economic research and comparative studies of governmental finances. Data are collected on a quarterly basis from State and local government tax collecting agencies.

Tax collection data are used to measure economic activity for the Nation as a whole, as well as for comparison among the various States. These data also are useful in comparing the mix of taxes employed by individual localities, and in determining the revenue raising capacity of different types of taxes.

The Quarterly Survey of Non-Property Taxes (Form F–73) will be sent to approximately 3,000 local tax collection agencies known to have substantial collections of local general sales and/or local individual income taxes every quarter. A new sample frame is being developed to accompany the new survey design. The new sample is designed to meet the Office of Management and Budget's statistical standards for data quality.

II. Method of Collection

The F–73 forms are sent to respondents by direct mail. Respondents submit the forms by mail, e-mail, facsimile or Internet. (E-mail and facsimile are accepted but not encouraged.)

In those instances when we are not able to obtain a response we conduct follow-up operations using e-mail and phone calls.

III. Data

OMB Control Number: 0607–0112.

Form Number: F–71, F–72, F–73.

Type of Review: Regular submission.

Affected Public: Local governments.

Estimated Number of Respondents: 3,800.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 11,400.

Estimated Total Annual Cost: $269,154.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 182.

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 24, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–30969 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Internet Reinterview Evaluation

AGENCY: U.S. Census Bureau, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before March 1, 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(s) and instructions should be directed to Randall Neugebauer, Bureau of the Census, HQ–3H381, Washington, DC 20233; (301) 763–6883 or *randall.j.neugebauer@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

As the 2010 Census approaches, planning for the 2020 Census is already underway. One particular area of interest for the next decade is to make the census more cost-effective and accurate. To that end, the Census Bureau will explore the use of the Internet for the 2020 Census as an alternative means for the public to respond to the census. Thus, we have established the Internet Reinterview Evaluation as a research component under the 2010 Census Program for Evaluations and Experiments (CPEX). A major goal of this evaluation, and other projects under the umbrella of the 2010 CPEX, is to assist in guiding future census design.

The main objective of the Internet Reinterview Evaluation is to estimate measurement errors, such as simple response variance and bias of responses from a census paper questionnaire compared to a census Internet questionnaire. The study will also include a mail reinterview component, which will provide additional information for estimating simple response variance. In addition to these measures, we also plan to collect metadata related to respondent usability of an Internet census questionnaire (*i.e.* keystroke analysis, break-off rates, completion times, *etc.*)

II. Method of Collection

The general methodology for this evaluation focuses on the use of a self-administered Internet reinterview. Internet reinterview data will be compared to 2010 Census paper questionnaire data for the same households to estimate gross difference rates. A similar comparison will be made for the mail reinterview to estimate gross difference rates for the paper mode. These gross difference rates will be compared to get the measurement error that arises from Internet versus census paper questionnaires.

Measurement error can arise from various sources, such as questionnaire design features and response mode. These design features include format (topic- or person-based), navigational flow (one question per screen), response category presentation (list or banked categories), visual design elements (such as item numbering and logos), and other questionnaire components. To supplement the interpretation of the survey results, laboratory data from usability and cognitive testing will be evaluated.

The reinterviews will be conducted with a sample of 2010 Census mail respondents. The 2010 Internet Reinterview Evaluation is intended to provide estimates of measurement error associated with the design and content of a self-administered census Internet questionnaire. Since the measurement error structure may differ depending on whether a respondent has only one response mode option (*i.e.* mail or Internet) versus having a choice between the two modes, we are testing both ''push'' and ''choice'' strategies. Thus, a sample of 2010 Census mail/paper questionnaire respondents will be invited to complete an Internet reinterview (''push'' Internet), which has the same content as the 2010 paper questionnaire. A separate sample of the 2010 mail questionnaire respondents will be invited to complete a mail reinterview (''push'' mail) with the same 2010 content. A third sample of the 2010 mail questionnaire respondents will be invited to complete a reinterview with the choice of mail and Internet modes (''choice'' Internet/mail).

Comparing the Internet reinterview responses with 2010 Census paper questionnaire data will yield estimates of the gross difference rates for each data item. Similarly, we will compare the mail reinterview responses with 2010 Census paper questionnaire data to get estimates of the gross difference rates for the same data items. Then, we will compare the gross difference rate estimates for the two reinterviews to assess the simple response variance of the census Internet questionnaire versus the census paper questionnaire administration. In addition to this traditional approach, we are currently exploring the use of alternative analysis methods to estimate the error probabilities. We will also attempt to get an indication of the magnitude of nonresponse bias by comparing demographic characteristics of reinterview respondents and nonrespondents based on data from their 2010 Census paper responses.

The Internet and mail reinterviews will be conducted in late summer, after the 2010 Census enumeration activities have been completed in order to minimize the risk to 2010 Census data collection. However, the reinterviews will be conducted as close to the census enumeration as feasible in order to effectively compare reinterview results to the 2010 Census self-administered paper questionnaire. Reinterview results collected within the census environment should reflect a more generalizable measurement error structure for future censuses than results from a mid-decade census test. In addition, we hope to capitalize on respondents' memory of the recent census advertising to obtain a higher response to the reinterviews than would be possible in the absence of the 2010 Census environment.

The Internet reinterview contact strategy will be similar to the contact strategy that is used for the 2010 Census. Sampled households will be sent an advance letter as well as a notification letter to inform them of the survey and to provide details about how to respond online. Up to two reminder postcards/letters will also be sent.

The full implementation contact strategy that is used for the 2010 Census will be implemented for the mail reinterview and the mail/Internet choice reinterview, which includes an advance letter, initial questionnaire package, reminder postcard, and replacement questionnaire. The mail reinterview questionnaire will be identical in content to the 2010 Census mail questionnaire but will have a different title, will contain the Bureau of the Census seal (as opposed to the 2010 Census logo), and will have a 'thank you' that is customized for reinterview respondents.

The Internet questionnaire is currently being developed. The Internet instrument is not intended to simply replicate the 2010 paper questionnaire in an electronic mode. Rather, the goal is to evaluate measurement error associated with an Internet questionnaire that exploits the advantages of the electronic technology, while still retaining the meaning and intent of the questions and response options from the paper form. Extensive laboratory usability testing will be conducted during the design phase. This will include qualitative research such as eye-tracking and mouse-tracing studies, key-stroke analysis, and documentation of what question(s), if any, were most susceptible to confusion or other problems.

III. Data

OMB Control Number: 0607–XXXX.
Form Number: TBD.
Type of Review: Regular submission.
Affected Public: Individuals or Households.

Estimated Number of Respondents: 262,857

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 43,810.

Estimated Total Annual Cost: There is no cost to the respondent other than his/her time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Sections 141 and 193.

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 24, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–30966 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943]

Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Amended Preliminary Determination of Sales at Less Than Fair Value

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

DATES: *Effective Date:* December 30, 2009.

SUMMARY: The Department of Commerce (''Department'') has determined that it made certain significant ministerial errors in the preliminary determination of sales at less than fair value in the antidumping duty investigation of oil country tubular goods (''OCTG'') from the People's Republic of China (''PRC'') [1] as described below in the ''Supplementary Information'' section of this notice. The Department has corrected those errors and has re-calculated the antidumping duty margins for a mandatory respondent and for exporters eligible for a separate rate as shown below in the ''Amended Preliminary Determination'' section of this notice. As a result of a document conversion error, the version of this notice released to interested parties on December 4, 2009, omitted the name of an exporter/producer combination that is eligible for a separate rate [2] and inadvertently misidentified the name of a non-selected respondent, Qiqihaer Haoying Iron and Steel Co., Ltd. of Northeast Special Steel Group (''Qiqihaer''), a separate-rate applicant. This amended notice corrects this error. Because these errors were discovered prior to publication in the **Federal Register**, this amended preliminary determination is being published in place of the original version released on December 4, 2009.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Eugene Degnan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474, or 482–0414, respectively.

Scope of Investigation

The merchandise covered by the investigation consists of certain oil country tubular goods (''OCTG''), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the investigation also covers OCTG coupling stock. Excluded from the scope of the investigation are casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise covered by the investigation is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the investigation may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80.

The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of the investigation is dispositive.

SUPPLEMENTARY INFORMATION:

Significant Ministerial Error

Pursuant to 19 CFR 351.224(e) and (g)(1), the Department is amending the preliminary determination of sales at less than fair value in the antidumping duty investigation of OCTG from the PRC to reflect the correction of significant ministerial errors it made in the margin calculations regarding

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[1] *See Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination,* 74 FR 59117 (November 17, 2009) (''*Preliminary Determination*'').

[2] The amended Preliminary Determination released to parties on December 4, 2009, inadvertently omitted the following exporter and producer combination: Exporter, Pangang Group Chengdu Iron & Steel; Producer, Pangang Group Chengdu Iron & Steel.

Tianjin Pipe (Group) Corporation (''TPCO''), a mandatory respondent, and in the name of a non-selected respondent, Qiqihaer Haoying Iron and Steel Co., Ltd. of Northeast Special Steel Group (''Qiqihaer''), a separate rate applicant. A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. *See* 19 CFR 351.224(f). A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. See 19 CFR 351.224(g).

Ministerial-Error Allegation

On November 17, 2009, the Department published its affirmative preliminary determination in this proceeding. *See Preliminary Determination.* On November 13, 2009, Qiqihaer, a separate rate applicant, submitted a ministerial error allegation claiming that the Department did not name it in the *Preliminary Determination* as one of the exporters receiving a separate rate. On November 16, 2009, Maverick Tube Corporation and United States Steel Corporation (''Petitioners'') [3] submitted ministerial error allegations with respect to the margin calculations for TPCO in the *Preliminary Determination,* relating to certain conversion errors and surrogate value calculations. No other interested party submitted ministerial error allegations. The Department has reviewed its preliminary calculations and agrees that the errors which the parties alleged are significant ministerial errors within the meaning of 19 CFR 351.224(g). *See* the ''Ministerial Error Memorandum, Certain Oil Country Tubular Goods from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value,'' dated December 4, 2009, for a discussion of the ministerial error allegations. *See* Appendix I for a list of the ministerial error allegations.

We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e). As a result of this amended preliminary determination, we have revised the antidumping rate for TPCO and corrected Qiqihaer's name in the list of exporters that received a separate rate.[4] In addition, we have revised the separate rate based on TPCO's revised dumping margin.

The collection of bonds or cash deposits and suspension of liquidation will be revised accordingly and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Tariff Act of 1930, as amended, (''the Act'').

Effective Date

The effective date of the corrected name for Qiqihaer will be November 17, 2009, the date of publication of the *Preliminary Determination.* The effective date of the amended preliminary determination rate for TPCO and the separate rate recipients will the date of publication of this amended preliminary determination in the **Federal Register.**

Amended Preliminary Determination

As a result of our correction of significant ministerial errors in the *Preliminary Determination,* we have determined that the following weighted-average dumping margins apply:

Exporter	Producer	Weighted-average margin
Tianjin Pipe International Economic and Trading Corporation	Tianjin Pipe (Group) Corporation	96.51
Angang Group Hong Kong Co., Ltd	Angang Steel Co. Ltd	96.51
Angang Steel Co., Ltd., and Angang Group International Trade Corporation.	Angang Steel Co. Ltd	96.51
Anhui Tianda Oil Pipe Co., Ltd	Anhui Tianda Oil Pipe Co., Ltd	96.51
Anshan Zhongyou Tipo Pipe & Tubing Co., Ltd	Anshan Zhongyou Tipo Pipe & Tubing Co., Ltd	96.51
Baotou Steel International Economic and Trading Co., Ltd	Baotou Steel International Economic and Trading Co., Ltd	96.51
Benxi Northern Steel Pipes Co., Ltd	Benxi Northern Steel Pipes Co., Ltd	96.51
Chengdu Wanghui Petroleum Pipe Co. Ltd	Chengdu Wanghui Petroleum Pipe Co. Ltd	96.51
Dalipal Pipe Company	Dalipal Pipe Company	96.51
Faray Petroleum Steel Pipe Co. Ltd	Faray Petroleum Steel Pipe Co. Ltd	96.51
Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch.	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch.	96.51
Hengyang Steel Tube Group International Trading, Inc	Hengyang Valin MPM Tube Co., Ltd.; Hengyang Valin Steel Tube Co., Ltd.	96.51
Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd.	Huludao Steel Pipe Industrial Co., Ltd./Huludao City Steel Pipe Industrial Co., Ltd.	96.51
Jiangsu Chengde Steel Tube Share Co., Ltd	Jiangsu Chengde Steel Tube Share Co., Ltd	96.51
Jiangyin City Changjiang Steel Pipe Co., Ltd	Jiangyin City Changjiang Steel Pipe Co., Ltd	96.51
Pangang Group Beihai Steel Pipe Corporation	Pangang Group Beihai Steel Pipe Corporation	96.51
Pangang Group Chengdu Iron & Steel	Pangang Group Chengdu Iron & Steel	96.51
Qingdao Bonded Logistics Park Products International Trading Co., Ltd.	Shengli Oilfield Highland Petroleum Equipment Co., Ltd.; Shandong Continental Petroleum Equipment Co., Ltd.; Aofei Tele Dongying Import & Export Co., Ltd.; Highgrade Tubular Manufacturing (Tianjin) Co., Ltd.; Cangzhou City Baohai Petroleum Material Co., Ltd.	96.51
Qiqihaer Haoying Iron and Steel Co., Ltd. of Northeast Special Steel Group.	Qiqihaer Haoying Iron and Steel Co., Ltd. of Northeast Special Steel Group.	96.51
Shandong Dongbao Steel Pipe Co., Ltd	Shandong Dongbao Steel Pipe Co., Ltd	96.51

[3] TMK IPSCO, V&M Star L.P., V&M Tubular Corporation of America, Wheatland Tube Corp., Evraz Rocky Mountain Steel, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC, also Petitioners, did not submit ministerial error allegations.

[4] In the *Preliminary Determination,* we inadvertently referred to Qiqihaer as ''Qiqihaer Bonded Logistics Park Products International Trading Co., Ltd.'' as both the exporter and producer; there was no separate rate applicant named Qiqihaer Bonded Logistics Park Products International Trading Co., Ltd.

Exporter	Producer	Weighted-average margin
ShanDong HuaBao Steel Pipe Co., Ltd	ShanDong HuaBao Steel Pipe Co., Ltd	96.51
Shandong Molong Petroleum Machinery Co., Ltd	Shandong Molong Petroleum Machinery Co., Ltd	96.51
Shanghai Metals & Minerals Import & Export Corp./Shanghai Minmetals Materials & Products Corp.	Jiangsu Changbao Steel Pipe Co., Ltd.; Huludao Steel Pipe Industrial Co., Ltd.; Northeast Special Steel Group Qiqihaer Haoying Steel and Iron Co., Ltd.; Beijing Youlu Co., Ltd.	96.51
Shanghai Zhongyou Tipo Steel Pipe Co., Ltd	Shanghai Zhongyou Tipo Steel Pipe Co., Ltd	96.51
Shengli Oil Field Freet Petroleum Equipment Co., Ltd	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch; Faray Petroleum Steel Pipe Co., Ltd.; Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.	96.51
Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd	Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch; Tianda Oil Pipe Co., Ltd; Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.	96.51
Shengli Oilfield Highland Petroleum Equipment Co., Ltd	Tianjin Pipe Group Corp.; Goods & Materials Supply Dept. of Shengli Oilfield SinoPEC;. Dagang Oilfield Group New Century Machinery Co. Ltd.; Tianjin Seamless Steel Pipe Plant; Baoshan Iron & Steel Co. Ltd.	96.51
Shengli Oilfield Shengji Petroleum Equipment Co., Ltd	Shengli Oilfield Shengji Petroleum Equipment Co., Ltd	96.51
Tianjin Xingyuda Import and Export Co., Ltd. & Hong Kong Gallant Group Limited.	Tianjin Lifengyuanda Steel Group Co., Ltd	96.51
Tianjin Seamless Steel Pipe Plant	Tianjin Seamless Steel Pipe Plant	96.51
Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	96.51
Wuxi Baoda Petroleum Special Pipe Manufacturing Co., Ltd	Wuxi Baoda Petroleum Special Pipe Manufacturing Co., Ltd	96.51
Wuxi Seamless Oil Pipe Co., Ltd	Wuxi Seamless Oil Pipe Co., Ltd	96.51
Wuxi Sp. Steel Tube Manufacturing Co., Ltd	Wuxi Precese Special Steel Co., Ltd	96.51
Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd	Huai'an Zhenda Steel Tube Manufacturing Co., Ltd	96.51
Xigang Seamless Steel Tube Co., Ltd	Xigang Seamless Steel Tube Co., Ltd.; Wuxi Seamless Special Pipe Co., Ltd.	96.51
Yangzhou Lontrin Steel Tube Co., Ltd	Yangzhou Lontrin Steel Tube Co., Ltd	96.51
Zhejiang Jianli Co., Ltd. & Zhejiang Jianli Steel Tube Co., Ltd	Zhejiang Jianli Co., Ltd.; Zhejiang Jianli Steel Tube Co., Ltd	96.51
PRC-wide Entity*		99.14

*Shengli Oil Field Freet Import & Export Trade Co., Ltd. is part of the PRC-wide entity.

The PRC-wide rate has not been amended. Further, we will not instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation or require a cash deposit or the posting of a bond for imports of OCTG from the PRC exported and produced by Changbao, because we have calculated a margin of zero percent for Changbao. In addition, consistent with the *Preliminary Determination,* we will adjust, as appropriate, the remaining exporter's cash deposit rates for export subsidies determined in *Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210 (September 15, 2009).

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of the preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or likelihood of sales) for importation, of the subject merchandise.

This determination is issued and published in accordance with sections 733(f) and 777(I)(1) of the Act and 19 CFR 351.224(e).

Dated: December 18, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Issue 1: Whether the Department incorrectly applied a currency conversion rate to the surrogate value for oxygen.

Issue 2: Whether the Department used the correct value for steel scrap.

Issue 3: Whether the Department used the correct surrogate value for marine insurance.

Issue 4: Whether the Department made an error converting brokerage and handling to a metric ton (''MT'') basis.

Issue 5: Whether the Department erroneously applied a weight conversion to certain export price (''EP'') sales.

Issue 6: Whether the Department applied converted MT values in certain U.S. price adjustments.

Issue 7: Whether the Department failed to list the name of a company granted a separate rate in the preliminary determination in the **Federal Register** notice.

[FR Doc. E9–31025 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1656]

Approval of Manufacturing Authority; Foreign-Trade Zone 79; Tampa, FL; Tampa Ship, LLC (Shipbuilding)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Tampa (Florida), grantee of FTZ 79, has requested authority under Section 400.28(a)(2) of the Board's regulations on behalf of Tampa Ship, LLC, to construct and repair oceangoing vessels under FTZ

procedures within FTZ 79—Site 5, Tampa, Florida (FTZ Docket 1–2009, filed 1–23–2009);

Whereas, the proposed shipbuilding and repair activity would be subject to the ''standard shipyard restriction'' (full customs duties paid on steel mill products);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 6012, 2–4–2009);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for the construction and repair of oceangoing vessels within FTZ 79 for Tampa Ship, LLC, as described in the application and **Federal Register** notice, subject to the Act and the Board's regulations, including Section 400.28, and the following special conditions:

1. Any foreign steel mill product admitted to FTZ 79 for the Tampa Ship, LLC activity, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill.

2. Tampa Ship, LLC shall meet its obligation under 15 CFR § 400.28(a)(3) by annually advising the Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the zone primarily because of FTZ procedures and whether the Board should consider requiring customs duties to be paid on such items.

3. All foreign-origin safety netting (HTSUS 5608.90) for the Tampa Ship, LLC activity must be admitted to the zone in privileged foreign status (19 CFR 146.41) or domestic (duty-paid) status (19 CFR 146.43).

Signed at Washington, DC, this *18th* day of December 2009.

Ronald K. Lorentzen

Deputy Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–31022 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Clarification of the 2009 Calculation of Expected Non-Market Economy Wages

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

ACTION: Clarification of the effective date of 2009 expected non-market economy wage calculation.

SUMMARY: On December 8, 2009, the Department of Commerce (''Department'') published the final calculation of the 2009 expected non-market economy (''NME'') wages. *See 2009 Calculation of Expected Non-Market Economy Wages,* 74 FR 65092 (December 9, 2009) (''*Final 2009 Notice''*). In the *Final 2009 Notice,* the Department stated that the final wage rate would be applied to all antidumping proceedings for which the Department's final decision is due after the publication of the notice. The Department hereby clarifies that it will apply this wage rate to final determinations subsequent to the publication of the *Final 2009 Notice* in antidumping proceedings for which the Department has not yet reached the preliminary results. The *Final 2009 Notice* remains in effect in all other respects.

DATES: These expected NME wage rates have been finalized in the *Final 2009 Notice* and will be applied to all antidumping proceeding final determinations subsequent to December 8, 2009, for which the Department has not yet reached the preliminary results.

FOR FURTHER INFORMATION CONTACT: Bobby Wong, International Trade Analyst, Operations Office IX, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0409.

RESULTS: The final results and underlying data for the 2009 calculation have been posted on the Import Administration Web site at (*http://ia.ita.doc.gov*).

Dated: December 22, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–31024 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT53

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for five new scientific research permits and two permit modifications.

SUMMARY: Notice is hereby given that NMFS has received seven scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview__open__for__comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on January 29, 2010.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *nmfs.nwr.apps@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above, or online at *apps.nmfs.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), threatened upper Willamette River (UWR), endangered upper Columbia River (UCR), threatened

Snake River (SR) spring/summer (spr/sum), threatened SR fall, threatened Puget Sound (PS).

Chum salmon (*O. keta*): threatened Columbia River (CR).

Steelhead (*O. mykiss*): threatened LCR, threatened UWR, threatened middle Columbia River (MCR), threatened SR, threatened UCR, threatened PS.

Coho salmon (*O. kisutch*): threatened LCR, threatened Oregon Coast (OC).

Sockeye salmon (*O. nerka*): endangered SR.

Green Sturgeon (Acipenser medirostris)

Eulachon: Southern Distinct Population Segment (DPS) (*Thaleichthys pacificus*)

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et. seq) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1379–5M

The Columbia River Inter-Tribal Fish Commission (CRITFC) is seeking to modify a permit that currently allows them to take listed salmonids (UCR steelhead and Chinook; LCR steelhead and Chinook; MCR steelhead; and SR steelhead, spr/sum Chinook, fall Chinook, and sockeye) while conducting research designed to increase what we know about the status and productivity of various fish populations, collect data on migratory and exploitation (harvest) patterns, and develop baseline information on various population and habitat parameters in order to guide salmonid restoration strategies. The permit would comprise four studies: Project 1--Juvenile Upriver Bright Fall Chinook Sampling at the Hanford Reach; Project 2--Adult Chinook, Sockeye, and Coho Sampling at Bonneville Dam; Project 3--Adult Sockeye Sampling at Tumwater and Wells dams; and Project 4--Acoustic trawl survey for Lake Wenatchee juvenile sockeye salmon. This modification would increase the number of fish CRITFC is allowed to handle and add Project 4. The research will benefit listed fish by helping managers set in-river and ocean harvest regimes so that they have minimal impacts on listed populations. It will also help managers prioritize projects in a way that gives maximum benefit to listed species including projects designed to help the listed fish recover. The CRITFC would obtain fish from the adult collection facilities at Bonneville, Wells, and Tumwater dams. The fish will be anesthetized, measured, examined for marks, scale-sampled, and allowed to return to the river. The researchers would also use beach- and stick seines to capture and tag juvenile fish in the Hanford reach of the Columbia River and capture fish during mid-water trawls in Lake Wenatchee. Those fish that are not immediately released upon capture would be transported to a holding facility where they will be anesthetized, examined for marks, adipose-clipped, coded wire tagged, allowed to recover, and released. The CRITFC does not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

Permit 14271–2M

The Washington State Department of Ecology (Ecology) is seeking to modify their 2 year scientific research permit that currently authorizes them to take juvenile and adult PS Chinook salmon, PS steelhead, and HC chum salmon. The modification would expand the area of the research to include the lower Columbia River and some Washington coastal areas. It would also allow them to take UCR steelhead and Chinook, SR sockeye, spr/sum Chinook, fall Chinook, and steelhead, LCR Chinook, coho and steelhead, MCR steelhead, UWR Chinook, CR chum, green sturgeon, and southern DPS eulachon. The purpose of the project is to continue developing a sampling plan to report on the status of watershed health and salmon recovery efforts at three spatial scales: Water Resource Inventory Area, Salmon Recovery Region, and statewide. The goal is to develop a quality assurance monitoring plan for statewide probability-based sampling of aquatic habitat conditions and species diversity and abundance. The information gathered by this research would benefit listed salmonids by helping resource managers evaluate the effectiveness of habitat restoration efforts and the status and trends of aquatic species. The applicant proposes to capture fish with backpack and boat electrofishing equipment. Listed fish would be enumerated and immediately released. The applicant does not propose to kill any listed fish species, but a small number may die as an unintended result of the activities.

Permit 14647

Wyllie-Echeverria Associates (WEA) is seeking to renew a research permit (permit 1521–4M) that currently authorizes the WEA to take juvenile natural and hatchery PS Chinook while conducting research designed to determine which salmonid species and which Chinook salmon stocks use the nearshore marine habitats of San Juan Archipelago, Washington. The modification would allow them to take juvenile PS steelhead as well. The research would benefit the listed fish by helping managers set priorities for protecting salmonid habitat in Washington. Also, the information gathered would be used in salmon recovery planning. The WEA proposes to capture fish using beach seines, toss nets, and surface tow nets. The fish would be handled, anesthetized, fin clipped, and released at selected sites in the nearshore marine habitats of the islands. The WEA does not propose to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 14678

Mr. Kenneth L. Witty is seeking to annually take juvenile, threatened, MCR steelhead during the course of scientific research in the Yakima River basin in Washington. The purpose of the research is to study fish communities in the irrigation drainage networks of the lower Yakima River basin. The project will determine the extent to which threatened steelhead juveniles inhabit the irrigation networks. The research will benefit threatened MCR steelhead by giving Federal managers data on where the fish are in the Yakima River basin irrigation system thus helping them make decisions about how to run the system in a way that conserves the species. Backpack electrofishing equipment will be used to sample fish distribution and abundance. Mr. Witty does not intend to kill any listed salmonids but a few may die as an unintentional result of the research.

Permit 14717

The US Fish and Wildlife Service (FWS) is requesting a one-year research permit to take juvenile LCR Chinook,

coho, and chum salmon. The Pacific Northwest National Laboratory has been conducting a comparative study of disturbed, undisturbed, and restored estuarine marshes in three tributaries of the Gray's River, Washington. Their study has examined the vegetative and hydrological conditions but relatively little information has been collected on salmonids. The objective of the FWS is to study species distribution and abundance in these three tributaries. The goal of the FWS is to determine if there is a significant difference in species abundance and diversity among these three sites. The research would benefit the species by helping managers learn more about the effectiveness of habitat restoration efforts. The FWS would use backpack electrofishing equipment to capture, handle, and release salmonids. Fish would be sedated with MS–222, weighed, measured, then allowed to recover before release. The FWS does not intend to kill any fish being captured but a small number may die as an unintended result of the activities.

Permit 14772

The Oregon Department of Fish and Wildlife (ODFW) is requesting a five-year research permit to take juvenile and adult OC coho salmon. The objective of the research is to determine fish abundance and distribution, as well as habitat preference in the Umpqua River. The ODFW would also study the distribution of non-native invasive species, interspecific competition, and predator-prey interactions. The information would benefit OC coho by helping to improve management plans. The ODFW would use backpack and boat electrofishing equipment to capture fish that would then be handled and swiftly released. The ODFW will avoid adult coho, but a few may be shocked. If the researchers were to encounter adult coho, they would shut off the electrical current and allow the fish to swim away and no more electrofishing would occur in that location. The ODFW does not intend to kill any of the fish being captured but a small number of juvenile coho may die as an unintended result of the activities.

Permit 15119

The Washington State Department of Ecology (Ecology) is requesting a 1-year research permit to take all fish species identified in this notice while conducting research throughout the coastal waters of the State of Washington. The research is part of the EPA-funded National Coastal Condition Assessment, which investigates the occurrence and concentrations of toxic contaminants in marine and estuarine fish tissue as one component of ecological health. The listed species would benefit indirectly from the development of actions to control, reduce, and remove toxic contaminants from Washington State's waters. Ecology would capture fish (using otter trawl, hook-and-line, or beach seine), handle, and release them. Ecology does not intend to kill any listed fish, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations.The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: December 24, 2009.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–31005 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XT55

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings, and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2010 ocean salmon fisheries. This document announces the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council(s complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April 2010 Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management options must be received by 11:59 p.m. Pacific Time, April 1, 2010.

ADDRESSES: Documents will be available from, and written comments should be sent to, Mr. David Ortmann, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: (503) 820–2280 (voice) or (503) 820–2299 (fax). Comments can also be submitted via e-mail at *PFMC.comments@noaa.gov*. address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include the I.D. number in the subject line of the message. For specific meeting and hearing locations, see supplementary information.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION:

Schedule for Document Completion and Availability

February 25, 2010: ''Review of 2009 Ocean Salmon Fisheries'' and ''Preseason Report I-Stock Abundance Analysis for 2010 Ocean Salmon Fisheries'' will be mailed to the public and posted on the Council website at *http://www.pcouncil.org*.

March 23, 2010: ''Preseason Report II-Analysis of Proposed Regulatory Options for 2010 Ocean Salmon Fisheries'' and public hearing schedule will be mailed to the public and posted on the Council website at *http://www.pcouncil.org*. The report will include a description of the adopted salmon management options and a summary of their biological and economic impacts.

April 23, 2010: ''Preseason Report III-Analysis of Council-Adopted Ocean Salmon Management Measures for 2010 Ocean Salmon Fisheries'' will be mailed to the public and posted on the Council website at *http://www.pcouncil.org*.

May 1, 2010: Federal regulations for 2010 ocean salmon regulations will be published in the **Federal Register** and implemented.

Meetings and Hearings

January 19–22, 2010: The Salmon Technical Team (STT) will meet at the Council office in a public work session to draft ''Review of 2009 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues

pertinent to the 2010 ocean salmon fisheries.

February 16–19, 2010: The STT will meet at the Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis for 2010 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2010 ocean salmon fisheries.

March 29–30, 2010: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. Written comments received at the public hearings, and a summary of oral comments at the hearings will be provided to the Council at its April meeting.

All public hearings begin at 7 p.m. at the following locations:

March 29, 2010: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone: (360) 268–9101.

March 29, 2010: Red Lion Hotel, Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone: (541) 269–4099.

March 30, 2010: Red Lion Eureka, Evergreen Room, 1929 Fourth Street, Eureka, CA 95501, telephone: (707) 445–0844.

Although non-emergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT(s intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 (voice), or (503) 820–2299 (fax) at least 5 days prior to the meeting date.

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

Dated: December 23, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–30883 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–703]

Granular Polytetrafluoroethylene Resin From Italy: Rescission of Antidumping Duty Administrative Review

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

DATES: *Effective Date:* December 30, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1785.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2009, the Department of Commerce (''the Department'') published a notice announcing the opportunity to request an administrative review of the antidumping duty order on granular polytetrafluoroethylene (''PTFE'') resin from Italy for the period August 1, 2008 through July 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 38397 (August 3, 2009). On August 28, 2009, in accordance with 19 CFR 351.213(b), the Department received a timely request from E.I. DuPont de Nemours & Company to conduct an administrative review of Solvay Solexis, S.p.A.

On September 22, 2009, the Department published a notice of initiation of an antidumping duty administrative review of Solvay Solexis, S.p.A.'s exports from Italy. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 48224 (September 22, 2009). On December 10, 2009, E.I. DuPont de Nemours & Company, the petitioner, withdrew its request for review.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, E.I. DuPont Nemours & Company, the sole party requesting the review, withdrew its request on December 10, 2009, which was before the 90-day deadline. Therefore, pursuant to 19 CFR 351.213(d)(1), the Department is rescinding the administrative review of the antidumping duty order on granular PTFE resin from Italy for the period August 1, 2008 to July 31, 2009.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Since the review of Solvay S.p.A. is being rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this rescission notice in the **Federal Register**.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: December 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–31020 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No.: 0912231439–91442–01]

Solicitation of Applications for the Minority Business Enterprise Center (MBEC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with 15 U.S.C. 1512 and Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate a Minority Business Enterprise Center (MBEC) in New Orleans, LA to service the New Orleans-Metairie-Kenner, LA service area. The MBEC operates through the use of business consultants and provides a range of business consulting and technical assistance services directly to eligible minority-owned businesses. Responsibility for ensuring that applications in response to this competitive solicitation are complete and received by MBDA on time is the sole responsibility of the applicant. Applications submitted must be for the operation of a MBEC and to provide business consultation services to eligible clients. Applications that do not meet these requirements will be rejected. This is not a grant program to help start or to further an individual business.

A link to the full text of the Announcement of Federal Funding Opportunity (FFO) for this solicitation may be accessed at: *http://www.Grants.gov, http://www.mbda.gov,* or by contacting the appropriate MBDA representative identified above. The FFO contains a full and complete description of the application and programmatic requirements under the MBEC Program. In order to receive proper consideration, applicants must comply with the requirements contained in the FFO.

DATES: The closing date for receipt of applications is February 1, 2010 at 5 p.m. Eastern Standard Time (EST). Completed applications must be received by MBDA at the address below for paper submissions or at *http://www.Grants.gov* for electronic submissions. The due date and time is the same for electronic submissions as it is for paper submissions. The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered. Anticipated time for processing is seventy-five (75) days from the closing date for receipt of applications. MBDA anticipates that one award under this notice will be made with a start date of April 1, 2010.

Pre-Application Conference: In connection with this solicitation, a pre-application conference is scheduled for January 15, 2010. The time and location of the pre-application conference have yet to be determined. Participants must register at least 24 hours in advance of the conference and may participate in person or by telephone. Please visit the MBDA Internet Portal at *http://www.mbda.gov* (MBDA Portal) or contact an MBDA representative listed below for the specific time and location of the pre-application conference and for registration instructions.

ADDRESSES: *1. Electronic Submission:* Applicants are highly encouraged to submit their proposal electronically at *http://www.Grants.gov.* Electronic submissions should be made in accordance with the instructions available at Grants.gov (*see http://www.Grants.gov/forapplicants* for detailed information). MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov as, in some cases, the process for completing an online application may require 3–5 working days.

2a. Paper Submission—If Mailed: If the application is sent by postal mail or overnight delivery service by the applicant or its representative, one (1) signed original plus two (2) copies of the application must be submitted. Applicants are encouraged to also submit an electronic copy of the proposal, budget and budget narrative on a CD–ROM to facilitate the processing of applications. Complete application packages must be mailed to: Office of Business Development—MBEC Program, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Applicants are advised that MBDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery due to security measures. Applicants may therefore wish to use a guaranteed overnight delivery service. Department of Commerce delivery policies for overnight delivery services require all packages to be sent to the address above.

2b. Paper Submission—If Hand-Delivered: If the application is hand-delivered by the applicant or by its representative, one (1) signed original plus two (2) copies of the application must be delivered. Applicants are encouraged to also submit an electronic copy of the proposal, budget and budget narrative on a CD–ROM to facilitate the processing of applications. Complete application packages must be delivered to: U.S. Department of Commerce, Minority Business Development Agency, Office of Business Development—MBEC Program (extension 1940), HCHB—Room 1874, Entrance #10, 15th Street, NW. (between Pennsylvania and Constitution Avenues), Washington, DC. MBDA will not accept applications that are submitted by the deadline, but that are rejected due to the applicant's failure to adhere to Department of Commerce protocol for hand-deliveries set forth in Section IV.D.2 of the accompanying FFO.

FOR FURTHER INFORMATION CONTACT: For further information or for an application package, please visit MBDA's Minority Business Internet Portal at *http://www.mbda.gov.* Paper applications may also be obtained by contacting the MBDA Office of Business Development or the MBDA National Enterprise Center (NEC) in the region in which the MBEC will be located (see below Agency Contacts). In addition, Standard Forms (SF) may be obtained by accessing *http://www.whitehouse.gov/omb/grants* or *http://www.Grants.gov* and Department of Commerce (CD) forms may be accessed at *http://www.doc.gov/forms.*

Agency Contacts

1. MBDA Office of Business Development, 1401 Constitution Avenue, NW., Room 5075, Washington, DC 20230. Contact: Rita Gonzales, Program Manager, 202–482–1940.

2. MBDA Dallas National Enterprise Center (DNEC), 1100 Commerce Street, Room 726, Dallas, Texas 75242. This region covers the States of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming. Contact: John F. Iglehart, Regional Director, 214–767–8001.

SUPPLEMENTARY INFORMATION: *Background:* The MBEC Program is a key component of MBDA's overall minority business development assistance program and promotes the growth and competitiveness of eligible minority-owned businesses. MBEC operators leverage project staff and professional consultants to provide a wide range of direct business assistance services to eligible minority-owned

firms, including but not limited to initial consultations and assessments, business technical assistance, and access to Federal and non-Federal procurement and financing opportunities.

MBDA currently funds a network of thirty MBEC projects located throughout the United States. Pursuant to this notice, and as set forth more fully in the corresponding FFO, competitive applications for a new award are being solicited for the one MBEC project identified below.

Geographical Service Areas: MBDA is soliciting competitive applications from organizations to operate a MBEC and to provide services in the following geographical service area:

Name of MBEC	Location of MBEC	MBEC geographical service area*
New Orleans MBEC	New Orleans, LA	New Orleans—Metairie—Kenner, LA MSA**

** Metropolitan Statistical Area, please see OMB Bulletin No.10–02, Update of Statistical Area Definitions and Guidance on Their Uses (December 1, 2009) at *http://www.whitehouse.gov/omb/bulletins.*

Electronic Access: Applicants will be able to access, download and submit electronic grant applications for the MBEC Program through *http://www.Grants.gov.* MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov, as in some cases the process for completing an online application may require additional time (*e.g.,* 3–5 working days). The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered.

Funding Priorities: Preference may be given during the selection process to applications that address one or more of the following MBDA funding priorities:

(a) Proposals that include performance goals that exceed by 10% or more the minimum performance goal requirements in the FFO;

(b) Applicants who demonstrate an exceptional ability to identify and work towards the elimination of barriers which limit the access of minority businesses to markets and capital;

(c) Applicants who demonstrate an exceptional ability to identify and work with minority firms seeking to obtain large-scale contracts and/or insertion into supply chains with institutional customers;

(d) Proposals that take a regional approach in providing services to eligible clients; or

(e) Proposals from applicants with pre-existing operations in the identified geographic service area.

Funding Availability: A total of $291,000 in FY 2010 funds is available under the Consolidated Appropriations Act, 2010, Pub. L. No. 111–117, to fund the financial assistance award for the New Orleans MBEC project. MBDA anticipates that this amount will also be available in FY 2011 to support continuation funding for this project. The total funding period for the award made under this competitive solicitation is anticipated to be two years and the award is expected to be made with a start date of April 1, 2010. The anticipated amount of the financial assistance award for the New Orleans MBEC project, including the minimum 20% non-Federal cost share, is set forth in the below table, although actual award amounts may vary depending on the availability of funds:

Project name	April 1, 2010 through March 31, 2011			April 1, 2011 through March 31, 2012		
	Total cost ($)	Federal share ($)	Non-Federal share ($) (20% min.)	Total cost ($)	Federal share ($)	Non-Federal share ($) (20% min.)
New Orleans MBEC	363,750	291,000	72,750	363,750	291,000	72,750

Applicants must submit project plans and budgets for each of the two (2) funding periods under this award (April 1, 2010–March 31, 2011 and April 1, 2011–March 31, 2012). Projects will be funded for no more than one year at a time. Project proposals accepted for funding will not be required to compete for funding in the subsequent budget period within the approved award period. However, operators that fail to achieve a ''satisfactory'' or better performance rating for the preceding program year may be denied second-year funding. Recommendations for second-year funding are generally evaluated by MBDA based on a mid-year performance rating and/or combination of mid-year and cumulative third quarter performance rating. In making such continued funding determinations, MBDA and the Department of Commerce will consider all the facts and circumstances of each case, such as but not limited to market conditions, most recent performance of the operator and other mitigating circumstances.

The funding periods and funding amounts referenced in this solicitation are subject to the availability of funds, as well as to Department of Commerce and MBDA priorities at the time of award. In no event will the Department of Commerce or MBDA be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other MBDA or Department of Commerce priorities. Publication of this notice does not obligate the Department of Commerce or MBDA to award any specific cooperative agreement or to obligate all or any part of available funds.

Authority: 15 U.S.C. 1512 and Executive Order 11625.

Catalog of Federal Domestic Assistance (CFDA): 11.800, Minority Business Enterprise Centers.

Eligibility: For-profit entities (including but not limited to sole-proprietorships, partnerships, and corporations), non-profit organizations, State and local government entities,

American Indian Tribes, and educational institutions are eligible to operate an MBEC.

Program Description: The MBEC Program requires project staff to provide standardized business assistance services directly to eligible ''minority business enterprises,'' with an emphasis on those firms with $500,000 or more in annual revenues and/or with ''rapid growth potential'' (''Strategic Growth Initiative'' or ''SGI'' firms); develop and maintain a network of strategic partnerships; provide collaborative consulting services with MBDA and other MBDA funded programs and strategic partners; and to provide referral services (as necessary) for client transactions. For this purpose, minority business enterprises are business concerns that are owned or controlled by the following persons or groups of persons: African Americans, Puerto Ricans, Spanish-speaking Americans, Asian and Pacific Islander Americans, Native Americans (including Alaska Natives, Alaska Native Corporations and Tribal entities), Eskimos, Aleuts, Asian Indians, and Hasidic Jews. *See* 15 CFR 1400.1 and Executive Order 11625.

The MBEC Program incorporates an entrepreneurial approach to building market stability and improving the quality of client services. This entrepreneurial strategy expands the reach of the MBECs by requiring project operators to develop and build upon strategic alliances with public and private sector partners as a means of serving minority-owned firms within each MBEC's geographical service area. The MBEC Program is also designed to effectively leverage MBDA resources, including but not limited to: MBDA Office of Business Development and MBDA National Enterprise Centers; MBDA's Business Internet Portal; and MBDA's nationwide network of MBECs, Native American Business Enterprise Centers (NABECs) and Minority Business Opportunity Centers (MBOCs). MBEC operators are also required to attend a variety of MBDA training programs designed to increase operational efficiencies and the provision of value-added client services.

MBEC operators are generally required to provide the following four client services: (1) Client Assessment—identifying clients' immediate and long-term needs and establishing projected growth tracks; (2) Strategic Business Consulting—providing intensive business consulting services that can be delivered as personalized consulting or group consulting; (3) Access to Capital—assisting clients with securing necessary financial capital; and (4) Access to Markets—assisting clients to identify and access opportunities for increased sales and revenues.

Please refer to the FFO pertaining to this competitive solicitation for a full and complete description of the application and programmatic requirements under the MBEC Program.

Match Requirements: The MBEC Program requires a minimum non-Federal cost share of 20%, which must be reflected in the proposed project budget. Non-Federal cost share is the portion of the project cost not borne by the Federal Government. Applicants must satisfy the non-Federal cost sharing requirements in one or more of the following four means or any combination thereof: (1) Client fees; (2) applicant cash contributions; (3) applicant in-kind (*i.e.,* non-cash) contributions; or (4) third-party in-kind contributions. The MBEC is required to charge client fees for services rendered based on a sliding scale of client revenues as set forth in Section III.B. of the accompanying FFO, and such fees must be used by the operator towards meeting the non-Federal cost share requirements under the award. Applicants will be awarded up to five (5) bonus points to the extent that the proposed project budget includes a non-Federal cost share contribution, measured as a percentage of the overall project budget, exceeding 20% (see Evaluation Criterion below).

Evaluation Criterion: Proposals will be evaluated and one applicant may be selected based on the below evaluation criterion. The maximum total number of points that an application may receive is 105, including the bonus points for exceeding the minimum required non-Federal cost share, except when oral presentations are made by applicants. If oral presentations are made (*see below:* Oral Presentation By MBDA Selected Applicants), the maximum total of points that can be earned is 115. The number of points assigned to each evaluation criterion will be determined on a competitive basis by the MBDA review panel based on the quality of the application with respect to each evaluation criterion.

1. Applicant Capability (40 Points)

Proposals will be evaluated with respect to the applicant's experience and expertise in providing the work requirements listed. Specifically, proposals will be evaluated as follows:

(a) *Community*—Experience in and knowledge of the minority community, minority business sector, and strategies for enhancing its growth and expansion; particular emphasis shall be on expanding SGI firms. Consideration will be given to whether the applicant has a physical presence in the geographic service area at the time of its application (4 points);

(b) *Business Consulting*—Experience in and knowledge of business consulting with respect to minority firms, with emphasis on SGI firms in the geographic service area (5 points);

(c) *Financing*—Experience in and knowledge of the preparation and formulation of successful financial transactions, with an emphasis on the geographic service area (5 points);

(d) *Procurements and Contracting*—Experience in and knowledge of the public and private sector contracting opportunities for minority businesses, as well as demonstrated expertise in assisting clients into supply chains (5 points);

(e) *Financing Networks*—Resources and professional relationships within the corporate, banking and investment community(ies) that may be beneficial to minority-owned firms (5 points);

(f) *Establishment of a Self-Sustainable Service Model*—Summary plan to establish a self-sustainable model for continued services to the MBE communities beyond the MBDA award period (3 points);

(g) *MBE Advocacy*—Experience and expertise in advocating on behalf of minority communities and minority businesses, both as to specific transactions in which a minority business seeks to engage and as to broad market advocacy for the benefit of the minority community at large (3 points); and

(h) *Key Staff*—Assessment of the qualifications, experience and proposed role of staff that will operate the MBEC. In particular, an assessment will be made to determine whether proposed key staff possess the expertise in utilizing information systems and the ability to successfully deliver program services. At a minimum the applicant must identify a proposed project director (10 points).

2. Resources (20 Points)

Proposals will be evaluated under this criterion as follows:

(a) *Resources*—Resources (not included as part of the non-Federal cost share) that will be used in implementing the program, including but not limited to existing prior and/or current data lists that will serve in fostering immediate success for the MBEC (8 points);

(b) *Location*—Assessment of the applicant's strategic rationale for the proposed physical location of the MBEC. The applicant is encouraged to establish a location for the MBEC that is in a building which is separate and apart from any of the applicant's

existing offices in the geographic service area (2 points);

(c) *Partners*—How the applicant plans to establish and maintain the network of strategic partners and the manner in which these partners will support the MBEC in meeting program performance goals (5 points); and

(d) *Equipment*—How the applicant plans to satisfy the MBEC information technology requirements, including computer hardware, software requirements and network map (5 points).

3. Techniques and Methodologies (20 Points)

Proposals will be evaluated under this criterion as follows:

(a) *Performance Measures*—For each funding period, the manner in which the applicant relates each performance measure to the financial information and market resources available in the geographic service area (including existing client list); how the applicant will create MBEC brand recognition (marketing plan); and how the applicant will satisfy program performance goals. In particular, emphasis will be placed on the manner in which the applicant matches MBEC performance goals with client service hours and how it accounts for existing market conditions in its strategy to achieve such goals (10 points);

(b) *Start-up Phase*—How the applicant will commence MBEC operations within the initial 30-day period that the MBEC will be allotted to become fully operational after an award is made (3 points); and

(c) *Work Requirement Execution Plan*—The applicant will be evaluated on how effectively and efficiently staff time will be used to achieve the MBEC programmatic requirements set forth more fully in the FFO, particularly with respect to periods beyond the start-up phase (7 points).

4. Proposed Budget and Budget Narrative (20 Points)

The applicant's proposal will be evaluated as follows:

(a) *Reasonableness, Allowability and Allocability of Proposed Program Costs.* All of the proposed program costs expenditures should be discussed and the budget line-item narrative must match the proposed budget. Fringe benefits and other percentage item calculations should match the proposed budget line-item and narrative (5 points);

(b) *Non-Federal Cost Share.* The required 20% non-Federal share must be adequately addressed and properly documented, including but not limited to how client fees will be used by the applicant in meeting the non-Federal cost-share (5 points); and

(c) *Performance-Based Budgeting.* The extent to which the line-item budget and budget narrative relate to the accomplishment of the MBEC programmatic requirements and performance measures (*i.e.,* performance-based budgeting) (10 points).

5. Bonus Points for Exceeding the Minimum Required Non-Federal Cost Share (5 Points)

Proposals with non-Federal cost sharing exceeding 20% of the total project costs will be awarded bonus points on the following scale: More than 20%–less than 25% = 1 point; 25% or more–less than 30% = 2 points; 30% or more–less than 35% = 3 points; 35% or more–less than 40% = 4 points; and 40% or more = 5 points. Non-Federal cost sharing of at least 20% is required under the MBEC Program. Non-Federal cost sharing is the portion of the total project cost not borne by the Federal Government and may be met by the applicant in any one or more of the following four means (or a combination thereof): (1) Client fees; (2) cash contributions; (3) non-cash applicant contributions; or (4) third party in-kind contributions.

6. Oral Presentation by MBDA Selected Applicants (10 Points)

Oral presentations are held only when requested by MBDA. This action may be initiated for the top two (2) ranked applications for a project and will be applied on a consistent basis for each project competition. Oral presentations will be used to establish a final evaluation and ranking.

The applicant's presentation will be evaluated as to the extent to which the presentation demonstrates:

(a) How the applicant will effectively and efficiently assist MBDA in the accomplishment of its mission (2 points);

(b) Business operating priorities designed to manage a successful MBEC (2 points);

(c) A management philosophy that achieves an effective balance between micromanagement and complete autonomy for its Project Director (2 points);

(d) Robust search criteria for the identification of a Project Director (1 point);

(e) Effective employee recruitment and retention policies and procedures (1 point); and

(f) A competitive and innovative approach to exceeding performance requirements (2 points).

Review and Selection Process

1. Initial Screening

Prior to the formal paneling process, each application will receive an initial screening to ensure that the applicant is eligible and that the application is complete and includes all required forms, signatures and documentation are present. An application will be considered non-responsive and will not be evaluated by the review panel if it is received after the closing date for receipt of applications, the applicant fails to submit an original, signed Form SF–424 by the application closing date (paper applications only), or the application does not provide for the operation of a MBEC. Other deficiencies, while not rendering the application non-responsive, will be considered during panel review and may result in point deductions.

2. Panel Review

Each responsive application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The review panel will consist of at least 3 persons, all of whom will be full-time Federal employees and at least one of whom will be an MBDA employee, who will review the applications for a specified project based on the above evaluation criterion. Each reviewer shall evaluate and provide a score for each proposal. Each project review panel (through the panel Chairperson) shall provide the MBDA National Director (Recommending Official) with a ranking of the applications based on the average of the reviewers' scores and shall also provide a recommendation regarding funding of the highest scoring application.

3. Oral Presentation by MBDA Selected Applicants

MBDA may request that the two (2) top-ranked applicants develop and make an oral presentation to MBDA. If an oral presentation is requested, the selected applicants will receive a formal communication (via standard mail, e-mail or fax) from MBDA informing them of the time and date of the oral presentation. In-person presentations are not mandatory but are encouraged; telephonic presentations are acceptable. MBDA will provide the teleconference dial-in number and pass code.

Oral presenters will be required to submit to MBDA, at least 24 hours before the scheduled date and time for

the oral presentation, a PowerPoint (or equivalent) presentation that addresses the oral presentation criteria set forth above. The oral presentation will be made to the MBDA National Director (or his/her designee) and up to three senior MBDA staff who did not serve on the original review panel. The oral panel members may ask follow-up questions after the presentation. Each applicant will present to MBDA staff only and applicants will not be permitted to listen to or attend presentations made by other applicants.

All costs pertaining to this presentation shall be borne by the applicant. MBEC award funds may not be used as a reimbursement for this presentation, nor will MBDA accept any requests or petitions for reimbursement.

The oral panel members shall score each presentation in accordance with the oral presentation criterion provided above. An average score shall be compiled and added to the score of the original panel review.

4. Final Recommendation

The MBDA National Director makes the final recommendation to the Grants Officer regarding the funding of one application under this competitive solicitation. MBDA expects to recommend for funding the highest ranking application, as evaluated and recommended by the review panel and taking into account oral presentations (as applicable). However, the MBDA National Director may not make any selection, or he/she may select an application out of rank order for either or both of the following reasons:

(a) A determination that a lower ranked application better addresses one or more of the funding priorities for this competition. The National Director (or his/her designee) reserves the right to conduct one or more site visits to better assess an applicant's capability to achieve the program and funding priorities; or

(b) The availability of MBDA funding.

Prior to making a final recommendation to the Grants Officer, MBDA may request that the apparent winner of the competition provide written clarifications (as necessary) regarding its application.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if the MBEC Program fails to receive funding or is cancelled because of Department of Commerce or MBDA priorities. All funding periods under the award are also subject to the availability of funds to support the continuation of the project. Publication of this notice does not obligate MBDA or the Department of Commerce to award any specific project or to obligate any available funds.

Universal Identifier: All applicants will be required to provide a Dun and Bradstreet Data Universal Numbering system (DUNS) number during the application process. *See* the June 27, 2003 **Federal Register** notice (68 FR 38402) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by accessing the Grants.gov Web site at *http://www.Grants.gov.*

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 has been approved by OMB under the respective control numbers 4040–0004, 4040–0006, 4040–0007, 0348–0046, and 0605–0001. Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the PRA unless that collection of information displays a currently valid OMB Control Number.

Executive Order 12866: This notice has been determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, or contracts (5 U.S.C. 533(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 533 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: December 24, 2009.

Efrain Gonzalez,

Chief, Office of Business Development,

Minority Business Development Agency.

[FR Doc. E9–30940 Filed 12–29–09; 8:45 am]

BILLING CODE 3510–21–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0017, Market Surveys

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

DATES: Comments must be submitted on or before March 1, 2010.

ADDRESSES: Comments may be mailed to Gary J. Martinaitis, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Gary J. Martinaitis, (202) 418–5209; FAX (202) 418–5527; *e-mail: gmartinaitis@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 Section 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing

notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality of, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Market Surveys, OMB Control No. 3038–0017—Extension

Under Commission Rule 21.02, upon call by the Commission, information must be furnished related to futures or options positions held or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers and, in addition, for options positions, by each reporting market. This rule is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 8a of the Commodity Exchange Act, 7 U.S.C. 7.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 21.02	400	annually	400	1.75	700

Dated: December 22, 2009.

Sauntia Warfield

Assistant Secretary of the Commission.

[FR Doc. E9–30893 Filed 12–29–09; 8:45 am]

BILLING CODE;P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board (DHB); DoD Task Force on the Prevention of Suicide by Members of the Armed Forces

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, DoD announces that the DoD Task Force on the Prevention of Suicide by Members of the Armed Forces will meet on January 15, 2010. Subject availability of space, meeting is open to the public.

DATES: The Task Force will meet from 9 a.m. to 4 p.m. on January 15, 2010.

ADDRESSES: The meeting will be held at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: COL JoAnne McPherson, Executive Secretary, DoD Task Force on Suicide Prevention by Members of the Armed Forces, One Skyline Place, 5205 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–3279, ext 162, Fax: (703) 681–3317, *JoAnne.Mcpherson@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: The task Force will meet to receive briefings regarding current Service efforts related to the investigation of suicides among members of the Armed Services.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.* The public is encouraged to register for the meeting.

Agenda

On January 15, 2010, the DoD Task Force on the Prevention of Suicide by Members of the Armed Forces will receive briefings from experts and others related to their procedures on investigations within the safety and risk management areas. Task Force members will also receive briefings from experts on data analysis studies. There will also be a panel of Service members who have previously attempted suicide.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the DoD Task Force on the Prevention of Suicide by Members of the Armed Forces meeting is open to the public.

Written Statements

Any member of the public wishing to provide input to the Task Force on the Prevention of Suicide by Members of the Armed Forces should submit a written statement in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should be not longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (DFO) (*see* **FOR FURTHER INFORMATION CONTACT**) at any point. However, if the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Task Force on the Prevention of Suicide by Members of the Armed Forces until the next open meeting. Written statements may be mailed to the above (*see* **FOR FURTHER INFORMATION CONTACT**), e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

The DFO will review all timely submissions with the Task Force on the Prevention of Suicide by Members of the Armed Forces Co-Chairpersons, and ensure they are provided to members of the Task Force before the meeting that is subject to this notice. After reviewing the written comments, the Co-Chairpersons and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The DFO, in consultation with the Task Force on the Prevention of Suicide by Members of the Armed Forces Co-Chairpersons, may, if desired, allot a specific amount of time for members of the public to present their issues for

review and discussion by the Task Force on the Prevention of Suicide by Member of the Armed Forces.

Special Accommodations

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Severine Bennett at (202) 374–5755 or *bennett_severine@bah.com* by January 1, 2010.

Dated: December 24, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–30946 Filed 12–29–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2009–0028]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 29, 2010.

Title, Form, and OMB Number: Corps of Engineers Civil Works Questionnaire—Generic Clearance; OMB Control Number 0710–0001.

Type of Request: Revision.

Number of Respondents: 185,500.

Responses Per Respondent: 1.

Annual Responses: 185,500.

Average Burden Per Response: 7 minutes.

Annual Burden Hours: 21,642 hours.

Needs and Uses: The U.S. Army Corps of Engineer utilizes the data collected from the questionnaire items for planning data to formulate and evaluate alternative water resources development plans, to determine the effectiveness and evaluate the impacts of Corps projects, and in the case of the flood damage mitigation, to obtain information on flood damage incurred, whether or not a project is being considered or exists. All survey questionnaires are administered either by face-to-face, mail, or telephone methods. Public surveys are used to gather data for planning and operating Corps projects and facilities and to determine public preferences and satisfaction.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; State, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. James Laity.

Written comments and recommendations on the proposed information collection should be sent to Mr. Laity at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

• *Federal eRulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: December 24, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–30929 Filed 12–29–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy. U.S. Patent No. 7,233,284: Hanheld GPS jammer locator, Navy Case No. 97678.

ADDRESSES: Requests for copies of the inventions cited should be directed to Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106 and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Michael D. Seltzer, Ph.D., Head, Technology Transfer Office, Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106, telephone 760–939–1074, FAX 760–939–1210, *E-mail: michael.seltzer@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR Part 404.7.

Dated: December 18, 2009.

A. M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–30898 Filed 12–29–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Military Housing Privatization Initiative at Eglin AFB, Florida and Hurlburt Field, Florida

AGENCY: United States Air Force, Air Force Materiel Command, Air Force Special Operations Command.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA, 42 United States Code [USC] 4321–4347), the Council on Environmental Quality (CEQ) NEPA Regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), and the United States Air Force's (Air Force) Environmental Impact Analysis Process (EIAP, 32 CFR Part 989), the Air Force is issuing this notice to advise the public of its intent to prepare a Supplemental Environmental Impact Statement (SEIS) for the Military Housing Privatization Initiative (MHPI) at Eglin AFB, Florida and Hurlburt Field, Florida.

This NOI describes the Air Force's proposed alternatives, scoping process, and identifies the Air Force's point of contact. As part of the SEIS, the Air Force will analyze potential environmental impacts associated with the alternatives for the MHPI, including a No Action Alternative. This is the fourth revision to the SEIS, which will describe the changes in the alternative development process used to identify potential parcels of land for the MHPI, consider F–35 aircraft noise profiles, identify new alternatives resulting from this process, and identify the potential impacts to the affected environment from MHPI.

Purpose: The purpose of this action is for the Air Force to implement the MHPI by leveraging private sector funds, expertise, and efficiency with Air Force resources (land and residences). The Air Force would ''privatize'' its military family housing assets (those currently owned and operated by the government as opposed to leased housing) to accelerate the improvement and availability of housing for military families.

Proposed Action: To obtain 1,477 military family housing units through some mixture of parcels from the five alternatives listed below plus the Hurlburt Field parcels. To implement the MHPI, the Air Force's proposed action includes the conveyance of all 1,413 existing military family housing units and infrastructure distributed among several parcels of land located on Eglin AFB and Hurlburt Field to a private developer.

Of the existing units, the private developer would demolish 1,404, renovate units in place, and accept the Air Force's conveyance of nine existing historic units ''as is.'' The private developer would construct 1,477 new units (548 units for Hurlburt Field and 929 units for Eglin AFB) in phases and return nine historic units (five historic units located at Georgia Avenue on Eglin AFB and four historic units at Camp Pinchot) to the Air Force for adaptive reuse for purposes other than residential housing (e.g., offices, meeting places, etc.) once replacement units are constructed. At completion of the project, a private developer would own and operate 1,477 military family housing units (548 units for Hurlburt Field and 929 units for Eglin AFB) on behalf of the Air Force.

All construction and demolition activities would occur on Air Force-owned property at Eglin AFB and Hurlburt Field. The Air Force would lease the real property underlying the current units to the private developer. For areas not designated for rebuilding, this lease would last only until demolition is complete or once replacement units are built (in the case of the historic units), at which time the property would be returned to the Air Force. For areas designated for rebuilding, renovation, or conveyance as is, the real property would be leased to the private developer for a period of 50 years from the date of the transaction. In addition, the existing Hurlburt Field FAMCAMP area would relocate as part of this proposed action.

Alternatives: Activities described under the Proposed Action, including construction of housing on Hurlburt Field, would be common across all alternatives, except the No Action Alternative. The alternatives for MHPI differ in the distribution of the housing. The following locations are being considered:

Alternative 1. Crestview Park/Duke Field Area consists of two parcels totaling 567 acres. The area is located approximately one mile northwest of Duke Field, just south of the Yellow River along the northern border of the Eglin Reservation.

Alternative 2. Eglin Northeast Area comprises four parcels totaling 2,458 acres. The area is located approximately one mile southeast of Mossy Head, Florida, right inside the northeastern Eglin Reservation border.

Alternative 3. White Point Area comprises seven parcels totaling 416 acres. The area is located at White Point along the coastline of Choctawhatchee Bay south of Niceville, Florida, and adjacent to SR–20.

Alternative 4. Eglin Main Base/ Valparaiso Area comprises eight parcels totaling 695 acres. The largest parcel (620 acres) is located in the southwest corner of Eglin Main Base adjacent to the New Plew housing area. The remaining parcels are located along the northeast border of Eglin Main Base, near the East Gate and adjacent to Valparaiso.

Alternative 5. North Fort Walton Beach Area comprises five parcels totaling 457 acres with a 50 acre buffer area. Three parcels were previously identified in MHPI NEPA documentation as the ''Camp Pinchot Expansion Area'' (located adjacent to the Camp Pinchot Historic District and bordered on the west by SR–189 and the east by Garnier Bayou) and parts of the ''Poquito Bayou Expansion Area'' (located just north of the existing Poquito Bayou housing area). The remaining two parcels are located along the southern Eglin Reservation boundary in north Fort Walton Beach just north of SR–189 and adjacent to the Okaloosa County Fairgrounds. The Camp Pinchot Historic District is not included in this alternative.

No Action Alternative. The Air Force would not implement the Proposed Action at Eglin or Hurlburt Field. Instead, the Air Force would continue to manage/maintain and replace/upgrade MFH in accordance with existing Air Force policy and resources.

Background: This document constitutes the fourth revision of an EIS that started with a Notice of Intent in January 2004 (**Federal Register**/Vol. 69, No. 116, pg. 3570/January 26, 2004). The first iteration of the Draft EIS was published and released to the public in April 2005 (**Federal Register**/Vol. 70, No. 67, pg. 17994/April 8, 2005). After consideration of concerns raised during the public comment period, the Air Force issued the second iteration, the Revised Draft EIS in March 2006 (**Federal Register**/Vol. 71, No. 62, pg. 16302/March 31, 2006), which received public and agency comments. Before the EIS was finalized, circumstances arose causing the Air Force to halt the completion of the EIS and reevaluate the Proposed Action.

The 2005 Base Closure and Realignment (BRAC) decisions resulted in the direction to beddown the Joint Strike Fighter (JSF) (*i.e.,* the F–35 aircraft) and the Army's 7th Special Forces Group. This BRAC directed action resulted in a planned net gain of approximately 4,000 additional military, civilian, and contractor personnel (not including family members) at Eglin AFB. As a result, the Air Force conducted a new housing requirements analysis and issued its third EIS iteration, the Supplemental Draft EIS in Aug 2008 (**Federal Register**/Vol. 73, No. 154, pg. 46269/August 8, 2008). The third iteration analyzed the potential consequences from housing alternatives limited exclusively to the main base areas of Eglin AFB or Hurlburt Field due to a shortfall in project financials associated with hurricane-related increases in construction/insurance costs.

Scoping: In order to effectively define the full range of issues to be evaluated in the EIS, the Air Force will determine the scope of the EIS (*i.e.,* what will be covered and in what detail) by soliciting scoping comments from interested state and federal agencies and interested members of the public through the **Federal Register** and various media in the local areas of concern. Scoping comments should be submitted to the address below by the date indicated. The Air Force will also hold a series of scoping meetings to further solicit input regarding the scope of the proposed action and alternatives.

DATES: Three scoping meetings will be held in the potentially impacted communities. The scheduled dates, times, locations and addresses for the meetings will be published in local media a minimum of 15 days prior to the scoping meetings. The Air Force intends to hold scoping meetings in the following communities: Crestview, FL; Ft Walton Beach, FL; and Niceville, FL.

In addition to comments received at the scoping meetings, any written comments on the scope of the proposed EIS should be provided to the address below by Friday, February 1, 2010.

FOR FURTHER INFORMATION PLEASE CONTACT: Mike Spaits, Eglin AFB Public Affairs Office, 101 West D Avenue, Suite 110, Eglin Air Force Base, FL 32542–5499, phone (850) 882–2836, e-mail: *mike.spaits@eglin.af.mil* or check the Web site, *http://www.eglin.af.mil/housing_privatization/index.asp.*

Bao-Anh Trinh,

YA–3, DAF, Air Force Federal Register Liaison Officer.

[FR Doc. E9–30980 Filed 12–29–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent to Prepare an Environmental Impact Statement for Basing F–35A Operational Aircraft

AGENCY: United States Air Force, Air Combat Command and Air National Guard.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and Air Force policy and procedures (32 CFR Part 989), the Air Force is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of establishing operational F–35 Joint Strike Fighter (JSF) aircraft at one or more existing Air Force installations within the continental United States.

The proposed basing alternatives include: Mt. Home AFB, Idaho; Hill AFB, Utah; Burlington Air Guard Station (AGS), Vermont; Shaw AFB/McEntire Joint National Guard Base (JNGB), South Carolina (SC); and Jacksonville AGS, Florida.

Each candidate base is an alternative. For Mt. Home AFB, Hill AFB, and Shaw AFB/McEntire JNGB, the potential environmental impacts will be analyzed for no action and in increments of 24 primary assigned aircraft (PAA). For Burlington AGS and Jacksonville AGS, the potential environmental impacts will be analyzed for no action and in increments of 18 and 24 primary assigned aircraft.

The Air Force version of the F–35 JSF, designated F–35A, is a conventional take-off, multiple-role fighter with an emphasis on air-to-ground missions. The aircraft was designed to supplement and eventually replace legacy aircraft as well as complement the air-to-air mission of the F–22A Raptor. At any of the alternative locations, the beddown action would involve personnel changes, facility construction and modifications, and aircraft operations.

Scoping: In order to effectively define the full range of issues to be evaluated in the EIS, the Air Force will determine the scope of the EIS (i.e., what will be covered and in what detail) by soliciting scoping comments from interested state and federal agencies and interested members of the public through the **Federal Register** and various media in the local areas of concern. Scoping comments should be submitted to the address below by the date indicated. The Air Force will also hold a series of scoping meetings to further solicit input regarding the scope of the proposed action and alternatives.

DATES: The Air Force intends to hold scoping meetings in the following communities: January 11–14, 2010 Grand View, Twin Falls, Boise, and Mt. Home Idaho; January 19–22, 2010 Ogden, Layton, Callao Utah; Wendover Nevada; January 25–28, 2010 Winooski, Vermont; Littleton, New Hampshire; Watertown, New York; February 1–4, 2010 Sumter, Eastover, and Kingstree, South Carolina; Augusta and Brunswick Georgia; February 8–12 2010 Jacksonville, Avon Park, Lake Wales and Palatka Florida. The scheduled dates, times, locations and addresses for the meetings will be published in local media a minimum of 15 days prior to the scoping meetings. All meetings will be held from 6 p.m. to 8 p.m.

Comments will be accepted at any time during the environmental impact analysis process. However, to ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments should be submitted to the address below by March 1, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Sheryl Parker, HQ ACC/A7PS, 129 Andrews Street, Suite 337, Langley AFB, VA 23665–2769, telephone 757/764–9334.

Bao-Anh Trinh, YA–3, DAF,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–30671 Filed 12–29–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Scientific Advisory Board Notice of Meeting

AGENCY: U.S. Air Force Scientific Advisory Board, Department of the Air Force, Defense.

ACTION: Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board meeting will take place on Tuesday, January 12th, 2010, at the SAF/AQ Conference and Innovation Center, 1550 Crystal Dr., Arlington, VA, 22202. The meeting will be from 8 a.m.—5 p.m. The purpose of the meeting is to hold the United States Air Force Scientific Advisory Board quarterly meeting to discuss the FY10 Scientific Advisory Board study topics tasked by the Secretary of the Air Force and the results of the Air Force Research Laboratory Assessment.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the United States Air Force Scientific Advisory Board meeting will be closed to the public because they will be concerned with classified information and matters covered by sections 5 U.S.C. 552b(c) (1) and (4).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air

Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col Anthony M. Mitchell, 301–981–7135, United States Air Force Scientific Advisory Board, 1602 California Ave. Ste. 251, Andrews AFB, MD 20762, *anthonym.mitchell@pentagon.af.mil.*

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E9–30981 Filed 12–29–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Race to the Top Fund

Catalog of Federal Domestic Assistance (CFDA) Number: 84.395C

AGENCY: Department of Education.

ACTION: Notice of three additional public meetings and request for input from technical experts pertaining to a possible Race to the Top Assessment program, and provide technical assistance to States for the development and implementation of high-quality assessments based on common standards.

SUMMARY: On October 23, 2009, the Department announced in the **Federal Register** (74 FR 54795) a series of public meetings to be held throughout November and December 2009 to inform its work on a potential Assessment Program within the Race to the Top Fund and to provide technical assistance to States. This notice announces three additional public meetings intended to address questions outlined in the October notice that have not been fully covered, and new topic areas and questions that have emerged based on public and expert input. As announced in the October notice, by March 2010, the Secretary of Education (Secretary) intends to announce a competition for a program that would support one or more consortia of States that are working toward jointly developing and implementing common, high-quality assessments aligned with a consortium's common set of kindergarten-through-grade-12 (K–12) standards that are internationally benchmarked and that build toward college and career readiness by the time of high school completion. To inform the design of this program and the development of a notice inviting applications that establishes the requirements for this competition, and to provide technical assistance to States, the Secretary continues to seek input from States, technical experts, and members of the public through public meetings and written submissions. Following the public meetings and review of the written submissions, the Department intends to publish a notice inviting applications for such a competition.

DATES: Public meetings will be held on the dates and at the locations specified later in this notice. Written submissions must be received by the Department by 5:00 p.m., Eastern time, on Wednesday, January 20, 2010.

ADDRESSES: For those submitting written input, we encourage submissions by e-mail using the following address: *racetothetop.assessmentinput@ed.gov.* If you prefer to send your input by mail, address it to Office of Elementary and Secondary Education, Attention: Race to the Top Assessment Program—Public Input Meetings, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W339, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W339, Washington, DC 20202. Telephone: 202–453–7246 or by e-mail: *racetothetop.assessment@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: The Race to the Top Fund, authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111–5, provides $4.35 billion for competitive grants to States to encourage and reward States that are creating the conditions for education innovation and reform; implementing ambitious plans in the four education reform areas described in the ARRA; and achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers.

The Department is considering implementing two separate programs under the Race to the Top Fund. The first, a general program, was announced in November through a notice inviting applications and notice of final priorities, requirements, definitions, and selection criteria published in the **Federal Register** on November 18, 2009 (74 FR 59688). Under this general program, the Department will award approximately $4 billion to State applicants that have demonstrated that they have created certain conditions for education innovation and reform; achieved significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and proposed to develop and implement comprehensive reform strategies that are integrated across the four ARRA education reform areas.

Through this notice, we are seeking additional input on a second proposed program (Assessment Program), which would provide approximately $350 million in grants to consortia of States for the development of common, high-quality assessments aligned with an applicant consortium's common set of K–12 standards that are internationally benchmarked and that build toward college and career readiness by the time of high school completion.

At a later date, guided by the input from the public meetings and written submissions described in this notice, and in conjunction with the input received in response to the October 23, 2009 notice, the Secretary intends to issue a notice inviting applications for a competition for this second program that would set forth the requirements and criteria for the submission of applications. Should the Secretary decide not to conduct the Race to the Top Assessment Program, the $350 million designated for this program will revert to fund additional grants under the general Race to the Top Program.

Because requirements for an assessment program are highly technical, the Department has been soliciting input through public meetings to inform the design and development of this program, including the notice inviting applications, and to provide technical assistance to States. Based on the input received in the three public meetings and written comments received thus far, the Department will hold a second series of public meetings to address issues articulated in this notice. At these meetings invited experts and members of the public will have the opportunity to provide input, including written input. Should we decide to implement this Assessment Program by holding a competition, we do not intend to conduct notice and comment rulemaking. Section 437(d)(1) of the General Education Provisions Act, 20 U.S.C. 1232(d)(1), allows the

Department to waive rulemaking for the first grant competition under a new or substantially revised program authority. This would be the first competition for an Assessment Program under the Race to the Top Fund.

The three meetings announced in the previous notice and held in November and December have informed the Department's thinking on the design and development of the potential competition and on the notice inviting applications. In addition, these meetings have provided an important opportunity for the Department and States to learn more about the design, development, and implementation of high-quality assessments. The Department intends to extend that learning to a new set of questions in the next set of meetings announced in this notice. As with the previous meetings, the Department expects that States, in particular, will acquire critical knowledge about best practices in assessments, especially on the development and management of assessment consortia, and then be able to employ that knowledge in developing their applications and in designing high-quality assessments.

Details of Public Meetings

Structure of Public Meetings:

The Department anticipates that each meeting will have two components as follows:

(1) Input from invited panels of experts and stakeholders:

○ Each meeting will have an invited set of panelists who will have a set amount of time to respond individually to the questions in this notice.

○ The Department representatives will then ask questions of individual panelists and facilitate cross-panelist discussion.

(2) Open opportunity to share input:

○ Each meeting will have 30 to 60 minutes for interested members of the public, who have registered to speak, to respond to the questions in this notice.

○ Each individual scheduled to speak will have 5 minutes to provide oral input.

○ Written submissions will also be accepted as described in the Submission of Written Input section.

Each meeting will focus on a particular topic as indicated in the next section. The Department will share any updates, including posting additional questions, online at *http://www.ed.gov/programs/racetothetop-assessment/index.html.*

Topic Areas, Dates, Times, Locations, and Registration Information:

The public meetings will occur on the following dates at the times and locations indicated below.

• Topic Area: Project and Consortium Management

○ Wednesday, January 13; in Washington, DC; at the United States Department of Education's Potomac Center Plaza at 550 12th Street, SW., 10th floor conference room, Washington, DC; from 10:00 a.m. to 5:00 p.m.

• Topic Area: Procurement

○ Thursday, January 14; in Washington, DC; at the United States Department of Education's Potomac Center Plaza at 550 12th Street, SW., 10th floor conference room, Washington, DC; from 9:00 a.m. to 12:30 p.m.

• Topic Area: General and Technical Assessment

○ Wednesday, January 20; in Washington, DC; at a Washington, DC metro area location to be determined and announced via the Department's Web site; from 10:00 a.m. to 5:00 p.m.

Attendance: If you are interested in attending an event, you must register by first sending an e-mail to *racetothetop.assessment@ed.gov.* The subject line of your e-mail must read, ''Request form.'' A registration form will be automatically sent to you. You must complete this form electronically and return it by e-mail. Detailed instructions are included in the form. Registrations will be processed on a first-come, first-served basis with space reserved for State participants. Individuals will be notified by e-mail when their registration is confirmed.

Providing input: If you are interested in speaking during the open input portion of the meeting, you must register by first sending an e-mail to *racetothetop.assessment@ed.gov.* The subject line of your e-mail must read, ''Speaker request form.'' A registration form will be automatically sent to you. You must complete this form electronically and return it by e-mail. Detailed instructions are included in the form. Because the number of public speaking slots is limited, individuals and organizations may register to speak at only one of the three meetings. Requests to speak will be processed on a first-come, first-served basis. Confirmed speakers will be notified by the Department by e-mail, and will be asked to bring two hard copies of their input to the meeting. People who are unable to attend a meeting in person or who do not register early enough to speak during the meeting are encouraged to submit written input.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting sites will be accessible to individuals with disabilities and sign language interpreters will be available. If you need an auxiliary aid or service (*e.g.,* interpreting service such as sign language, oral, cued speech, or tactile interpreter; assisted listening device; or materials in alternate format) to participate in the meeting, notify the Department using the contact information provided in the **FOR FURTHER INFORMATION CONTACT** section of this document at least two weeks before the scheduled meeting date. Although we will attempt to meet any requests we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time.

Submission of Written Input:

All interested parties, including those who cannot attend a meeting or from whom we do not have time to hear at a meeting, may submit written input in response to this notice.

Written input will be accepted at the meeting site or via e-mail and mail at the addresses listed in the **ADDRESSES** section of this notice. Written input must be submitted by the date listed in the **DATES** section.

When submitting input at the meetings, we request that you submit two written copies. Please include your name, organization (if applicable), and contact information.

Both at the meetings and in your written submission, we encourage you to be as specific as possible. To ensure that your input is fully considered, we urge you to identify clearly the specific question, purpose, and characteristic that each of your suggestions addresses and to arrange your submission in the order of the questions listed in this notice. Please also include a description of your involvement, if any, in statewide assessment practices.

Sharing Input Publicly:

The Department is committed to gathering and sharing publicly the input from the meetings and written submissions. Each meeting will be transcribed. All transcripts will be available for viewing at *http://www.ed.gov/programs/racetothetop-assessment/index.html.* All written input received will be available for viewing via this Web site as well.

Assessment Program Design and Questions

As described in the October 23 notice, we intend for the Assessment Program to support consortia of States working toward jointly developing and implementing a next generation of common summative assessments that are aligned with a common set of kindergarten-through-grade-12 internationally benchmarked, college-

and career-ready standards that model and support effective teaching and student learning. Such summative assessments would allow students, including students with disabilities and English language learners, to demonstrate at each grade level tested their mastery of knowledge and skills and the extent to which each student is on track to college- and career-readiness by the time of high school graduation.

In designing the requirements for this program, the Secretary is particularly interested in innovative and effective approaches to assessment that will assist States in creating powerful and useful systems of assessment that meet these requirements.

In the following paragraphs, we have provided a framework that outlines the characteristics we believe should be required or encouraged in assessment systems supported by a grant under this proposed program. We then list the specific questions on which we seek input, taking into account this framework.

It is important to note that this proposed program, the public meetings, and the framework below would focus on the design and quality of assessment systems and not on accountability policies, such as those described in section 1116 of the Elementary and Secondary Education Action (ESEA). Given the pending reauthorization of the ESEA, we intend that the Assessment Program would support the development of the best possible assessments that could be not only appropriately used by States under the current ESEA assessment and accountability requirements, but could also serve additional purposes as outlined later in this notice.

Framework:

Design of Assessment Systems—General Requirements

The Department is particularly interested in supporting the development of summative assessments that measure—

- Individual student achievement as measured against standards that build toward college- and career-readiness by the time of high school completion;
- Individual student growth (that is, the change in student achievement data for an individual student between two or more points in time); and
- The extent to which each individual student is on track, at each grade level tested, toward college- or career-readiness by the time of high school completion.

At a minimum, we would expect that the common assessments would measure each of these elements in the subject areas of reading/language arts and mathematics, would provide information for each student annually in grades 3 through 8, and would provide information at the high school level about each student's college- and/or career-readiness. The assessments would not need to be limited to a single end-of-year assessment but could include multiple summative components administered at different points during the school year. Moreover, the assessments might be viewed as replacing rather than adding to the assessments currently in use in States participating in the consortia.

Information gathered from the assessments should be useable in informing—

- Teaching, learning, and program improvement;
- Determinations of school effectiveness;
- Determinations of principal and teacher effectiveness in order to inform evaluation and the provision of support to teachers and principals; and
- Determinations of individual student college- and career-readiness, such as determinations made for high school exit decisions, college course placement in credit-bearing classes, or college entrance.

Design of Assessment Systems—Required Characteristics

With respect to the design of the assessment system, the Department would likely require that the assessments, at a minimum, meet the following characteristics:

(1) Reflect and support good instructional practice by eliciting complex responses and demonstrations of knowledge and skills consistent with the goal of being college and career ready by the time of high school completion;

(2) Be accessible to the broadest possible range of students, with appropriate accommodations for students with disabilities and English language learners;

(3) Contain varied and unpredictable item types and content sampling, so as not to create incentives for inappropriate test preparation and curriculum narrowing;

(4) Produce results that can be aggregated at the classroom, school, local educational agency (LEA), and State levels;

(5) Produce reports that are relevant, actionable, timely, accurate, and displayed in ways that are clear and understandable for target audiences, including teachers, students and their families, schools, LEAs, communities, States, institutions of higher education, policymakers, researchers, and others;

(6) Make effective and appropriate use of technology;

(7) Be valid, reliable, and fair;

(8) Be appropriately secure for the intended purposes;

(9) Have the fastest possible turnaround time on scoring, without forcing the use of lower-quality assessment items; and

(10) Be able to be maintained, administered, and scored at a cost that is sustainable over time.

Design of Assessment Systems—Desired Characteristics

In addition, the Department is particularly interested in assessment systems in which—

(1) Teachers are involved in scoring of constructed responses and performance tasks in order to measure effectively students' mastery of higher-order content and skills and to build teacher expertise and understanding of performance expectations;

(2) The assessment approach can be easily adapted to include summative assessments in other content areas (*e.g.,* science, social studies) in the future;

(3) The technology ''platform'' created for summative assessments supports assessment and item development, administration, scoring, and reporting that increases the quality and cost-effectiveness of assessments; and

(4) The technology infrastructure created for summative assessments can be easily adapted to support practitioners and professionals in the development, administration, and/or scoring of high-quality interim assessments.[1]

Additional Questions for Input:

The specific additional questions on which the Department seeks input are listed below. All input, including expert presentations and discussions, public input, and written submissions, should focus primarily on responding to these questions in the context of the framework outlined above, and may also provide input on the framework itself. We encourage you to make your input as specific as possible, to provide

[1] Consistent with section 14006(c) of ARRA, the October 23, 2009 **Federal Register** notice announcing the initial public meetings for the assessment competition stated that at least 50 percent of any award under this competition would have to be provided to local educational agencies through sub-grants (74 FR 54796). However, section 310(2) of the Department of Education Appropriations Act, 2010 amended ARRA to make this requirement not apply to ''grants made by the Secretary to consortia of States to develop academic assessments that are aligned with academic standards.'' Therefore, the requirement that 50 percent of the funds must be sub-granted to LEAs does not apply to this assessment competition.

evidence to support your proposals and answers, and to present the information in a context and format that will be helpful to States implementing high-quality assessments. These additional questions focus on the topics of project and consortium management, procurement, and general and technical assessment matters.

To ensure that your input is fully considered in the development of the notice inviting applications, we urge you to identify clearly the specific question, purpose, or characteristic that you are addressing, and to arrange your input in the order of the questions as they are listed in this notice.

Project and Consortium Management Questions

1. How would you recommend organizing a consortium to achieve success in developing and implementing the proposed assessment system?

a. What governance model do you suggest and why? What leadership model do you suggest and why?

b. What recommendations do you have on the decision-making process within a consortium?

c. What recommendations do you have for States that are organizing consortia regarding:

- how to differentiate roles, responsibilities, and workloads within a consortium?
- roles for third parties (*e.g.,* conveners, project managers, assessment developers/partners, intermediaries)?

d. What advice do you have on the characteristics that all consortium members must have in common in order for a consortium to be successful, and what characteristics can vary across member States, *e.g.,* philosophical approaches to assessment, standards, scope and sequence, etc.?

2. What would you recommend that a consortium be asked to demonstrate in its application to show that it has the capacity, structure, and potential to implement its proposed plan? What are the critical success indicators six, 12 and 18 months into the life of a consortium? What signals are predictive of ultimate success or failure?

3. What could go wrong in the development and management of a consortium and what can States do to mitigate these factors up front? In what ways could the Department structure the competition to help mitigate these factors?

Procurement Questions

1. How do differences in State procurement rules affect how you would design and manage a consortium? How will State procurement regulations, processes and time frames likely affect how a consortium carries out the development, piloting, and implementation of common assessments? (You may use examples from outside the education sector, if relevant.)

2. States have expressed interest in acquiring information about, and input and ideas from, potential assessment partners/vendors in advance of completing their applications. What actions, if any, would you advise the Department to take to help facilitate this?

3. States expressed a desire to run competitive (as opposed to sole-sourced) processes for selecting partners/vendors. How would you advise the Department to structure the application to enable States to do so? What other ideas would you offer in designing a process that is flexible enough to accommodate other challenges that States might encounter over time (*e.g.,* challenges related to partner/vendor selection or contract change management)?

General and Technical Assessment Questions

The Department continues to synthesize input received in response to the October 23 notice of public input meetings. Approximately two weeks in advance of the January 20 meeting on this topic, the Department intends to publish via our website (*http://www.ed.gov/programs/racetothetop-assessment/resources.html*) a list of general and technical assessment questions on which further input is requested.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 24, 2009.

Arne Duncan,

Secretary of Education.

[FR Doc. E9–30975 Filed 12–28–09; 11:15 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy.

ACTION: Notice of Open Teleconference.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. No. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, January 21, 2010, 1 to 2 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Senior Management Technical Advisor, Intergovernmental Projects, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303–275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. No. 101–440).

Tentative Agenda: Discuss ways STEAB can support DOE's implementation of the Economic Recovery Act, follow-up on discussion begun during the December teleconference call, and update members of the Board on routine business matters.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is

empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org.*

Issued at Washington, DC, on December 24, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–30958 Filed 12–29–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, January 21, 2010, 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Committee Chairs' Comments
- Presentations
  - Understanding Risk—Rich Bonczek, DOE
- Administrative Issues
  - New Business and Recommendations
- Public Comments
- Final Comments
- Adjourn

Breaks Taken As Appropriate

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/meetings.html.*

Issued at Washington, DC on December 24, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–30961 Filed 12–29–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Methane Hydrate Advisory Committee

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Methane Hydrate Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, January 28, 2010, 8:30 a.m. to 5 p.m. Friday, January 29, 2010, 8 a.m. to 3 p.m.

ADDRESSES: School of Civil and Environmental Engineering, Sustainable Education Building, Room SEB#122, Georgia Institute of Technology, 790 Atlantic Drive, Atlanta, GA 30332–0355.

FOR FURTHER INFORMATION CONTACT: Edith Allison, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–1023.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy, and assist in developing recommendations and priorities for the Department of Energy Methane Hydrate Research and Development Program.

Tentative Agenda

Thursday, January 28, 2010

8:30 a.m. Registration
9 a.m. Welcome and Introductions
9:15 a.m. Report from Representative Group of Committee Members on meeting with Secretary Chu
9:45 a.m. Report on DOE Budget and Strategy for Field Testing
10:15 a.m. Break
10:30 a.m. Report and Discussion of Gulf of Mexico Joint Industry Project 2009 Expedition
11:30 a.m. Report and Discussion of ConocoPhillips Alaska North Slope CO_2 Injection Project
12:30 p.m. Working Lunch
1:45 p.m. Status Report on BP Alaska North Slope Proposed Production Test
2:15 p.m. Report and Discussion: Modeling Hydrate in the Global Climate Cycle
3 p.m. Break
3:30 p.m. Report on Post-Doctoral Fellowship and Laboratory R&D
4 p.m. Report on Beaufort Sea 2009 Expedition
4:30 p.m. Report on Gas Production from Hydrate Bearing Sediments: Geomechanical Implications
5 p.m. Adjourn for the day

Friday, January 29, 2010

8 a.m. Registration
8:30 a.m. Report and Discussion on National Research Council (NRC) Assessment and 2010 Report to Congress
10 a.m. Break
10:15 a.m. Continue Discussion of NRC Report
11 a.m. Discussion and Preparation of Recommendations to DOE
12 p.m. Working Lunch
1 p.m. Continue Preparation of Recommendations to DOE
3 p.m. Wrap up—Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on

the agenda, you should contact Edith Allison at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on December 23, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–30959 Filed 12–29–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9097–8; OW–2009–0921]

Draft 2009 Update Aquatic Life Ambient Water Quality Criteria for Ammonia—Freshwater

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft criteria and request for scientific views.

SUMMARY: Pursuant to section 304(a) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) is announcing the availability of draft national recommended water quality criteria for ammonia for the protection of aquatic life. The draft criteria are based on EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses (1985), (EPA/R–85–100).* EPA's recommended section 304(a) water quality criteria provide guidance to States and authorized tribes in adopting water quality standards for protecting aquatic life and human health and provide guidance to EPA for promulgating Federal regulations under CWA section 303(c), when such action is necessary.

DATES: Scientific views must be received on or before March 1, 2010. Comments postmarked after this date may not be considered.

ADDRESSES: Submit your scientific views, identified by Docket ID No. EPA–HQ–OW–2009- 0921, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OW-Docket@epa.gov.*
- *Mail:* U.S. Environmental Protection Agency; EPA Docket Center (EPA/DC) Water Docket, MC 28221T; 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Ave, NW., EPA West, Room 3334, Washington DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2009–0921. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Water Docket/EPA/DC, 1301 Constitution Ave, NW., EPA West, Room 3334, Washington DC. This Docket Facility is open from 8:30 a.m. until 4:30 p.m., EST, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Lisa Huff, Health and Ecological Criteria Division (4304T), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 566–0787; *huff.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Are Water Quality Criteria?

Water quality criteria are either narrative descriptions of water quality or scientifically derived numeric values that protect aquatic life or human health from the deleterious effects of pollutants in ambient water.

Section 304(a)(1) of the Clean Water Act requires EPA to develop and publish and, from time to time, revise, criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting pollutant concentrations in ambient water.

Section 304(a) criteria provide guidance to States and authorized tribes in adopting water quality standards that ultimately provide a basis for controlling discharges or releases of pollutants. The criteria also provide guidance to EPA when promulgating Federal regulations under section 303(c) when such action is necessary. Under the CWA and its implementing regulations, States and authorized tribes are to adopt water quality criteria to protect designated uses (*e.g.,* public water supply, aquatic life, recreational use, or industrial use). EPA's recommended water quality criteria do not substitute for the CWA or regulations, nor are they regulations themselves. Thus, EPA's recommended criteria do not impose legally binding requirements. States and authorized tribes have the discretion to adopt, where appropriate, other scientifically

defensible water quality criteria that differ from these recommendations.

II. What Are the Ammonia Criteria?

EPA is today publishing draft national recommended water quality criteria (NRWQC) for ammonia for protecting aquatic life. These draft criteria updates are based on EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (1985), (EPA/R–85–100). These Guidelines describe the Agency's current approach for deriving national recommended water quality criteria to protect aquatic life. Toxicity data and other information on the effects of ammonia were obtained from reliable sources and subjected to both internal and external scientific peer review. The NRWQC for ammonia saltwater are not being updated at this time.

Freshwater: Freshwater aquatic organisms and their uses should not be affected unacceptably if—

1. The one-hour average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the CMC (acute criterion), which is dependent on the aquatic organisms present.

2A. The thirty-day average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the CCC (chronic criterion), which is dependent on the aquatic organisms present.

2B. In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the CCC.

The acute and chronic criteria concentrations are expressed as functions of temperature and pH, such that values differ across sites, and differ over time within a site. See draft criteria document (pp. 34–38) for actual equations describing this function. As temperature decreases, invertebrates, but not fish, become less sensitive to ammonia, and below a particular temperature threshold, fish become the most sensitive genera.

Acute Criteria: At pH=8, where freshwater mussels are present, the criterion concentration ranges from 1.90 mg N/L at 30° C to 9.81 mg N/L at 0° C. At pH=8, where freshwater mussels are absent the criterion concentration ranges from 3.29 mg N/L at 30° C to 9.99 mg N/L at 0° C.

Chronic Criteria: At pH=8, where freshwater mussels are present, irrespective of whether fish early life stages (ELS) are present or absent, the criterion ranges from 0.186 mg N/L at 30° C to 0.817 mg N/L at 0° C. When freshwater mussels are absent, the values range from 1.33 mg N/L at 30° C to 2.32 mg N/L at 0° C at times when fish ELS are present, and from 1.33 mg N/L at 30° C to 5.87 mg N/L at 0° C at times when fish ELS are absent.

	Draft 2009 ammonia criteria (at pH 8 and 25° C)	Current 1999 criteria (at pH 8 and 25° C)
Acute	2.9 mg N/L mussels present 5.0 mg N/L mussels absent.	5.6 mg N/L salmon present.
Chronic	0.26 mg N/L mussels present 1.8 mg N/L mussels absent.	1.2 mg N/L fish early life stages present.

Note: These criteria values are appropriate at the standard normalized pH and temperature; the criteria values are a function of the variability of pH and temperature.

The water quality criteria for ammonia saltwater are not being updated at this time.

III. What is the Relationship Between the Water Quality Criteria and State or Tribal Water Quality Standards?

As part of the water quality standards triennial review process defined in Section 303(c)(1) of the CWA, the States and authorized Tribes are responsible for maintaining and revising water quality standards. Water quality standards consist of three principal elements: designated uses, water quality criteria to protect those uses, and antidegradation requirements, providing for protection of existing water uses and limitations on degradation of high quality waters. Section 303(c)(1) requires States and authorized Tribes to review and modify, if appropriate, their water quality standards at least once every three years.

States and authorized Tribes must adopt water quality criteria that protect designated uses. States may develop their criteria based on EPA's recommended section 304(a) water quality criteria or other scientifically defensible methods. A State's criteria must contain sufficient parameters or constituents to protect the designated uses. Consistent with 40 CFR 131.21, new or revised water quality criteria adopted into law by States and authorized Tribes on or after May 30, 2000 are in effect for CWA purposes only after EPA approval.

IV. Where Can I Find More Information About Water Quality Criteria and Water Quality Standards?

For more information about water quality criteria and Water Quality Standards refer to the following: *Water Quality Standards Handbook* (EPA 823–B94–005a); *Advanced Notice of Proposed Rule Making (ANPRM),* (63FR36742); *Water Quality Criteria and Standards Plan—Priorities for the Future* (EPA 822–R–98–003); *Guidelines and Methodologies Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents* (45FR79347); *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000), EPA–822–B–00–004); *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (EPA 822/R–85–100); *National Strategy for the Development of Regional Nutrient Criteria* (EPA 822–R–98–002); and *EPA Review and Approval of State and Tribal Water Quality Standards* (65FR24641).

You can find these publications through EPA's National Service Center for Environmental Publications (NSCEP, previously NCEPI) or on the Office of Science and Technology's Home-page (*http://www.epa.gov/waterscience*).

Dated: December 23, 2009.

Peter S. Silva,

Assistant Administrator for Water.

[FR Doc. E9–30992 Filed 12–29–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9094–7]

Notice of Draft National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of Outer Continental Shelf (OCS) of the Gulf of Mexico (GEG460000); Availability of Preliminary Finding of No Significant Impact (FNSI) and Environmental Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Reissuance of NPDES General Permit, Notice to States of Mississippi, Alabama and Florida for Consistency Review with approved Coastal Management Programs.

SUMMARY: The Regional Administrator of EPA Region 4 (the ''Region'') is today proposing to reissue the National Pollutant Discharge Elimination System (NPDES) general permit for the Outer Continental Shelf (OCS) of the Gulf of Mexico (General Permit No. GMG460000) for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 Code of Federal Regulations (CFR) Part 435, subpart A). The existing permit, issued by EPA Region 4 and published at 69 FR 76740 on December 22, 2004, authorizes discharges from exploration, development, and production facilities located in and discharging, to all Federal waters of the eastern portion of the Gulf of Mexico seaward of the outer boundary of the territorial seas. Today's draft NPDES permit covers existing and new source facilities with operations located on Federal leases occurring in water depths seaward of 200 meters, occurring offshore the coasts of Alabama and Florida. The western boundary of the coverage area is demarcated by Mobile and Visoca Knoll lease blocks located seaward of the outer boundary of the territorial seas from the coasts of Mississippi and Alabama. Individual permits will be issued for operating facilities on lease blocks traversed by and shoreward of the 200 meter water depth.

DATES: Comments on this proposed action must be received by January 29, 2010.

ADDRESSES: Comments should be sent the Water Protection Division, U.S. EPA- Region 4, Municipal and Industrial NPDES Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Ms. Karrie-Jo Robinson-Shell.

FOR FURTHER INFORMATION CONTACT: Ms. Karrie-Jo Robinson-Shell, Offshore Oil and Gas Contact, at telephone (404) 562–9308 or at the following address: Water Protection Division, Municipal and Industrial NPDES Section, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960.

SUPPLEMENTARY INFORMATION: As proposed, this draft NPDES general permit includes, best conventional pollutant control technology (BCT), and best available technology economically achievable (BAT) limitations for existing sources and new source performance standards (NSPS) limitations for new sources as promulgated in the effluent guidelines for the offshore subcategory at 58 FR 12454 and amended at 66 FR 6850 (March 4, 1993 and January 22, 2001, respectively). The draft permit also includes the following changes to the expiring permit: (1) Requirements were included to permittees to comply with cooling water intake structure regulations per 40 CFR Part 125-subpart N (Requirements Applicable to Cooling Water Intake Structures for New Offshore Oil and Gas Extraction Facilities Under Section 316(b) of the Clean Water Act); (2) Best Management Practices (BMP) Plan requirements were changed to incorporate measures to address discharges of debris from blasting and painting activities; (3) Modified ISO Test Method 11734, Protocol For The Determination of Degradation of Non-Aqueous Base Fluids in a Marine Closed Bottle Biodegradation Test System, was included in order to clarify testing procedures; (4) rounding procedures were included to clarify reporting requirements for ratio values used to report compliance with the sediment toxicity and biodegradation tests; and (5) the requirement to perform a Seabed Survey was deleted since the industry completed this study during the term of the existing permit. Other minor changes in wording were made to clarify EPA's intent regarding the permit's requirements.

Under 40 CFR Part 6, EPA Region 4 is also making available a Preliminary Finding of No Significant Impact (FNSI) and an Environmental Assessment (EA) for review during the 30 day public comment period for this general permit. The EA addresses potential impacts from proposed changes to the general permit and it considers recent technical studies.

I. Procedures for Reaching a Final Permit Decision

Pursuant to 40 CFR 124.13, any person who believes any condition of the permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments in full, supporting their position, by the close of the comment period. All comments on the draft NPDES general permit, the preliminary FNSI and the EA received within the 30-day comment period will be considered in the formulation of final determination regarding the National Environmental Pollution Act (NEPA) review and the permit reissuance. After consideration of all written comments and the requirements and policies in the CWA and appropriate regulations, the EPA Regional Administrator will make a determination regarding the EA/FNSI and permit reissuance. If the determination results in a permit that is substantially unchanged from the draft permit announced by this notice, the Regional Administrator will so notify all persons submitting written comments. If the determination results in a permit that is substantially changed, the Regional Administrator will issue a public notice indicating the revised determination.

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15, except for a general permit as cited at 40 CFR 124.71. Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as specified at 40 CFR 122.21 as authorized at 40 CFR 122.28, and then request a formal hearing on the issuance or denial of an individual permit. Additional information regarding these procedures is available by contacting Mr. Paul Schwartz, Associate Regional Counsel Office of Environmental Accountability, at (404) 562–9576.

II. Procedures for Obtaining General Permit Coverage

Notice of Intent requirements for obtaining coverage for operating facilities are stated in Part I Section A.4 of the general permit. Coverage under the reissued general permit is effective upon receipt of notification of coverage with an assignment of an NPDES general permit number from the EPA-Region 4, Director of the Water Protection Division. EPA will act on the Notice of Intent (NOI) within a reasonable period of time.

III. Exclusion of Non-Operational Leases

This permit does not apply to non-operational leases, *i.e.,* those on which no discharge has taken place in the two (2) years prior to the effective date of the reissued general permit. EPA will not accept NOIs for such leases, and the general permit will not cover such leases. Non-operational leases will lose coverage under the previous general permit on the effective date of the reissued general permit. No subsequent exploration, development or production activities may take place on these leases until and unless the lessee has obtained coverage under the new general permit or an individual permit. EPA will not accept an NOI or individual permit application for non-operational or new acquired leases until such time as an Exploration Plan Document or the Development Operations Coordination Document has been prepared and submitted to Minerals Management Service.

IV. State Water Quality Certification

Because State waters are not included in the area covered by the OCS general permit, its effluent limitations and monitoring requirements are not subject to State water quality certification under CWA Section 401. However, the States of Alabama, Florida and Mississippi have been provided a copy of this draft general permit, Preliminary FNSI and EA to review and submit comments. Copies of these documents have also been provided to EPA Headquarters for their review.

V. State Consistency Determination

This Notice will also serve as Region 4's requirement under the Coastal Zone Management Act (CZMA) to provide all necessary information for the States of Mississippi, Alabama and Florida to review this action for consistency with their approved Coastal Management Programs. A copy of the consistency determination on the proposed activities is being sent to each affected State, along with a letter of this FR notice, which provides the EPA Web site where electronic copies can be obtained of the draft NPDES general permit, permit fact sheet, preliminary Ocean Discharge Criteria Evaluation, a Preliminary FNSI, and EA. Other relevant information for their review is available upon request from each State. Comments regarding State Consistency are invited in writing within 30 days of this notice to the Water Protection Division, U.S. EPA-Region 4, Municipal and Industrial NPDES Permits Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960, Attention: Ms. Karrie-Jo Robinson-Shell.

VI. Public Comment Period and Public Hearings

The public comment period for the draft NPDES permit, preliminary FNSI and EA will begin on the date of publication of this notice and end 30 calendar days later.

VII. Administrative Record

The draft NPDES general permit, permit fact sheet, Preliminary FNSI, EA and other relevant documents are on file and may be inspected any time between 8:15 a.m. and 4:30 p.m., Monday through Friday at the address shown below. Copies of the draft NPDES general permit, permit fact sheet, Preliminary FNSI, EA and other relevant documents may be obtained by writing the U.S. EPA–Region 4, Water Protection Division, Municipal and Industrial NPDES Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, Attention: Ms. Karrie-Jo Robinson-Shell, or by calling (404) 562–9308. A hard copy of the Preliminary FNSI and EA may be obtained by calling Traci Buskey at (404) 562–8284. Alternatively, copies of the draft NPDES general permit, permit fact sheet, Preliminary FNSI and EA may be downloaded at *http://www.epa.gov/region4/water/permits.*

VIII. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule making requirements under the Administrative Procedures Act (APA) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Issuance of an NPDES general permit is not subject to rule making requirements, including the requirement for a general notice of proposed rule making, under APA Section 533 or any other law, and is thus not subject to the RFA requirements.

The APA defines two broad, mutually exclusive categories of agency action—''rules'' and ''orders.'' APA Section 551(4) defines rule as ''an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure, or practice or requirements of an agency . . .'' APA Section 551(6) defines orders as ''a final disposition . . . of an agency in a matter other than rule making but including licensing.'' APA Section 551(8) defines ''license'' to ''include . . . an agency permit . . .'' The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes ''rule making'' requirements. APA Section 551(5) defines ''rule making'' as ''the agency process for formulating, amending, or repealing a rule.'' By its terms, Section 553 applies only to rules and not to orders, exempting by definition permits.

X. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their ''regulatory actions'' to refer to regulations. (*See, e.g.,* UMRA Section 401, ''Each agency shall . . . assess the effects of Federal regulatory actions . . . (other than to the extent that such regulations incorporate requirements specifically set forth in law).'') UMRA Section 102 defines ''regulation'' by reference to 2 U.S.C. 658 which in turn defines ''regulation'' and ''rule'' by reference to Section 601(2) of the RFA. That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rule making pursuant to Section 553(b) of the APA, or any other law.''

As discussed in the RFA section of this notice, NPDES general permits are not ''rules'' by definition under the APA and thus not subject to the APA requirement to publish a notice of proposed rule making. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA Section 402(a) requirement to provide an opportunity for a hearing. Therefore, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

XI. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 [(NPDES Discharge Monitoring Reports (DMRs)].

Since this permit is very similar in reporting and application requirements and in discharges which are required to be monitored as the previous Eastern Gulf of Mexico OCS general permit (GMG460000) the paperwork burdens are expected to be nearly identical. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare DMRs. It is estimated that the time required to prepare the request for coverage and DMRs for the reissued permit will be approximately the same.

Dated: December 11, 2009.

James D. Giattina,

Director, Water Protection Division.

[FR Doc. E9–30852 Filed 12–29–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0901; FRL–8804–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by June 28, 2010, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than June 28, 2010. Comments must be received on or before June 28, 2010 for these registrations.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2009–0901, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Written Withdrawal Request, Attention : Barbara Briscoe, Pesticide Re-evaluation Division (7508P).

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0901. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Briscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8177; e-mail address: *Briscoe.Barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that

includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 19 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
002382-00054	Otomite-Pesticidal	Piperonyl Butoxide, Pyrethrins
002382-00092	Pet-Guard Gel Forte	Piperonyl Butoxide, Butoxypolypropylene glycol
002382-00126	Duocide L.A.	Permethrin, MGK 264, Pyrethrins

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
002382-00158	Knockout Flea & Tick Carpet Spray #1	Permethrin, Piperonyl butoxide, Pyripoxyfen
002915-00065	Industrial Insect Spray 111	Pyrethrins, MGK 264, Piperonyl butoxide
030573-00002	Pyrellin E.C.	Pyrethrins, Rotenone, Cube Resins other than rotenone
042697-00034	Safer Brand Entire Insect Killer Concentrate	Pyrethrins, Potassium laurate
067517-00004	Insecticide Mist	Pyrethrins, Piperonyl butoxide,
067517-00012	Dairy Spray	Pyrethrins, Piperonyl butoxide
067517-00041	Rose & Flower Spray	Pyrethrins, Piperonyl butoxide
067517-00042	Tomato & Vegetable Spray	Pyrethrins, Piperonyl butoxide
067517-00043	Fly-A-Rest Aq	Pyrethrins, Piperonyl butoxide
067517-00045	Hard Hitter Aerosol	Permethrin
067517-00049	Dog & Cat Spray Or Dip	Pyrethrins, Piperonyl butoxide
067517-00051	Flea And Tick Spray	Pyrethrins, Permethrin
067517-00056	Flea And Insect Carpet Dust	Pyrethrins, Piperonyl butoxide
067517-00057	Cat And Dog Pyrethrin Powder	Pyrethrins, Piperonyl butoxide
067517-00061	Permethrin 10% W.B. Multi-Purpose Concentrate	Permethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
067517-00080	Permethrin 10% Oil Base Concentrate	Permethrin

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
002382	Virbac AH, Inc. 1445 Ross Avenue, Suite 3800 Dallas, TX 75202
002915	The Fuller Brush Company One Fuller Way Great Bend, KS 67530
030573	Wright Webb Corp. P.O. Box 1572 Fort Myers, FL 33902
042697	Safer, Inc. 69 North Locust St. P.O. Box 327 Lititz, PA 17543
067517	PM Resources, Inc. P.O. Box 162059 Fort Worth, TX 76161

III. What Is the Agency's Authority for Taking This Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before June 28, 2010. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. EPA's existing stocks policy (56 FR 29362) provides that: ''If a registrant requests to voluntarily cancel a registration where the Agency has identified no particular risk concerns, the registrant has complied with all applicable conditions of reregistration, conditional registration, and data call ins, and the registration is not subject to a Registration Standard, Label Improvement Program, or reregistration decision, the Agency will generally permit a registrant to sell or distribute existing stocks for 1 year after the cancellation request was received. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted.''

Upon cancellation of the pesticides identified in Table 1, EPA anticipates allowing sale, distribution and use as described above. Exception to this general policy will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 16, 2009.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. E9–31002 Filed 12–29–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9097–9]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Massachusetts Water Resources Authority (MWRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the Massachusetts Water Resources Authority (''MWRA'') for the purchase of a foreign manufactured hydroelectric generator for the Loring Road Hydroelectric Project in Weston, Massachusetts. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by the MWRA and its consulting engineer, it has been determined that there are currently no domestic manufactured hydroelectric generators available to meet its proposed project and performance specifications. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of a foreign manufactured hydroelectric generator by the MWRA, as specified in its October 23, 2009 request.

DATES: *Effective Date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT: David Chin, Environmental Engineer, (617) 918–1764, or Katie Connors, Environmental Engineer, (617) 918–1658, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(b)(2) of Public Law 111–5, Buy American requirements, to the MWRA for the purchase of a non-domestic manufactured hydroelectric generator to meet the MWRA's design and performance specifications as part of its proposed Loring Road Hydroelectric Project in Weston, MA.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The MWRA is proposing a renewable energy project consisting of a hydraulic turbine, a hydroelectric generator, associated piping, and controls to be located in an existing valve chamber within the MWRA's drinking water transmission system at Loring Road in Weston, MA. Currently, the MWRA is reducing water pressure in a section of the water transmission system to properly serve certain areas of low elevation within the City of Boston. Pressure is dissipated across valves located in the chamber on a continuous process. Instead of losing this potential energy, the MWRA plans to install a hydraulic turbine and hydroelectric generator to recover 1,200,000 kilowatt hours (kWh) of electricity annually, an amount that will meet MWRA's on-site electrical needs and allow excess recovered energy to be delivered to the regional electric grid.

The proposed project has been reviewed by the Federal Energy

Regulatory Commission and has been granted a Small Conduit Exemption from Licensing. The MWRA is receiving Massachusetts State Drinking Water Revolving funds, as well as a construction grant from the Massachusetts Technology Collaborative. Design plans and specifications have been completed and include the ARRA's Buy American terms. The estimated total cost of the proposed construction project is $1.8M.

The MWRA is requesting a waiver for a foreign manufactured hydroelectric generator to generate electrical power from the available hydraulic potential energy in the MWRA's drinking water transmission system. It is estimated that the hydroelectric generator will account for approximately 15% of the entire project construction cost of $1.8M. The MWRA has researched foreign and domestic manufacturers of hydroelectric generators and has determined that domestic manufacturers are not able to manufacture a hydroelectric turbine generator that meets the capacity requirements as specified for the proposed project. The waiver request has been submitted prior to the MWRA's bid solicitation. Any bid proposals are not expected to include any domestic manufacturers based on the research conducted and documentation provided by the MWRA.

The project specifications and other supporting documentation state that the hydroelectric generator must produce 200 kilowatts, 250 kVA of 3 phase electrical energy at 60 Hz from an available head at the turbine inlet of 70 to 75 feet and an average daily flow of 20 million gallons of water per day. The project design and specifications require that the hydraulic turbine and hydroelectric generator be installed within the confines of the facility's existing pressure reducing valve station vault/chamber.

An evaluation of all of the submitted documentation by EPA's technical review team supports and confirms the MWRA's claim that there are currently no domestic manufacturers that can provide a suitable hydroelectric generator to meet project specifications. The consulting engineer for the MWRA identified four domestic manufacturers in the United States. None of the four companies manufacture generators smaller than 500 kilowatts in size, with the project specifications requiring 200 kilowatts in size. The supporting information for this proposed project also includes contacts with hydro turbine manufacturers who work with generator manufacturers, internet research conducted at sales websites, telephone calls, and e-mail correspondence with generator manufacturers and visits to their websites. An independent review of the submitted documentation by EPA's national contractor confirmed this evidence.

The supporting documentation (*i.e.* results of research and communications with manufacturers of hydroelectric turbine generators) and independent research and communication with selected manufacturers of hydroelectric turbine generator technology conducted by EPA's national contractor demonstrate that U.S. manufacturers do not currently produce hydroelectric turbine generators capable of generating the requisite power output and having the physical dimensions required for installation in the utility's existing pressure reducing station valve vault/chamber located at the Loring Road facility in Weston, MA. In addition, the evaluation of the supporting documentation also demonstrates that foreign manufactured hydroelectric generators are available and will be able to meet the proposed project design and specifications.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay or curtail entirely projects that are ''shovel ready'' by requiring potential SRF eligible recipients, such as the MWRA, to revise their design standards and specifications. The imposition of ARRA Buy American requirements in this case would not be workable within the absolute constraints and dimensions of the project within the existing facility. To curtail entirely this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' '' (''Memorandum''), defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The same Memorandum defines ''satisfactory quality'' as ''the quality of steel, iron or manufactured good specified in the project plans and designs.''

The Municipal Assistance Unit (CMU) has reviewed this waiver request and has determined that the supporting documentation provided by the MWRA establishes both a proper basis to specify a particular manufactured good, and that the domestic manufactured good that is currently available does not meet the design specifications for the proposed project. The information provided is sufficient to meet the following criteria listed under Section 1605(b) of the ARRA and in the April 28, 2009 Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a producer in the United States, the MWRA is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds for the purchase of a non-domestic manufactured hydroelectric generator documented in MWRA's waiver request submittal dated October 23, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Dated: December 16, 2009.

H. Curtis Spalding,

Regional Administrator, EPA Region 1—New England.

[FR Doc. E9–31048 Filed 12–29–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9098–1]

Notice of a Regional Project Waiver of Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the North Conway, NH Water Precinct

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a waiver of the Buy America requirements of ARRA Section 1605 under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a

satisfactory quality] to the North Conway, New Hampshire Water Precinct (NCWP) for the purchase of two SB615 Series Boilers manufactured by Bosch Thermotechnology of Germany. This is a project specific waiver and only applies to the use of the specified product for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. Based upon information submitted by the NCWP and its consulting engineer, it has been determined that there are currently no domestic manufacturers available to meet its proposed project design and performance specifications. The Regional Administrator is making this determination based on the review and recommendations of the Municipal Assistance Unit. The Assistant Administrator of the Office of Administration and Resources Management has concurred on this decision to make an exception to Section 1605 of ARRA. This action permits the purchase of two foreign manufactured high efficiency boilers by the NCWP, as documented in its November 4, 2009 request.

DATES: *Effective Date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT: David Chin, Environmental Engineer, (617) 918–1764, or Katie Connors, Environmental Engineer, (617) 918–1658, Municipal Assistance Unit (CMU), Office of Ecosystem Protection (OEP), U.S. EPA, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(b)(2) of Public Law 111–5, Buy American requirements, to the North Conway, NH Water Precinct (NCWP) for the purchase of two SB615 Series Boilers manufactured by Bosch Thermotechnology of Germany. The boiler is manufactured under the brand name of Buderus, whose headquarters in the United States is located in Londonderry, NH. By incorporating high efficiency boilers into the design of the facility's proposed alternative energy project, it is estimated that 2,750 gallons of oil will be saved per year to heat the various buildings at the wastewater treatment facility. The estimated cost for each boiler is $35,000.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or a public works project unless all of the iron, steel, and manufactured goods used in the project is produced in the United States, or unless a waiver is provided to the recipient by the head of the appropriate agency, here the EPA. A waiver may be provided if EPA determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The NCWP is proposing a two phase Alternative Energy project. Phase I involves the installation of solar panels that will augment the power supplied to the wastewater treatment plant and decrease the draw on the electrical grid. Phase II is a $1M construction project that will include the installation of geothermal wells that will supply groundwater to the facility's HVAC system. The constant temperature water will reduce the energy needed to heat and cool the various buildings of the entire wastewater treatment facility. In order to maximize the energy conserving potential, the NCWP has determined that it will also install new high efficiency boilers as part of the Phase II project. The existing boilers at the wastewater treatment facility are 14 years old, one of which is cracked, and several boiler plate sections need to be replaced. These boilers have an estimated rated 84.8% combustion efficiency and 83.6% thermal efficiency. The NCWP is proposing to replace these existing boilers and achieve a minimum 5% increase in efficiency given that the technology currently exists to provide this energy savings.

The design specifications for the proposed project require the following: A condensing oil fired boiler; rated combustion and thermal efficiencies exceeding 90%; performance of the boiler certified by the Air Conditioning, Heating, and Refrigeration Institute; and capacity in the range of 1.6 to 2.0 million BTU/hour.

The April 28, 2009 EPA HQ Memorandum, ''Implementation of Buy American provisions of Public Law 111–5, the 'American Recovery and Reinvestment Act of 2009' '' (''Memorandum''), defines *reasonably available quantity* as ''the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.'' The same Memorandum defines ''satisfactory quality'' as ''the quality of steel, iron or manufactured good specified in the project plans and designs.''

Based on our review, it has been determined that the supporting documentation provided by the NCWP establishes both a proper basis to specify a particular manufactured good, and that no domestic manufactured good is currently available to meet the design and performance specifications for the proposed project. An evaluation of all of the submitted documentation by EPA's technical review team confirms the NCWP's claim that there are currently no domestic manufacturers of commercial grade condensing oil fired boilers with rated combustion and thermal efficiencies greater than 90%. The foreign manufactured boiler that has been identified has a rated combustion efficiency of 95.2% and a thermal efficiency of 92.6%. The information provided is sufficient to meet the criteria necessary for a waiver of the Buy American provision listed under Section 1605(b)(2) of the ARRA and in the ''American Recovery and Reinvestment Act of 2009'' April 28, 2009 Memorandum: Iron, Steel, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are ''shovel ready'' by requiring potential SRF eligible recipients, such as the NCWP, to revise their design standards and specifications. The imposition of ARRA Buy American requirements in this case would result in unreasonable delay for this project. To delay this construction would directly conflict with a fundamental economic purpose of ARRA, which is to create or retain jobs.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the temporary authority to issue exceptions to Section 1605 of the ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project and that this manufactured good was not available from a producer in the United States, the NCWP is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5. This waiver permits use of ARRA funds

for the purchase of two foreign manufactured high efficiency boilers as noted in the NCWP's waiver request submittal dated November 4, 2009. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Dated: December 16, 2009.

H. Curtis Spalding,

Regional Administrator, EPA Region 1—New England.

[FR Doc. E9–31045 Filed 12–29–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION.

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

12/22/2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Persons wishing to comments on this information collection should submit comments by March 1, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street, SW, Washington, DC 20554. To submit your comments by e–mail send them to: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0748.

Title: Section 64.104, 64.1509, 64.1510, Pay–Per–Call and Other Information Services.

Form Number: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents and Responses: 5,125 respondents; 5,175 responses.

Estimated Time per Response: 2 to 50 hours.

Frequency of Response: Annual and on occasion reporting requirements; Third party disclosure; Recordkeeping requirement.

Total Annual Burden: 47,750.

Total Annual Cost: $0.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority(s) for the

information collection are found at 47 U.S.C. 228(c)(7) – (10); Pub. L. No. 192–556, 106 stat. 4181 (1992), codified at 47 U.S.C. 228 (The Telephone and Dispute Resolution Act of 1992).

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 64.1504 of the Commission's rules incorporates the requirements of Sections 228(c)(7)–(10) of the Communications Act restricting the manner in which toll–free numbers may be used to charge telephone subscribers for information services. Common carriers may not charge a calling party for information conveyed on a toll–free number call, unless the calling party: (1) has executed a written agreement that specifies the material terms and conditions under which the information is provided, or (2) pays for the information by means of a prepaid account, credit, debit, charge, or calling card and the information service provider gives the calling party an introductory message disclosing the cost and other terms and conditions for the service. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll–free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll–free information services.

47 CFR 64.1509 of the Commission rules incorporates the requirements of 47 U.S.C. (c)(2) and 228 (d)(2)–(3) of the Communications Act. Common carriers that assign telephone numbers to pay–per–call services must disclose to all interested parties, upon request, a list of all assigned pay–per–call numbers. For each assigned number, carriers must also make available: (1) a description of the pay–per–call services; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay–per–call services must establish a toll–free number that consumers may call to receive information about pay–per–call services. Finally, the Commission requires carriers to provide statements of pay–per–call rights and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

Under 47 CFR 64.1510 of the Commission's rules, telephone bills containing charges for interstate pay–per–call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay–per–call charges must include a consumer notification stating that: (1) the charges are for non–communication services; (2) local and long distance telephone services may not be disconnected for failure to pay per–call charges; (3) pay–per–call (900 number) blocking is available upon request; and (4) access to pay–per–call services may be involuntarily blocked for failure to pay per–call charges. In addition, each call billed must show the type of services, the amount of the charge, and

the date, time, and duration of the call. Finally, the bill must display a toll–free number which subscribers may call to obtain information about pay–per–call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll–free number. The billing disclosure requirements are intended to ensure that telephone subscribers billed for pay–per–call or other information services can understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. E9–30965 Filed 12–29–09; 8:45 am]

BILLING CODE 6712-01-S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 24, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not collect or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on or before March 1, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie F. Smith, Federal Communications Commission, at *Leslie.Smith@fcc.gov.* To submit your comments by e-mail, send them to *PRA@fcc.gov.* Include in the e-mail the OMB Control Number of the collection or, if there is no OMB control number, the Title shown in the **SUPPLEMENTARY INFORMATION** section below. If you are unable to submit your comments by e-mail, contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) or to obtain a copy of the collection, send an e-mail to *PRA@fcc.gov* and include the collection's OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below, or call Leslie F. Smith at (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0951.

Title: Sections 1.204(b) and 1.1206(a) Note 1, Service of Petitions for Preemption.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, local, or Tribal Government.

Number of Respondents: 125; 125 responses.

Estimated Time per Response: 0.25 hours (15 minutes).

Frequency of Response: Occasional reporting requirements; Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 35 hours.

Total Annual Costs: N/A.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR Section 0.459. The FCC has a system of records, FCC/OGC–5, ''Pending Civil Cases,'' to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individuals may submit with their petitions for preemption that they file with the Commission.

Needs and Uses: These provisions supplement the procedures for filing petitions seeking Commission preemption of state and local government regulation of telecommunications services. They require that such petitions, whether in the form of a petition for rulemaking or a petition for declaratory ruling, be served on all state and local governments. The actions for which are cited as a basis for requesting preemption. Thus, in accordance with these provisions, persons seeking preemption must serve their petitions not only on the state or local governments whose authority would be preempted, but also on other state or local governments whose actions are cited in the petition.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–31013 Filed 12–29–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

December 22, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not collect or sponsor a collection of information unless it displays a currently valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have

practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on or before March 1, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Leslie F. Smith, Federal Communications Commission, at *Leslie.Smith@fcc.gov.* To submit your comments by e-mail, send them to *PRA@fcc.gov.* Include in the e-mail the OMB Control Number of the collection or, if there is no OMB control number, the Title shown in the **SUPPLEMENTARY INFORMATION** section below. If you are unable to submit your comments by e-mail, contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) or to obtain a copy of the collection, send an e-mail to *PRA@fcc.gov* and include the collection's OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below, or call Leslie F. Smith at (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0411.

Title: Procedures for Formal Complaints Filed Against Common Carriers.

Form Number: FCC 485.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 26; 26 responses.

Estimated Time per Response: 0.5–12 hours.

Frequency of Response: Recordkeeping, On occasion reporting requirements; and Third party disclosure.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 1,001 hours.

Total Annual Cost: $1,409,600.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: 47 CFR 1.731 provides for confidential treatment of materials disclosed or exchanged during the course of formal complaint proceedings when those materials have been identified by the disclosing party as proprietary or confidential. In the rare case in which a producing party believes that Section 1.731 will not provide adequate protection for its asserted confidential material, it may request either that the opposing party consent to greater protection, or that the staff supervising the proceeding order greater protection.

Needs and Uses: Sections 206–209 of the Communications Act of 1934, as amended (the ''Act''), provide the statutory framework for the Commission's rules for resolving formal complaints against common carriers. Section 208(a) authorizes complaints by any person ''complaining of anything done or omitted to be done by any common carrier'' subject to the provisions of the Act. Section 208(a) states that if a carrier does not satisfy a complaint or there appears to be any reasonable ground for investigating the complaint, the Commission shall ''investigate the matters complained of in such manner and by such means as it shall deem proper.'' Certain categories of complaints are subject to a statutory deadline for resolution. *See, e.g.,* 47 U.S.C. 208(b)(1) (imposing a five-month deadline for complaints challenging the ''lawfulness of a charge, classification, regulation, or practice''); 47 U.S.C. 271(d)(6) (imposing a 90-day deadline for complaints alleging that a Bell operating company (BOC) has ceased to meet conditions imposed in connection with approval to provide in-region interLATA services).

Formal complaint proceedings before the Commission are similar to civil litigation in federal district court. In fact, under section 207 of the Act, a party claiming to be damaged by a common carrier, may file its complaint with the Commission or in any district court of the United States, ''but such person shall not have the right to pursue both such remedies'' (47 U.S.C. 207). The Commission has promulgated rules (the ''Formal Complaint Rules'') to govern its formal complaint proceedings that are similar in many respects to the Federal Rules of Civil Procedure. *See* 47 CFR 1.720–1.736. These rules require the submission of information from the parties necessary to create a record on which the Commission can decide complex legal and factual issues. As described in Section 1.720 of the Commission's rules, formal complaint proceedings are resolved on a written record consisting of a complaint, answer or response, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments.

This collection of information includes the process for submitting a formal complaint. The Commission uses this information to determine the sufficiency of complaints and to resolve the merits of disputes between the parties. Orders issued by the Commission in formal complaint proceedings are based upon evidence and argument produced by the parties in accordance with the Formal Complaint Rules. If the information were not collected, the Commission would not be able to resolve common carrier-related complaint proceedings, as required by Section 208 of the Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–31039 Filed 12–29–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

December 23, 2009.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 1, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Leslie F. Smith,* Federal Communications Commission, via the Internet at *Leslie.Smith@fcc.gov.* To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Leslie F. Smith at (202) 418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0917.

Title: CORES Registration Form.

Form Number: FCC Form 160.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit institutions; and State, Local, or Tribal Governments.

Number of Respondents: 150,000; 150,000 responses.

Estimated Time per Response: 10 minutes (0.167 hours).

Frequency of Response: One time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 25,050 hours.

Total Annual Costs: None.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: The FCC has a system of records, FCC/OMD–9, ''Commission Registration System (CORES),'' to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on FCC Form 160. The FCC will also redact PII submitted on this form before it makes FCC Form 160 available for public inspection.

Needs and Uses: Respondents use FCC Form 160 to register in the FCC's Commission Registration System (CORES). Respondents may also register in CORES on-line at *http://www.fcc.gov/frnreg.* When registering, the respondent receives a unique FCC Registration Number (FRN), which is required for anyone doing business with the Commission. FCC Form 160 is used to collect information that pertains to the entity's name, address, contact representative, telephone number, e-mail address, and fax number. The Commission uses this information to collect or report on any delinquent debt arising from the respondent's business dealings with the FCC, including both ''feeable'' and ''nonfeeable'' services; and to ensure that registrants (respondents) receive any refunds due. Use of the CORES System is also a means of ensuring that the Commission operates in compliance with the Debt Collection Improvement Act of 1996.

The Commission has increased the number of respondents and number of responses by approximately 50,000 each to account for those who will now be filing FCC Form 323, ''Ownership Report for Commercial Broadcast Stations.''

OMB Control Number: 3060–0918.

Title: CORES Update/Change Form.

Form Number: FCC Form 161.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit institutions; and State, Local, or Tribal Governments.

Number of Respondents: 57,600; 57,600 responses.

Estimated Time per Response: 10 minutes (0.167 hours).

Frequency of Response: One time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 9,792 hours.

Total Annual Costs: None.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: The FCC has a system of records, FCC/OMD–9, ''Commission Registration System (CORES),'' to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individual respondents may submit on FCC Form 160. The FCC will also redact PII submitted on this form before it makes FCC Form 160 available for public inspection.

Needs and Uses: After respondents have registered in the FCC's Commission Registration System (CORES) and have been issued a FCC Registration Number (FRN), they may use FCC Form 161 to update and/or change their contact information, including name, address, telephone number, e-mail address, fax number, contact representative, contact representative's address, telephone number, e-mail address, and/or fax number. Respondents may also update their registration information in CORES on-line at *http://www.fcc.gov/frnreg.* The Commission uses this information to collect or report on any delinquent debt arising from the respondent's business dealings with the FCC, including both ''feeable'' and ''nonfeeable'' services; and to ensure that registrants (respondents) receive any refunds due. Use of the CORES System is also a means of ensuring that the Commission operates in compliance with the Debt Collection Improvement Act of 1996.

Federal Communicatons Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–31010 Filed 12–29–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice; one new Privacy Act system of records.

SUMMARY: Pursuant to subsection (e)(4) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the FCC proposes to add a new system of records, FCC/OMD–27, ''Broadband Unavailability Survey and Broadband Quality Test.'' The FCC's Office of Managing Director (OMD) will use the information contained in FCC/OMD–27 to cover the personally identifiable information (PII) in the Commission's new ''Public Registry of Broadband Availability Consumer Information'' survey and ''Broadband Quality Test.'' This survey will determine the access of U.S. residents to broadband—cable and DSL, fiber and other broadband services. The test will provide individuals with a mechanism to measure the quality of their internet broadband connection. Individual street addresses will not be made public but aggregated data from the database may be made public. These data may be used to inform the National Broadband Plan, the National Broadband Map and other proceedings related to the provisioning of broadband services.

DATES: In accordance with subsections (e)(4) and (e)(11) of the Privacy Act, any interested person may submit written comments concerning the alteration of this system of records on or before January 29, 2010. The Office of Management and Budget (OMB), which has oversight responsibility under the

Privacy Act to review the system of records, may submit comments on or before February 8, 2010. The proposed system of records will become effective on February 8, 2010 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed altered system to OMB and to both Houses of Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management, Room 1–C216, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION: Contact Leslie F. Smith, Performance Evaluation and Records Management, Room 1–C216, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed new system of records maintained by the FCC. This notice is a summary of the more detailed information about the proposed new system of records, which may be viewed at the location given above in the **ADDRESSES** section. The purpose for adding this new system of records, FCC/OMD–27, ''Broadband Unavailability Survey and Broadband Quality Test,'' is to cover the personally identifiable information (PII) in the Commission's new ''Public Registry of Broadband Availability Consumer Information'' survey and ''Broadband Quality Test.'' This survey will determine the access of U.S. residents to broadband—cable and DSL, fiber, and other broadband services. The test will provide individuals with a mechanism to measure the quality of their internet broadband connection. Individual street addresses will not be made public, but aggregated data from the database may be made public. The data may also be used to inform the National Broadband Plan, the National Broadband Map, and other proceedings related to the provisioning of broadband services.

This notice meets the requirement documenting the proposed new system of records that is to be added to the systems of records that the FCC maintains, and provides the public, Congress, and the Office of Management and Budget (OMB) with an opportunity to comment.

FCC/OMD–27

SYSTEM NAME:

Broadband Unavailability Survey and Broadband Quality Test.

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Information Technology Center (ITC), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include individuals who participate in the ''Public Registry of Broadband Unavailability Consumer Information'' survey and individuals who participate in the internet service ''Broadband Quality Test.''

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include the street address, city, state, and zip code of each individual who selects to participate in the ''Public Registry of Broadband Unavailability Consumer Information'' survey and each individual who participates in the Internet service ''Broadband Quality Test.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Broadband Data Improvement Act of 2008, Public Law No. 110–385, Stat 4096 § 103(c)(1); American Reinvestment and Recovery Act of 2009 (ARRA), Public Law No. 111–5, 123 Stat 115 (2009); and Communications Act, 47 U.S.C. 154(i).

PURPOSES:

The Commission uses the records in this system to conduct the ''Public Registry of Broadband Availability Consumer Information'' survey to determine the access of U.S. residents to broadband—cable and DSL, fiber, and other broadband services and to provide individuals with a ''Broadband Quality Test'' to measure their quality of their internet broadband connection. Individual street addresses will not be made public but aggregated data from the database may be made public. These data may be used to inform the National Broadband Plan, the National Broadband Map and other proceedings related to the provisioning of broadband services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for implementing or enforcing the statute, rule, regulation, or order.

2. A record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

3. A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when:

(a) the United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation.

4. A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

5. A record from this system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

6. A record from this system may be disclosed to appropriate agencies, entities, and persons when (1) The Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's

efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

7. The information collected through the voluntary Registry and speed tests, with the exception of any personally identifiable information, may be shared with public-private partnerships and with the Telecommunications Program of the United States Department of Agriculture (USDA) Rural Development Agency. This sharing regime is described in the Commission's Broadband Data Order of 2008 (FCC 08–89).

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information includes the electronic data and records that are stored in the FCC's computer network databases.

RETRIEVABILITY:

Information in this system may be retrieved by the responses to the broadband internet access questions: (1) Broadband access (yes/no); (2) broadband service availability (check boxes for types of broadband services available at an individual's home); and (3) the individual's home address: street address, city, state, and zip code. Furthermore, the information may be retreived and/or aggregated based upon other Broadband Quality Test variables, such as broadband speed, latency, jitter, and packet loss, among other broadband quality variables.

SAFEGUARDS:

Access to the information in the Public Registry of Broadband Unavailability, which is housed in the FCC's computer network databases, is restricted to authorized OMD supervisory and staff in the Planning and Support Group of ITC and other ITC staff and contractors who maintain these computer databases. Other employees and contractors may be granted access on a ''need-to-know'' basis. The FCC's computer network databases are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. Information resident on the database servers is backed-up routinely onto magnetic media. Back-up tapes are stored on-site and at a secured location.

RETENTION AND DISPOSAL:

The information in this system is limited to electronic files, records, and data, which pertains to the Public Registry of Broadband Unavailability, which includes:

(1) the information obtained from individuals who participated in the Consumer Information survey; and

(2) the information obtained from individuals who participated in the Speed Test.

Until the National Archives and Records Administration (NARA) approves the retention and disposal schedule, these records will be treated as permanent.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Address inquiries to the Information Technology Center (ITC), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the Information Technology Center (ITC), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Address inquiries to the Information Technology Center (ITC), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

CONTESTING RECORD PROCEDURES:

Address inquiries to the Information Technology Center (ITC), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources for the information in this system are the survey respondents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–31009 Filed 12–29–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 13, 2010.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Kirk Doskocil, Brecksville, Ohio; to acquire voting shares of Bonifay Holding Company, Inc., and thereby indirectly acquire voting shares of Bank of Bonifay, both of Bonifay, Florida.

Board of Governors of the Federal Reserve System, December 24, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–30937 Filed 12–29–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 12, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Elisabeth Meyer Kimmel 2009 Grantor Retained Annuity Trust 4, Champaign, Illinois, and Elisabeth Meyer Kimmel, LaJolla, California, individually and as trustee of the Elisabeth Meyer Kimmel 2009 Grantor Retained Annuity Trust 4, to join the existing Meyer/Kimmel Family Control Group through the acquisition of voting shares of First Busey Corporation, and thereby indirectly acquire voting shares of Busey Bank, both of Champaign, Illinois.

Board of Governors of the Federal Reserve System, December 23, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–30876 Filed 12–29–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 2010.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. City Holding Company, Charleston, West Virginia; to acquire up to 7.5 percent of the voting shares of First United Corporation, and thereby indirectly acquire up to 7.5 percent of the voting shares of First United Bank & Trust Company, both of Oakland, Maryland.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Drayton Bancor, Inc., to merge with Walsh County Bancorporation, Inc., both of Drayton, North Dakota, and thereby indirectly merge with Bank of Minto, Minto, North Dakota.

Board of Governors of the Federal Reserve System, December 23, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–30875 Filed 12–29–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 2010.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. Boston Private Financial Holdings, Inc., Boston, Massachusetts; to acquire the remaining 19 percent of the direct ownership of KLS Professional Advisers Group, LLC, New York, New York, and thereby engage in financial and investment advisory activities pursuant to section 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, December 23, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–30874 Filed 12–29–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

[Docket No. 09–08]

SSA Terminals, LLC and SSA Terminals (Oakland), LLC v. The City of Oakland, Acting by and Through Its Board of Port Commissioners; Notice of Filing of Complaint and Assignment

Served December 24, 2009, *Federal Maritime Commission.*

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by SSA Terminals, LLC and SSA Terminals (Oakland), LLC (jointly referred to as ''SSAT''). Complainant asserts that SSA Terminals, LLC is a Delaware limited liability company and that SSA Terminals (Oakland), LLC is a California limited liability company. Complainant alleges that Respondent, the City of Oakland acting by and through its Board of Port Commissioners (hereinafter ''the Port''), is a municipal department established and existing under Article VII of the Charter of the City of Oakland. Complainant also alleges that the Port is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. 40102(14). Complainant asserts that, through means of an assignment and subassignment agreement, Complainant leases Berths 57–59 from Respondent. Complainant alleges that Respondent and Ports America Outer Harbor Terminal, LLC (''PAOHT'') are parties to a lease agreement for Berths 20–24 which violates the Shipping Act by granting more reasonable terms for the rental and use of marine terminal

facilities to PAOHT than those provided to SSAT. Specifically, Complainant alleges that Respondent has violated the Shipping Act by: (1) Imposing an undue or unreasonable prejudice or disadvantage with respect to SSAT; (2) giving an undue or unreasonable preference or advantage to PAOHT; (3) refusing to deal or negotiate with SSAT; and (4) failing to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling and storing or delivering property. 46 U.S.C. 41106(2) and (3) and 41102(c). Complainant maintains that, as a consequence of the Port's agreement with PAOHT, Complainant has sustained and continues to incur injuries and damages, including lost business and higher rents, and other payments and obligations to the Respondent, thereby suffering damages in the millions of dollars.

Complainant requests that the Commission require Respondent to answer the charges in this Complaint, cease and desist from engaging in violations of the Shipping Act, and put in force such practices as the Commission determines to be lawful and reasonable. Complainant also requests that an order be issued requiring Respondent to pay SSAT reparations for violations of the Shipping Act, including the amount of the actual injury, plus interest, costs and attorney fees, and any other damages to be determined; and that the Commission order any such other relief as it determines appropriate. Complainant requests that a hearing be held in Washington, DC.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by December 28, 2010, and the final decision of the Commission shall be issued by April 27, 2011.

Karen V. Gregory,

Secretary.

[FR Doc. E9–31065 Filed 12–29–09; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Braid Logistics (North America), Inc., 5642 Shirley Lane, Houston, TX 77032, Officer: Michael Ng, Treasurer, (Qualifying Individual).

PNX Global, Inc. dba Terramar Logistics Int'l, 2065 Venice Blvd., Ste. C, Los Angeles, CA 90006, Officers: Chul H. Choi, CEO, (Qualifying Individual). Kyu H. Whang, CFO.

SBB International Shipping LLC, 100 Plaza Drive, Ste. 102, Secaucus, NJ 07094, Officer: Ozgur Cebioglu, Manager, (Qualifying Individual).

Sky Express World Courier, Inc., 1740 S. Los Angeles Street, Ste. 201, Los Angeles, CA 90015, Officers: Gyou H. Ahn, Secretary, (Qualifying Individual). Hyoungtae Kim, CEO.

Pentagon Freight, Inc., 2113 Treeridge Circle, Brea, CA 92821, Officers: Jenny Jie Kang Yang, CEO, (Qualifying Individual). Bao Chen, Vice President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

SBB International Shipping LLC, 100 Plaza Drive, Ste. 102, Secaucus, NJ 07094, Officer: Ozgur Cebioglu, Manager, (Qualifying Individual).

USKO Shipping, 4021 Hillswood Dr., Sacramento, CA 95821, Roman Z. Skots, Sole Proprietor.

Group JDS, Inc., 790 NW. 107 Ave., Ste. 306, Miami, FL 33172, Officer: Jorge L. Castano, President, (Qualifying Individual).

Total Commerce Corp. dba Pentabox, 3410 NW. 73 Avenue, Miami, FL 33122, Officer: Carmen G. Mayer, President, (Qualifying Individual).

ALO Enterprise Corporation, 225 Chambers Street, Trenton, NJ 08609, Officers: Amr M. Rihan, CEO, (Qualifying Individual). Fida Dahrouj, Vice President.

Ace Relocation Systems, Inc., 5608 Eastgate Drive, San Diego, CA 92121, Officer: Daniel J. Lammers, Vice President, (Qualifying Individual).

Omnitrans Corp., Ltd., 111 Broadway, Ste. 1705B, New York, NY 10006, Hermann V. AmsZ, Sole Proprietor.

Assure Shipping, LLC, 9462 Stevens Ave., So., Bloomington, MN 55420, Officer: Jane Mahowald, CEO, (Qualifying Individual).

Megatrans Logistics, Inc. dba Orion, International Mega-Logistics, 2129 NW. 86th Avenue, Doral, FL 33122, Officers: Lilian D. Cobo, Secretary, (Qualifying Individual). Lilian M. Cobo, President.

Azap Motors Inc., 5433 Buffalo Avenue, Jacksonville, FL 32208, Officer: Ali Y. Hussein, President, (Qualifying Individual).

Commodity Forwarders, Inc., 11101 S. La Cienega Blvd., Los Angeles, CA 90045, Officers: Chris A. Connell, President, (Qualifying Individual). Alfred Kuehlewind, CEO.

Barthco International, Inc., dba OHL–International, 5101 S. Broad Street, Philadelphia, PA 19112, Officers: Ed M. Piza, Vice President, (Qualifying Individual). Scott McWilliams, CEO.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

D. Hauser, Inc., 1555 Fording Island Rd., Ste. E, Hilton Head, SC 29926, Officer: Michael J. Bonvissuto, Jr., Exec. V. President. (Qualifying Individual).

SBB Shipping USA Inc., 100 Plaza Drive, 1st Floor, Secaucus, NJ 07094, Officer: Ozgur Cebioglu, Treasurer, (Qualifying Individual).

Daniel L. Vesque LCHB, 100 Plaza Drive, Ste. 102, Secaucus, NJ 07094, Daniel L. Vesque, Sole Proprietor.

Total Global Solutions, Inc., 4290 Bells Ferry Road, Ste. #224, Kennesaw, GA 30144, Officer: Tomomi Hamamura, CFO, (Qualifying Individual).

Dated: December 24, 2009.

Karen V. Gregory,

Secretary.

[FR Doc. E9–30962 Filed 12–29–09; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Charges For Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice Regarding Charges for Certain Disclosures.

SUMMARY: The Federal Trade Commission announces that the ceiling on allowable charges under Section 612(f) of the Fair Credit Reporting Act (''FCRA'') will decrease from $11.00 to $10.50 effective January 1, 2010. Under 1996 amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(f) on January 1 of each year, based proportionally on changes in the Consumer Price Index (''CPI''), with fractional changes rounded to the nearest fifty cents. The CPI increased 33.98 percent between September 1997, the date the FCRA amendments took effect, and September 2009. This increase in the CPI, and the requirement that any increase be rounded to the nearest fifty cents, results in a maximum allowable charge of $10.50 effective January 1, 2010.

EFFECTIVE DATE: January 1, 2010.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Clarke W. Brinckerhoff, Bureau of Consumer Protection, 202-326-3208, or Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3428.

SUPPLEMENTARY INFORMATION: Section 612(f)(1)(A) of the Fair Credit Reporting Act, which became effective in 1997, provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to Section 609 of the Act.[1] The law states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to Section 609, the charge shall not exceed $8.00 and shall be indicated to the consumer before making the disclosure. Section 612(f)(2) states that the Federal Trade Commission (''the Commission'') shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

Section 211(a)(2) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') added a new Section 612(a) to the FCRA that gives consumers the right to request free annual disclosures once every 12 months. The maximum allowable charge established by this Notice does not apply to requests made under that provision. The charge does apply when a consumer who orders a file disclosure has already received a free annual disclosure and does not otherwise qualify for an additional free disclosure.

The Commission considers the $8.00 amount referred to in paragraph (1)(A)(i) of Section 612(f) to be the baseline for the effective ceiling on reasonable charges dating from the effective date of the amended FCRA, *i.e.*, September 30, 1997. Each year the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8.00 should be made effective on January 1 of the subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2009, the Consumer Price Index for all urban consumers and all items increased by 33.98 percent – from an index value of 161.2 in September 1997 to a value of 215.969 in September 2009. An increase of 33.98 percent in the $8.00 base figure would lead to a new figure of $10.72. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the maximum allowable charge should be $10.50.

The Commission therefore determines that the maximum allowable charge for the year 2010 will be $10.50.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E9–30982 Filed 12–29–09: 8:45 am]

BILLING CODE 6750–01–S

[1]This provision, originally Section 612(a), was added to the FCRA in September 1996 and became effective in September 1997. It was relabeled Section 612(f) by Section 211(a)(1) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act''), Public Law 108-159, which was signed into law on December 4, 2003.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees for the Lawrence Berkeley National Laboratory, Berkeley, CA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for the Lawrence Berkeley National Laboratory, Berkeley, California, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Lawrence Berkeley National Laboratory.

Location: Berkeley, California.

Job Titles and/or Job Duties: All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors.

Period of Employment: August 13, 1942 through December 31, 1961.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–30984 Filed 12–29–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees for the Westinghouse Electric Corporation, Bloomfield, NJ, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health

(NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for the Westinghouse Electric Corporation, Bloomfield, New Jersey, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Westinghouse Electric Corporation.

Location: Bloomfield, New Jersey.

Job Titles and/or Job Duties: All Atomic Weapons Employer employees.

Period of Employment: August 13, 1942 through December 31, 1949.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–30983 Filed 12–29–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees at Metals and Controls Corp. in Attleboro, Massachusetts, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 10, 2009, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at Metals and Controls Corp. in Attleboro, MA, from January 1, 1952 to December 31, 1967, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the SEC.

This designation will become effective on January 9, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–30986 Filed 12–29–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees at the Piqua Organic Moderated Reactor site, Piqua, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 10, 2009, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the Piqua Organic Moderated Reactor site during the covered period from May 2, 1966 through February 28, 1969, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on January 9, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–30988 Filed 12–29–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees at Brookhaven National Laboratory in Upton, New York, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 10, 2009, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at Brookhaven National Laboratory in Upton, New York, from January 1, 1947 to December 31, 1979, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation will become effective on January 9, 2010, unless Congress provides otherwise prior to the

effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–30989 Filed 12–29–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees at the Oak Ridge Hospital, Oak Ridge, Tennessee, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 10, 2009, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked in any location at the Oak Ridge Hospital in Oak Ridge, Tennessee, from May 15, 1950 through December 31, 1959, for a number of work days aggregating at least 250 work days or in combination with work days within the parameters established for one or more other classes of employees in the SEC.

This designation will become effective on January 9, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–30987 Filed 12–29–09; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees at the Hanford site in Richland, Washington, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 10, 2009, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors who worked at the Hanford site in Richland, Washington, from October 1, 1943 through June 30, 1972, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on January 9, 2010, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–30985 Filed 12–29–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public. Pre-registration is required for both public attendance and comment. Individuals who wish to attend the meeting and/or participate in the public comment session should either e-mail *nvpo@hhs.gov* or call 202–690–5566 to register.

DATES: The meeting will be held on February 3, 2010, from 9 a.m. to 5:30 p.m., and February 4, 2010 from 8:30 a.m. to 5:30 p.m.

ADDRESSES: Department of Health and Human Services; Hubert H. Humphrey Building, Room 800; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. *Phone:* (202) 690–5566; *Fax:* (202) 260–1165; *e-mail: nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. Section 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program, on matters related to the Program's

responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

Topics to be discussed at the meeting include vaccine safety recommendations, the National Vaccine Plan, adult immunization recommendations, vaccine financing, 2009 H1N1 influenza outbreak, and other related issues. The meeting agenda will be posted on the website: *www.hhs.gov/nvpo/nvac* at least one week prior to the meeting. Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the office at the address/phone listed above at least one week prior to the meeting. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Individuals who would like to submit written statements should e-mail or fax their comments to the National Vaccine Program Office at least five business days prior to the meeting. Those wishing to register may do so by sending an email to *nvpo@hhs.gov* or by calling 202–690–5566 and providing name, e-mail address and organization.

Dated: December 23, 2009.

Bruce Gellin,

Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.

[FR Doc. E9–30897 Filed 12–29–09; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0546]

Agency Information Collection Activities; Proposed Collection; Comment Request; Pet Food Early Warning Recall Rational Questionnaire as Part of the MedWatch^{Plus} Portal and Rational Questionnaire Initiative

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow for public comment in response to the notice. This notice solicits comments on the data elements for the Rational Questionnaire which is being rolled out as part of the ongoing MedWatch^{Plus} Portal and Rational Questionnaire initiative.

DATES: Submit written or electronic comments on the collection of information by January 29, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

II. Pet Food Early Warning Recall Rational Questionnaire as Part of the MedWatch^{Plus} Portal and Rational Questionnaire Initiative (OMB Control No. 0910–0645)—Revision

Section 1002(b) of the FDA Amendments Act of 2007 (FDAAA) (Public Law 110–85), directs the Secretary of Health and Human Services (the Secretary), to establish an early warning and surveillance system to identify adulteration of the pet food supply and outbreaks of illness associated with pet food. As part of the effort to fulfill that directive, the Secretary tasked FDA with developing the instrument that would allow consumers to report voluntarily adverse events associated with pet food. In a 60-day **Federal Register** notice, which published on October 23, 2008 (73 FR 63153 at 63155), and a 30-day notice, which published on May 20, 2009 (74 FR 23721 at 23726), FDA announced the agency-wide information collection initiatives MedWatch^{Plus} Portal and Rational Questionnaire. These initiatives are components of a larger electronic system being developed to collect, submit, and process adverse event reports and other safety information for all FDA-regulated products. The MedWatch^{Plus} Portal, a Web-based portal, and the Rational Questionnaire, a user-friendly data collection tool, together make it easy for the public to report a safety problem.

In this 30-day notice, FDA is requesting public comment on data elements associated with the roll out of the Pet Food Early Warning System component of the overall MedWatch^{Plus}Portal and Rational Questionnaire initiative, whose framework and burden hours were approved under OMB Control Number 0910–0645. This notice refers to the instrument described in that information collection. FDA previously estimated the total burden hours associated with the Pet Food Early Warning System to be 324 hours (73 FR 63153 at 63155; 74 FR 23721 at 23726). The estimated burden hours associated with this information collection remain 324 total hours.

III. Data Elements for Pet Food Early Warning System Rational Questionnaire

In this 30-day notice, FDA is requesting public comment on data elements associated with the Pet Food Early Warning System component of the MedWatch^{Plus} Portal and Rational Questionnaire initiatives. Following is a

table describing the data elements to be included in the instrument.

TABLE 1.—DATA ELEMENTS FOR VOLUNTARY PET FOOD REPORTS OF PRODUCT PROBLEMS AND/OR ADVERSE EVENTS SUBMITTED THROUGH THE MEDWATCH[PLUS] RATIONAL QUESTIONNAIRE SAFETY REPORTING PORTAL

Data Element	Description
Introduction Page	
Report Identifying Information	
*Which of the following best describes you?	This describes whether the reporter is a consumer/private citizen, or a veterinary professional.
*Enter a name to help you identify the report.	This requests that the reporter enter a short name, description, or title that the reporter associates with the event reported.
*What type of report are you submitting?	This describes the type of report being submitted (e.g., adverse event, product problem, or both).
*Are you the animal owner?	This indicates whether the reporter is the owner of an animal involved in the report.
Contact Information Page	
Your Contact Information	
First Name	This is the reporter's first name.
Last Name	This is the reporter's last name.
*May the FDA contact you to follow-up, if necessary?	This indicates whether FDA may contact the reporter if follow-up information is needed.
E-mail	This is the reporter's e-mail address.
Confirm e-mail	This requests that e-mail information be confirmed by the reporter.
Primary Phone	This is the reporter's primary phone number.
Other Phone	This is the reporter's alternate phone number.
Country	This is the reporter's country of residence.
Street Address Line 1	This is the street address of the reporters primary residence.
Street Address Line 2	This is additional street address information for the reporter's primary residence (if additional lines are necessary to report that information).
City/Town	This is the reporter's city or town of residence.
State	This is the reporter's State of residence.
ZIP/Postal Code	This is the zip code for the reporter's residence.
Other Parties Reported To	
Indicate any other parties that you notified about this issue	This asks the reporter to identify (in general) other parties told about the problem being reported to FDA.
Problem Summary Page	
Affected Animal Information	
Number of animals given the product	This asks about the number of animals that received the product.
*Number of animals reacted	This asks about the number of animals that became ill or had a reaction after receiving the product.
Animal Name/Identifier	This asks the reporter to provide a name or other means to identify the animal(s) involved in the report.
*Species	This is a list of values describing the species of the animal(s) involved in the report.

TABLE 1.—DATA ELEMENTS FOR VOLUNTARY PET FOOD REPORTS OF PRODUCT PROBLEMS AND/OR ADVERSE EVENTS SUBMITTED THROUGH THE MEDWATCH[PLUS] RATIONAL QUESTIONNAIRE SAFETY REPORTING PORTAL—Continued

Data Element	Description
*Breed	This is a list of values describing the breed(s) of the animal(s) involved in the report.
Age	This is the animal's age.
Weight	This is the animal's weight.
Gender	This asks the reporter to identify the gender (sex) of the animal involved in the report.
*Reproductive status	This asks the reporter to identify whether the animal's reproductive organs are intact or whether the animal had been neutered (e.g., sterilized, castrated or spayed).
*Was animal pregnant at time of event?	This asks the reporter to identify whether the animal was pregnant at the time of the adverse event.
*Was the animal lactating at time of event?	This asks the reporter to identify whether the animal was producing milk at the time of the adverse event.
Prior to the event what was the animal's overall state of health?	This asks the reporter to identify the overall or general state of the animal's health before the adverse event.
Medical History	
Did the animal have any health problems and/or was the animal taking medication prior to the event?	This asks the reporter to identify whether the animal was taking medication or had a health problem before the adverse event.
Problem Description	
*Describe what happened	This asks the reporter to describe in a narrative what was observed with the product, and/or how the animal reacted to the product.
*Date problem started	This asks the reporter what date the problem started.
Date of recovery	This is the date the animal recovered from the illness associated with, or the reaction to, the product.
*Outcome to date	This requests that the reporter identify the current condition of the animal.
*Date of death	This is the date the animal died (if applicable).
Products Page	
Product Details	
*Product Brand Name	This is the name of the product.
UPC from Label	This is the 12-digit bar code that can be found on the product label.
*Product Type	This asks the reporter to identify whether the product is food for people, food for pet animals, or food for other animals, such as livestock, zoo, or research animals.
Was product recalled?	This asks the reporter to identify whether the reporter knows if the manufacturer has removed from sale and destroyed the product being reported, regardless of whether the manufacturer did so voluntarily or at the request of a government agency.
Package Type	This is a list of values for the type of package or container for the product.
Package Size	This asks the reporter to provide information on the quantity of the product contained in the package.
Date last purchased product	This is the date the product was last purchased.
Number purchased on this date	This asks the reporter to enter the number of packages, containers, or other units of the product purchased on the date the product was last purchased.

TABLE 1.—DATA ELEMENTS FOR VOLUNTARY PET FOOD REPORTS OF PRODUCT PROBLEMS AND/OR ADVERSE EVENTS SUBMITTED THROUGH THE MEDWATCH[PLUS] RATIONAL QUESTIONNAIRE SAFETY REPORTING PORTAL—Continued

Data Element	Description
If the product is reconstituted, what is the percentage of the product that is water?	This asks the reporter to provide information for the proportion (expressed as a percentage) of the final product fed that is water, if water is added to the product before feeding it.
Were there any other foods or products given to the animal during this period of time?	This asks the reporter to identify whether the animal was fed any other foods or supplements during the time the animal was fed the product.
Do you have a package/container of unopened product from this purchase?	This asks the reporter to identify whether the reporter has any remaining unopened packages or containers of the product.
Describe how the product was stored before and after opening.	This asks the reporter to describe how the product was stored in the user's home before it was opened and after it was opened.
Product Use Details	
Describe how the product was used or administered.	This asks the reporter to describe how the product was given to the animal.
Date first fed the animal product from this purchase	This is the first date the animal received product from the most recent purchase of that product.
Date last fed the animal product from this purchase	This is the last date the animal received product from the most recent purchase of that product.
Percentage of daily ration of product that animal consumed.	This asks the reporter to provide an estimate of the percentage of the animal's total diet that is represented by the product being reported.
How Product Was Used	
Amount of time from use of product to onset of the event?	This asks the reporter to provide information on the amount of time the product was used before the animal became ill or reacted to the product.
Was the product use stopped after the onset of the adverse event?	This asks the reporter to identify whether the use of the product was stopped after the animal became ill or reacted to the product.
Did the adverse event diminish or stop after the product use was stopped?	This asks the reporter to identify whether the signs of illness or reaction stopped or lessened after use of the product was stopped.
Was product use started again?	This asks the reporter to indicate whether the product was used again after its use was stopped.
Length of waiting period between stopping and restarting product use	This is the amount of time between stopping use of the product and restarting the use of the product (if applicable).
Did the adverse event reappear after reintroducing this product?	This requests the reporter identify whether the illness or reaction to the product occurred again after the use of the product was restarted (if applicable).
In your opinion, how likely is it that the use of this product is related to the adverse event?	This requests the reporter to indicate how strongly the reporter believes the use of the product caused the illness or adverse reaction.
Product Purchase Location	
Store/place of purchase.	This is the name of the store or the Web address from which the product was purchased.
Country	This is the country associated with the store or the Web address from which the product was purchased.
Street Address Line 1	This is the street address associated with the store or the Web address from which the product was purchased.
Street Address Line 2	This is additional street address information associated with the store or the Web address from which the product was purchased (if additional lines are necessary to report that information).

TABLE 1.—DATA ELEMENTS FOR VOLUNTARY PET FOOD REPORTS OF PRODUCT PROBLEMS AND/OR ADVERSE EVENTS SUBMITTED THROUGH THE MEDWATCH[PLUS] RATIONAL QUESTIONNAIRE SAFETY REPORTING PORTAL—Continued

Data Element	Description
City/Town	This is the city or town associated with the store or the Web address from which the product was purchased.
State	This is the State associated with the store or the Web address from which the product was purchased.
State/Province	This is the State/Province associated with the store or the Web address from which the product was purchased.
ZIP/Postal Code	This is the zip code associated with the store or the Web address from which the product was purchased.
Firm/Organization on Label	
Do you have one or more labels from this product?	This requests the reporter to indicate whether the reporter has one or more labels from the product being reported.
Firm/Organization Name	This is name of the firm that appears on the label.
Firm/Organization Type	This is the type of firm whose name appears on the label.
Country	This is the country associated with the firm that appears on the label.
Primary Phone	This is the primary phone number associated with the firm that appears on the label.
Street Address Line 1	This is the street address associated with the firm that appears on the label.
Street Address Line 2	This is additional street address information associated with the firm that appears on the label (if additional lines are needed to report that information).
City/Town	This is the city or town associated with the firm that appears on the label.
State	This is the State associated with the firm that appears on the label.
State/Province	This is the State/Province associated with the firm that appears on the label.
ZIP/Postal Code	This is the zip code associated with the firm that appears on the label.
Web address	This is the Web address for the firm whose name appears on the label.
Product Lots	
Lot Number	This requests the reporter to provide the lot number or production code that can be found on the label.
Expiration/use-by date	This is the month and year of an expiration date or use-by (best-by, best-before) date that appears on the label.
Veterinarian Visits Page	
Veterinary Visit Details	
Was a veterinarian consulted?	This requests the reporter to indicate whether a veterinarian was consulted about the illness or reaction the animal had to the product.
Veterinarian Information	
*First Name	This is the first name of the veterinarian who was consulted.
*Last Name	This is the last name of the veterinarian who was consulted.
Veterinary Practice Name	This is the name of the veterinary practice in which the veterinarian that was consulted works.

TABLE 1.—DATA ELEMENTS FOR VOLUNTARY PET FOOD REPORTS OF PRODUCT PROBLEMS AND/OR ADVERSE EVENTS SUBMITTED THROUGH THE MEDWATCHPLUS RATIONAL QUESTIONNAIRE SAFETY REPORTING PORTAL—Continued

Data Element	Description
Country	This is the country of the veterinary practice where the animal was examined.
Street Address Line 1	This is the street address of the veterinary practice where the animal was examined.
Street Address Line 2	This is additional street address information for the veterinary practice where the animal was examined (if additional lines are needed to report that information).
City/Town	This is the city or town of the veterinary practice where the animal was examined.
State	This is the State of the veterinary practice where the animal was examined.
ZIP/Postal Code	This is the zip code of the veterinary practice where the animal was examined.
E-mail	This is the e-mail address of the veterinary practice where the animal was examined.
*Primary Phone	This is the primary phone number of the veterinary practice where the animal was examined.
Attachments Page	
Attach File	
*Description of Attachment	This requests the reporter provide a brief description of the file being attached, e.g., scanned label or medical records.
*Type of Attachment	This requests the reporter indicate the specific contents of the attachment.
* Indicates the information or a response is necessary for FDA to fully process a report.	

IV. Request for Comments

FDA invites comments on all aspects of the collection of the data elements for this Pet Food Early Warning System Rational Questionnaire. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the proposed changes. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 22, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–30872 Filed 12–29–09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

List of Recipients of Indian Health Scholarships Under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94–437) provide at 42 CFR 136.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and Tribal affiliation, if applicable. These scholarships were awarded under the authority of Sections 103 and 104 of the Indian Health Care Improvement Act, 25 U.S.C. 1613–1613a, as amended by the Indian Health Care Amendments of 1988, Public Law 100–713.

The following is a list of Indian Health Scholarship Recipients funded under Sections 103 and 104 for Fiscal Year 2009:

Ahpeahtone, Edwin Paul, University of Oklahoma, Delaware Nation, Oklahoma.

Alexander, Laura Lee, Pennsylvania College of Optometry, Native Village of Selawik, Alaska.

Amdur-Clark, Micah Evan, Northeastern University, Citizen Potawatomi Nation, Oklahoma.

Anagale, Paul Todd, University of Minnesota/Duluth, Navajo Nation, Arizona, New Mexico & Utah.

Anderson, Debra Jean, Northern Arizona University, White Earth Band of the Minnesota Chippewa Tribe, Minnesota.

Avery, Shaela Ann, University of Utah College of Medicine, Navajo Nation, Arizona, New Mexico & Utah.

Azure, Joan Marie, Dakota State College, Turtle Mountain Band of Chippewa Indians of North Dakota.

Azure, Krysten Ross, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota.

Bacon, Kyle, Idaho State University College of Pharmacy, Shoshone Tribe of the Wind River Reservation, Wyoming.

Barr, Eva Ann, Bacone College, United Keetoowah Band of Cherokee Indians in Oklahoma.
Barrett, Haley Nicole, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Battese, Anthony Steven, Cameron University, Prairie Band of Potawatomi Nation, Kansas.
Beals, Charles Gregory, Oklahoma State University, Muscogee (Creek) Nation, Oklahoma.
Beaver, Aaron Don, University of Oklahoma Health Sciences Center, Choctaw Nation, Oklahoma.
Beaver, Allen Don, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Beck, Dustin Ryan, Oklahoma State University, Cherokee Nation, Oklahoma.
Begay, Mirielle Rose, University of New Mexico, Albuquerque, Navajo Nation, Arizona, New Mexico & Utah.
Begay, Natalie, University of Washington, Pueblo of Santa Clara, New Mexico.
Begaye, Adrienne Marie, University of Arizona College of Pharmacy, Navajo Nation, Arizona, New Mexico & Utah.
Begaye, Robbin L., Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah.
Benally, Charleen, New Mexico State University College of Nursing, Navajo Nation, Arizona, New Mexico, Utah.
Benally, Taleisa Morgan, University of New Mexico/Albuquerque, Navajo Nation, Arizona, New Mexico & Utah.
Bercier, Shellee, Turtle Mountain Community College, Turtle Mountain Band of Chippewa Indians of North Dakota.
Berger, Jessica Paulette, Montana State University, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana.
Bighorse, Amanda Nicole, Oklahoma State University, Cherokee Nation, Oklahoma.
Blackburn, Jimmy, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Blackfox, Sasha Denee, Cumberland University, Cherokee Nation, Oklahoma.
Bolton-Baldwin, Marjorie Elsie, University of Alaska School of Nursing, Native Village of Kotzebue, Alaska.
Borges, Laura Annabeth, University of Oklahoma, Choctaw Nation of Oklahoma.
Bost, Dekoda Kole, Oklahoma State University, Choctaw Nation of Oklahoma.
Boyd, Cassandra Iva, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah.
Brady, Meagan Leigh, University of Oklahoma Health Sciences Center, Comanche Nation, Oklahoma.
Brandt, Monica Renea, University of Oklahoma, Muscogee (Creek) Nation, Oklahoma.
Brewer, Cristie Shon, Clackamas Community College, Cherokee Nation, Oklahoma.
Brisbois, Leaha, Washington State University, Turtle Mountain Band of Chippewa Indians of North Dakota.
Brumley (Walker), Breanna Jo, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Buck Elk, Michael Warren, Montana State University, Crow Tribe of Montana.
Burden-Greer, Katie Nicole, University of Oklahoma Health Sciences Center, Muscogee (Creek) Nation, Oklahoma.
Butler, Collette Michelle, Arizona School of Dentistry, Navajo Nation, Arizona, New Mexico & Utah.
Calderon, Sophina Manheimer, University of Rochester School of Medicine, Navajo Nation, Arizona, New Mexico & Utah.
Cardenas-Begaye, Dharshini, Dixie State College of Utah, Navajo Nation, Arizona, New Mexico & Utah.
Cavanaugh, Sarah, University of Mary, Spirit Lake Tribe, North Dakota.
Chatter, DeRay Jacob, Weber State University, Navajo Nation, Arizona, New Mexico & Utah.
Clary, Zachary K., Oklahoma State University, Cherokee Nation, Oklahoma.
Cleavenger, Aaron James, Everest College, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana.
Cleavenger, Beth Ann, University of Montana, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana.
Coble, Leslie Ann, University of South Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota.
Cody, Leigh, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah.
Colclasure, Robin Lynn, Rogers State College, Cherokee Nation, Oklahoma.
Colelay, Aletta Lynn, Northland Pioneer College, White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.
Collins, Sara Jane, University of Oklahoma, Cherokee Nation, Oklahoma.
Coming Hay, April Johanna, Dickinson State University, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.
Cook, Raymond Natonabah, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah.
Corbin, Christopher Neal, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Cummings, Samantha Joellen, University of Michigan, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota.
Cuny, Ryan Wilson, University of Minnesota/Duluth, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota.
Curley, Dustin M., East Central University, Navajo Nation, Arizona, New Mexico & Utah.
Curley-Moses, Tiffany Dawn, Northern Arizona University, San Carlos Apache Tribe of the San Carlos Reservation, Arizona.
Davis, Brandy Darlene, Western Carolina University, Eastern Band of Cherokee Indians of North Carolina.
Davis, Cassidy Wray, University of Oklahoma Health Sciences, Center, Choctaw Nation of Oklahoma.
Davis, Chance Wesley, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Davis, Deidrea Rose, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah.
Davis, Kayla Joyce, Boise State University, Bois Forte Band of the Minnesota Chippewa Tribe, Minnesota.
Day, Autumn Ann, Kirksville College of Osteopathic Medicine, Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota.
De Vera, Melissa Myers, University of Nevada/Reno, Chippewa Cree Indians of the Rocky Boy's Reservation, Montana.
Debo, Erica Kristin, Southwestern Oklahoma State University, Choctaw Nation of Oklahoma.
Decker-Walks Over Ice, Amber Victoria, University of Montana, Confederated Salish & Kootenai of the Flathead Reservation, Montana.
Dez, Desiderio, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah.
Dickson, Jamie Ruth, Salish Kootenai College, Navajo Nation, Arizona, New Mexico & Utah.
Diswood, Patricia Heather, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah.
Dolson, Charles William, College of St. Scholastica, Red Lake Band of Chippewa Indians, Minnesota.
Donaldson, Carrie Marie, University of the Pacific, Village of Old Harbor (Aleut), Alaska.
Downum, Kyle Wilson, Northeastern State University, Peoria Tribe of Indians of Oklahoma.
Draper, Melanie B., Excela Health School of Anesthesia, Cherokee Nation, Oklahoma.

Drappeau, Donis Devoree, University of South Dakota, Yankton Sioux Tribe of South Dakota.
Duncan, Caleb Jerome, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma.
Duncan, Colette Renee, Simmons College, Choctaw Nation of Oklahoma.
Endischee, Flonda, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah.
Enfield, Donna Estella, College of St. Catherine, Choctaw Nation of Oklahoma.
English, Brittany Renee, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Enix, Jessica Lea, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Evans, Amanda Lorna, University of Montana, Confederated Salish & Kootenai of the Flathead Reservation, Montana.
Evans, Crystalle M., Oklahoma State University, Cherokee Nation of Oklahoma.
Faram, Ronald Chad, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Fitzl, Robin A., Rogers State College, Choctaw Nation of Oklahoma.
Fleming, Travis James, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma.
Ford-Bremerman, Jessica Louise, University of Washington School of Dentistry, Confederated Tribes and Bands of the Yakama Nation, Washington.
Forrester, Ross L., Northeastern State University, Cherokee Nation, Oklahoma.
Foruria, Georgianna, University of Alaska Southeast, Central Council of Tlingit & Haida Indian Tribes, Alaska.
Foster, Alexandria L., Southwestern Oklahoma State University, Muscogee (Creek) Nation, Oklahoma.
Foster, James Ray, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Frazier, Hunter L., University of Colorado School of Dentistry/Denver, Cherokee Nation, Oklahoma.
Frederick, Denise, Cankdeska Cikana Community College, Spirit Lake Tribe, North Dakota.
Freeling, Catherine Jane, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Frizzell, Felicia, University of the Pacific, Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.
Frost, Jerrod Caloway, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma.
Gallagher, Shawna Fay, Wright Institute, Klamath Indian Tribe of Oregon.
Garcia, Karen Gina, Kirksville College of Osteopathic Medicine, Pit River Tribe (Montgomery Creek), California.
Garland (Greenwood), Karen L., Southwestern Oklahoma State University, Cherokee Nation, Oklahoma.
Garrison, Bijiibaa Kristin, Harvard Medical School, Navajo Nation, Arizona, New Mexico & Utah.
Gates, Khrys W., University of Missouri/St. Louis, Cherokee Nation, Oklahoma.
Gee, Jodi Leigh, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah.
Gilmore, Jesicah Marie, University of Oklahoma Health Sciences Center, Chickasaw Nation, Oklahoma.
Gipp, Chenoa R.., University of North Dakota, Standing Rock Sioux Tribe of North & South Dakota.
Gladden, Emily, Midwestern University, Navajo Nation, Arizona, New Mexico & Utah.
Good, Jennifer Lynn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota.
Gourneau, Jeremy L, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota.
Gower, Shanon R., Southwestern Oklahoma State University, Cherokee Nation, Oklahoma.
Grabowski, Laura Anne, Marquette University, Choctaw Nation of Oklahoma.
Green-Van De Streek, Sarah Elizabeth, North Dakota State University, White Earth Band of the Minnesota Chippewa Tribe, Minnesota.
Guilbert, Danielle A., Mayville State University, Turtle Mountain Band of Chippewa Indians of North Dakota.
Hajicek, Jodi Lynn, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota.
Harp, Emma Beth, Oklahoma State University, Cherokee Nation, Oklahoma.
Harrison, Lisa Lizette, Mid-State Technical College, Ho-Chunk Nation of Wisconsin.
Hatchett, Sandra Leah, University of Colorado/Denver, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota.
Hatley, Jonathan M., Northeastern State University, Muscogee (Creek) Nation, Oklahoma.
Hatton, Bobby Shane, East Central University, Chickasaw Nation, Oklahoma.
Hayes, Teresa A., Southwestern Oklahoma State University, Cherokee Nation, Oklahoma.
Henry, David Edmond, Creighton University Dental School, Cherokee Nation, Oklahoma.
Hernandez, Carmen Marie, Midwestern State University, Kiowa Indian Tribe of Oklahoma.
Herron (Sherman), Lisa Renee, University of Minnesota College of Pharmacy, Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota.
Heth, Talara K., Connors State College, Cherokee Nation, Oklahoma.
Hicks, Lucretia, Wake Forest University, Eastern Band of Cherokee Indians of North Carolina.
Hill, Kyle Xavier, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota.
Hinkle, Brian A., Southwestern Oklahoma State University, Cherokee Nation, Oklahoma.
Holguin, Guadalupe Joseph, Arizona State University, Pascua Yaqui Tribe of Arizona.
Horn, Tara Jo, Montana State University School of Nursing, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.
Howard, Audrey L., Connors State College, United Keetoowah Band of Cherokee Indians in Oklahoma.
Huff, Zachary Wade, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Humphers, Jon Michael, Des Moines University, Chickasaw Nation, Oklahoma.
Humphreys-Deschiney, Christina Lilly, University of St. Francis, Navajo Nation, Arizona, New Mexico & Utah.
Hunnicutt, Rita Ann, Oklahoma Baptist University, Citizen Potawatomi Nation, Oklahoma.
Ivey, Julie Anne, University of New England, Houlton Band of Maliseet Indians of Maine.
Iyott, John Phillip, Alliant International University, Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.
Jackson, Todd Alan, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Jaramillo, Ernest Benjamin, Central New Mexico Community College, Pueblo of Acoma, New Mexico.
Jensen, Kelsey Nicole, Arizona State University, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota.
Jensen, Maximillion, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah.
Jim, Leroy, The Fielding Institute, Navajo Nation, Arizona, New Mexico & Utah.
Johnson, Blakely Elizabeth, University of Arkansas, Cherokee Nation, Oklahoma.

Johnston, Kristen Denae, University of Oklahoma Health Sciences Center, Muscogee (Creek) Nation, Oklahoma.
Jojola, Nicole, Northland Pioneer College, Hopi Tribe of Arizona.
Jones, Carman R., University of North Dakota, Choctaw Nation of Oklahoma.
Jones, Heather A., Northeastern State University, Choctaw Nation of Oklahoma.
Jones, Tamra Shay, Creighton University Dental School, Navajo Nation, Arizona, New Mexico & Utah.
Kabotie, Margaret Alicia, Northern Arizona University, Hopi Tribe of Arizona.
Kaiser, Morgan Lynn, North Dakota State University, White Earth Band of the Minnesota Chippewa Tribe, Minnesota.
Kane, Marie A., University of Montana, Arapahoe Tribe of the Wind River Reservation, Wyoming.
Kaye, Justin B., University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah.
Kee, Timothy W., University of Rhode Island, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, Montana.
Ketcher, John M., Southern College of Optometry, Cherokee Nation, Oklahoma.
Key, Cody Ryan, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Kirk, Brant Evan, Oregon Health Sciences University, Klamath Indian Tribe of Oregon.
Knight-Brown, Miranda Dawn, University of Minnesota/Duluth, Cherokee Nation, Oklahoma.
Kurley, Stanley, A.T. Still University, White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.
Lamb, Bianca Irene, Texas A&M University, Lipan Apache Tribe of Texas (State-recognized).
Landgren, Shanna Rachelle, University of North Dakota, Bois Forte Band of the Minnesota Chippewa Tribe, Minnesota.
Lane, Dakotah C., Cornell University Medical College, Lummi Tribe of the Lummi Reservation, Washington.
Larney, Kristi Tafv, Southwestern Oklahoma State University, Seminole Nation of Oklahoma.
Lauderdale, Lisa Ann, University of Oklahoma Health Sciences Center, Kickapoo Tribe of Oklahoma.
Laughlin, Tawnya Rae, University of New Mexico/Gallup, Navajo Nation, Arizona, New Mexico & Utah.
Laurence, Kami Lynn, University of Colorado Dental School, Navajo Nation, Arizona, New Mexico & Utah.
Lee, Christa Nicole, Arizona State University, Navajo Nation, Arizona, New Mexico & Utah.
Lee, Jared J., Arizona State University, White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.
Lee, Jhanna, Drexel University, Onondaga Nation of New York.
Lee, Sonya Tere, Weber State University, Navajo Nation, Arizona, New Mexico & Utah.
LeMaster, Robbi Lynn, University of Iowa, Santee Sioux Tribe of the Santee Reservation of Nebraska.
Lerche, Kathryn Addie, Michigan Technological University, Sault Ste. Marie Tribe of Chippewa Indians of Michigan.
Light, Jessica L., Dakota State University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.
Livingston, Carole Ann, Argosy University/Eagan, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.
Longhurst, William D., University of North Dakota, Navajo Nation, Arizona, New Mexico & Utah.
Love, Socia Nicole, University of Minnesota/Duluth, Cherokee Nation, Oklahoma.
Maddox, Gregory John, Cornell University Medical College, Choctaw Nation of Oklahoma.
Maleport, Marcy Marlene, Lake Superior State College, Sault Ste. Marie Tribe of Chippewa Indians of Michigan.
Mannila, Anthony Lee, College of St. Scholastica, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.
Marquis, Stacie Lee, Lourdes College, Citizen Potawatomi Nation, Oklahoma.
Marvel, Lindsey, Indiana University/Bloomington, Caddo Indian Tribe of Oklahoma.
Mason, Caley, University of Montana, Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.
Massie, Alissa Louise, Arcadia University, Sault Ste. Marie Tribe of Chippewa Indians of Michigan.
Matlock, Jazmin, Oklahoma State University, Cherokee Nation, Oklahoma.
Matthews, William Burt Lewis, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Mayahi, Naseam, University of Nevada/Las Vegas, Seminole Nation of Oklahoma.
Mayo, Joshua Allen, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
McCorkle, Cody W., University of Minnesota/Duluth, Citizen Potawatomi Nation, Oklahoma.
McDaniels, Christopher Michael, Northeastern State University, Cherokee Nation, Oklahoma.
McDonald, Kathryn Elizabeth, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah.
McEvoy, Kathryn Ann, University of North Dakota, Cherokee Nation, Oklahoma.
McLemore, Alison Denise, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma.
Means, Darrin Curtis, Tulsa Community College, Cherokee Nation, Oklahoma.
Meeks, Kayla Don, University of Oklahoma Health Sciences Center, Chickasaw Nation, Oklahoma.
Mesteth, Connally (Connie) Marie, University of Colorado Health Sciences Center, Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota.
Middleton, Kelly Diane, University of Alabama/Birmingham, Choctaw Nation of Oklahoma.
Mika, Krista Leigh, University of Minnesota/Duluth, Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.
Miles, Rachelle Ranee, University of South Dakota, Navajo Nation, Arizona, New Mexico & Utah.
Miller, John Ross, Oklahoma State University, Cherokee Nation, Oklahoma.
Mode, Jessica Lois, Harding University, Choctaw Nation of Oklahoma.
Morris, Gerald Wayne, Indiana University School of Medicine, Pokagon Band of Potawatomi Indians, Michigan and Indiana.
Mote, Mary, University of Oklahoma Health Sciences Center, Chickasaw Nation, Oklahoma.
Mowrey, Sara Ann, University of Oklahoma Health Sciences Center, Muscogee (Creek) Nation, Oklahoma.
Mulanax, Jamie Lynn, Kansas City University of Medicine & Biosciences, Citizen Potawatomi Nation, Oklahoma.
Mullican, Faye L., Connors State College, Cherokee Nation, Oklahoma.
Murray, Sara Emily, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Myers, Sarah E., Vanderbilt University School of Nursing, Cherokee Nation, Oklahoma.
Nelson, Joseph Jake, Central Washington University, Confederated Tribes and Bands of the Yakama Nation, Washington.
Nelson, Tiara Novelle, Minnesota State University/Moorhead, Red Lake Band of Chippewa Indians, Minnesota.
Newbrough, Deidra Dawn, Colorado State University, Cheyenne River

Sioux Tribe of the Cheyenne River Reservation, South Dakota.
Nix, Micah Douglass, Oklahoma State University, Cherokee Nation, Oklahoma.
Not Afraid, Rosebud Faith, Montana State University/Bozeman, Crow Tribe of Montana.
Nunez, Euila Diane, New Mexico State University College of Nursing, Pueblo of Laguna, New Mexico.
O'Brien, Nancy Sue, Arizona State University, Cherokee Nation, Oklahoma.
O'Connell, Meghan Curry, University of Washington, Cherokee Nation, Oklahoma.
Old Elk, Chelsey Dionne, University of Montana, Crow Tribe of Montana.
Oldacre, Matt Lance, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Ostagard, Estelle Anne, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota.
Parker, Mahate Ann, University of North Dakota, Chickasaw Nation, Oklahoma.
Paul, Patsy A., Gateway Community College, Navajo Nation, Arizona, New Mexico & Utah.
Pearish, Loni Dawn, Oklahoma State University, Cherokee Nation, Oklahoma.
Pebworth, Destiny, East Central University, Choctaw Nation of Oklahoma.
Peltier, Luke Joseph, North Dakota State University, Turtle Mountain Band of Chippewa Indians of North Dakota.
Peltier, Michelle Marie, University of North Dakota, Turtle Mountain Band of Chippewa Indians of North Dakota.
Perryman, Russell C., University of Tulsa, Muscogee (Creek) Nation, Oklahoma.
Peshlakai, Karshira Fallon, University of New Mexico/Gallup, Navajo Nation, Arizona, New Mexico & Utah.
Peterson-Lewis, Annie May, University of Alaska/Anchorage, Village of Old Harbor (Aleut), Alaska.
Platero, Miriam, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah.
Pletnikoff, Elise Marie, University of Washington, Sun'aq Tribe of Kodiak, (formerly Shoonaq' Tribe of Kodiak), Alaska.
Poitra, Berry James, North Dakota State University, Turtle Mountain Band of Chippewa Indians of North Dakota.
Poorbuffalo, Shanna, East Central University, Choctaw Nation of Oklahoma.
Porter, Billy Garrison, East Central University, Seminole Nation of Oklahoma.
Porter, Rachael Kristin, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Powell, Rachel Leah, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Preston, Drew Alan, University of California School of Dentistry/Los Angeles, Navajo Nation, Arizona, New Mexico & Utah.
Ramirez, Amanda Jo, Oklahoma City University, Muscogee (Creek) Nation, Oklahoma.
Rangel, Tammy Ann, Paris Junior College, Choctaw Nation of Oklahoma.
Reed III, William M., University of Oklahoma Health Sciences Center, Citizen Potawatomi Nation, Oklahoma.
Rice, Charan Norwakis, Xavier University of Louisiana, Pawnee Nation of Oklahoma.
Rico, Jennifer Rebecca Rose, Oklahoma City University, Caddo Indian Tribe of Oklahoma.
Roberts, Addison Pierce, University of Oklahoma, Cherokee Nation, Oklahoma.
Robinson, Riesa Lynne, University of Massachusetts/Boston, Hopi Tribe of Arizona.
Roecker, Whitney Ellen, University of Arkansas/Fayetteville, Cherokee Nation, Oklahoma.
Roselius, Kassi, University of North Dakota, Citizen Potawatomi Nation, Oklahoma.
Ross, Matthew, University of Southern California, Cherokee Nation, Oklahoma.
Rumsey, Matthew C., University of South Dakota, Osage Tribe, Oklahoma.
Running Hawk, Lacey Marie, University of Minnesota/Duluth, Standing Rock Sioux Tribe of North & South Dakota.
Saladin, Elizabeth Jane, Howard University College of Medicine, Seminole Nation of Oklahoma.
Salas, Lenora D., Central New Mexico Community College, Pueblo of Zia, New Mexico.
Saltclah, Shannon Marie, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah.
Sandoval, Adrian Kyle, Creighton University, Navajo Nation, Arizona, New Mexico & Utah.
Scantlen, Marty R., University of Oklahoma Health Sciences Center, Kiowa Indian Tribe of Oklahoma.
Scheurer, Mallory, University of Arkansas/Fayetteville, Cherokee Nation, Oklahoma.
Schlender, Margaret Marie, University of Wisconsin, Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.
Schlotthauer, Rachael Joy, Loma Linda University, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.
Schultheiss, Lindsey B., Hardin-Simmons University, Cherokee Nation, Oklahoma.
Shadaram, Sara Roya, University of Oklahoma Health Sciences Center, Cheyenne and Arapaho Tribes of Oklahoma.
Shaughnessy, Catherine Faith, Alliant International University, Muscogee (Creek) Nation, Oklahoma.
Shirleson, Jamie Ruth Morgan, Arizona State University Navajo Nation, Arizona, New Mexico & Utah.
Shirley, Jeremy, Arizona State University Navajo Nation, Arizona, New Mexico & Utah.
Short, Kayleigh Ann, Arizona School of Dentistry, Petersburg Indian Association, Alaska.
Shoup, Deanna Michelle, South Dakota School of Mines & Technology, Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.
Silversmith, Lenora Rose, University of New Mexico/Gallup, Navajo Nation, Arizona, New Mexico & Utah.
Singer, Cheryle A., Arizona School of Dentistry, Navajo Nation, Arizona, New Mexico & Utah.
Skan, Jordan Dewey, University of Alaska/Fairbanks, Ketchikan Indian Corporation, Alaska.
Slate, Megan, Northeastern State University, Cherokee Nation, Oklahoma.
Small, Jade Derek, Charles Drew University of Medicine & Science, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.
Smith, Jana Renee, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Smith, Samantha Jenny, University of New Mexico, Navajo Nation, Arizona, New Mexico & Utah.
Smith, Tanya R. Salish Kootenai College, Apache Tribe of Oklahoma.
Smith, Taylor Brooke, Southwestern Oklahoma State University, Cherokee Nation, Oklahoma.
Snider (Ragsdale), Allison L., Southwest Baptist University, Cherokee Nation, Oklahoma.
Sparks, Aaron D., University of Montana/Missoula, Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.
St. Goddard, Marcia Lunn, University of Montana/Missoula, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.
Stamile, Zachary Peter, University of Oklahoma Health Sciences Center, Chickasaw Nation, Oklahoma.
Stimson, Danielle Rain, University of Washington School of Dentistry, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.

Tabor, Aaron Austin, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Tarbell, Stephen Charles, University of Buffalo, St. Regis Band of Mohawk Indians of New York.
Taylor, Tara Lynn, Lewis and Clark State College, Nez Perce Tribe of Idaho.
Taylor, Valerie Michelle, Oklahoma State University, Wyandotte Tribe of Oklahoma.
Teel, Jena Beth, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Thrasher, Carrie Ella, California State University/Long Beach, Choctaw Nation of Oklahoma.
Tincher, Amber Nicole, University of North Dakota,, Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation, Montana.
Tom, Michelle, Nova Southeastern University, Navajo Nation, Arizona, New Mexico & Utah.
Tom, Nicole C., University of New Mexico/Gallup, Navajo Nation, Arizona, New Mexico & Utah.
Tomosie, Pearlyn G. University of North Dakota, Hopi Tribe of Arizona.
Townsend, Travis J., University of New Mexico/Albuquerque, Pueblo of Acoma, New Mexico.
Tsabetsaye, Jessica Lucillia, University of St. Francis, Zuni Tribe of the Zuni Reservation, New Mexico.
Tso, Crescentia Rose, Arizona State University Navajo Nation, Arizona, New Mexico & Utah.
Tsosie, Cynthia, Northern Arizona University, Navajo Nation, Arizona, New Mexico & Utah.
Turner, Stephen Matthew, University of Minnesota College of Pharmacy, White Earth Band of the Minnesota Chippewa Tribe, Minnesota.
Velarde, Susan A., University of New Mexico, Jicarilla Apache Nation, New Mexico
Vernon, Lauren E., Rose State College, Cherokee Nation, Oklahoma.
Waite, Jeremy Kenneth, Idaho State University College of Pharmacy, Native Village of Nunapitchuk, Alaska.
Walker, Krystina, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Walker, Pearl, Bemidji State University, Standing Rock Sioux Tribe of North & South Dakota.
Walker, Tyson, Shasta College, White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.
Walker-Ben, Valerie, University of New Mexico/Gallup, Navajo Nation, Arizona, New Mexico & Utah.
Wallace, Roseann Marie, University of Oklahoma Health Sciences Center, Muscogee (Creek) Nation, Oklahoma.
Wallace, Tricia Alane, University of New Mexico/Gallup, Zuni Tribe of the Zuni Reservation, New Mexico.
Walls, Nicholas Damond, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Warwick, Rochelle L., University of Wisconsin/Eau Claire, Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.
Waseta, Shawn Ray, Central New Mexico Community College, Zuni Tribe of the Zuni Reservation, New Mexico.
Waters, Jonathan Michael, University of Texas Medical School/Houston, Choctaw Nation of Oklahoma.
Watt, Calin Larhee, University of Oklahoma, Cherokee Nation, Oklahoma.
Watts, Brandi Kay, University of Oklahoma Health Sciences Center, Choctaw Nation of Oklahoma.
Webster, Elisha Elyse, Creighton University, Yankton Sioux Tribe of South Dakota.
Welch, Leeann Sue, Arizona School of Dentistry, Central Council of Tlingit & Haida Indian Tribes, Alaska.
Welsh, Dale William, University of Utah School of Medicine, Sault Ste. Marie Tribe of Chippewa Indians of Michigan.
Westlake, Julianne Camille, Gonzaga University, Native Village of Kiana, Alaska.
Wheeless, Leslie Amanda, Yale University School of Nursing, Ketchikan Indian Corporation, Alaska.
Whistler, Brett, University of South Dakota, Citizen Potawatomi Nation, Oklahoma.
White, Jenifer Lorraine, Northeastern Oklahoma State University, Cherokee Nation, Oklahoma.
White, Kristin Rae, University of New Mexico/Gallup, Navajo Nation, Arizona, New Mexico & Utah.
Whitehair, Lance, University of Minnesota/Duluth, Navajo Nation, Arizona, New Mexico & Utah.
Whitener, Henry Jake, Northeastern State University, United Keetoowah Band of Cherokee Indians in Oklahoma.
Whitsitt, Adam Douglas, Midwestern University, Choctaw Nation of Oklahoma.
Wilbourn, Whitney Dawn, University of Arkansas, Cherokee Nation, Oklahoma.
Wilch-Tweten, Saundra Whitney Madeline, Western Iowa Technical Community College, Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota.
Wiley, Matthew Hallett, Oklahoma State University, Muscogee (Creek) Nation, Oklahoma.
Williams, Jennifer Brooke, Washington University School of Medicine, Choctaw Nation of Oklahoma.
Williams, Matthew John, Indiana University Dental School, Pribilof Islands Aleut Communities of St. Paul & St. George Islands, Alaska.
Williams, Zachariah Frank, University of Oklahoma Health Sciences Center, Cherokee Nation, Oklahoma.
Wilson, Megan Breffney, Oklahoma State University, Muscogee (Creek) Nation, Oklahoma.
Yazzie, Marla Jana, University of Arizona, Navajo Nation, Arizona, New Mexico & Utah.

FOR FURTHER INFORMATION CONTACT: The Indian Health Service Scholarship Branch, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, Telephone: (301) 443–6197, Fax: (301) 443–6048.

Date: December 17, 2009.

Randy Grinnell,

Deputy Director, Indian Health Service.

[FR Doc. E9–30945 Filed 12–29–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Career Development Grant Review Meeting.

Date: January 21, 2010.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John F. Connaughton, PhD, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of

Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30859 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: January 25, 2010.

Open: 8:30 a.m. to 11:15 a.m.

Agenda: Report to the Director, NIDCR.

Place: National Institutes of Health, Building 31C, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: 11:30 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31C, 31 Center Drive, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, PhD, Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30856 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''Infectious Disease Trials A''.

Date: February 1, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: St. Regis, Washington, DC, 923 16th and K Streets, NW., Washington, DC 20006.

Contact Person: Lynn Rust, Ph.D, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–3938, *lr228v@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''Infectious Disease Trials B''.

Date: February 2, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: St. Regis, Washington, DC, 923 16th and K Streets, NW., Washington, DC 20006.

Contact Person: Lynn Rust, Ph.D, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–3938, *lr228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30862 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Screening for Inherited Disorders.

Date: January 20, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Blvd., Room 5B01G, Bethesda, MD 20892–7510. 301–435–6889.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and

Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30888 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Prevention.

Date: January 11, 2010.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *ngkl@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reproductive Sciences and Perinatology.

Date: January 19–20, 2010.

Time: 10 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group, Surgery, Anesthesiology and Trauma Study Section.

Date: January 27–28, 2010.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30882 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Interventions Committee for Adult Disorders.

Date: February 9–10, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group; Interventions Committee for Disorders Involving Children and Their Families.

Date: February 16, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services in Non-Specialty Settings.

Date: February 16–17, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Initial Review Group; Mental Health Services in MH Specialty Settings.

Date: February 18, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 23, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–31014 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Experimental Therapeutics Program (NExT) Cycle 2.

Date: January 13, 2010.

Time: 8:30 a.m.–4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, Building 31A—Conference Room 8A28, 31 Center Drive, Bethesda, MD 20817.

Contact Person: Dr. Barbara Mroczkowski, Executive Secretary, NCI Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20892. (301) 496–4291. *mroczkowskib@mail.nih.gov*.

This notice is being published less than 30 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–31012 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Discovery and Development P01.

Date: February 2–3, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Sergei Radaev, PhD., Scientific Review Officer, Resources And Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8113, Rockville, MD 20852, 301–435–5655, *sradaev@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Epidemiology, Prevention, Control & Population Sciences.

Date: February 9–11, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Wlodek Lopaczynski, M.D., PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8131, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Molecular Oncology—Basic, Translational, and Clinical Studies.

Date: February 9–11, 2010.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD.

Contact Person: David G. Ransom, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 8133, Bethesda, MD 20892–8328, 301–451–4757, *david.ransom@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, SPORE in Gynecologic, Breast, and Skin Cancers.

Date: February 17–19, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, Bethesda, MD.

Contact Person: Caron A. Lyman, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd, Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, SPORE in Brain, Leukemia, Myeloma, Sarcoma, Esophageal, GI, HN, and Pancreatic Cancers.

Date: February 17–19, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shamala K. Srinivas, PhD., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8123, Bethesda, MD 20892, 301–594–1224, *ss537t@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 21, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30923 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Advisory Committees; Tentative Schedule of Meetings for 2010

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory

committees for 2010. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hays, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of the FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**; FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA advisory committees' Internet site located at *http://www.fda.gov/AdvisoryCommittees/default.htm*. FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2010. You may also obtain up-to-date information by calling the Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) and use the appropriate Information Line Code for the committee in which you are interested.

Committee Name	Tentative Date of Meeting(s)	Advisory Committee 10-Digit Information Line Code
OFFICE OF THE COMMISSIONER		
Pediatric Advisory Committee	March 22, June 21–22, September 20–21, December 6–7	8732310001
Risk Communication Advisory Committee	February 25–26, May 6–7, August 19–20, November 8–9	8732112560
Science Board to the Food and Drug Administration	February 22, May 17, August 16, November 15	3014512603
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH		
Allergenic Products Advisory Committee	April 30, October 26	3014512388
Blood Products Advisory Committee	April 12–13, July 26–27, November 18–19	3014519516
Cellular, Tissue and Gene Therapies Advisory Committee	To be announced	3014512389
Transmissible Spongiform Encephalopathies Advisory Committee	To be announced	3014512392
Vaccines and Related Biological Products Advisory Committee	February 22, May 19–20, September 15–16, November 17–18	3014512391
CENTER FOR DRUG EVALUATION AND RESEARCH		
Anesthetic and Life Support Drugs Advisory Committee	January 28, April 22, April 23	3014512529
Anti Infective Drugs Advisory Committee	August and October dates To be announced	3014512530
Antiviral Drugs Advisory Committee	To be announced	3014512531
Arthritis Advisory Committee	May dates To be announced	3014512532
Cardiovascular and Renal Drugs Advisory Committee	January 11, March 1, April dates to be announced, July 28, July 29, December 8, December 9	3014512533
Dermatologic and Ophthalmic Drugs Advisory Committee	To be announced	3014512534
Drug Safety and Risk Management Advisory Committee	To be announced	3014512535
Endocrinologic and Metabolic Drugs Advisory Committee	January 12, January 13, February 24, May 26–27	3014512536
Gastrointestinal Drugs Advisory Committee	February 23, November dates to be announced	3014512538
Nonprescription Drugs Advisory Committee	To be announced	3014512541
Oncologic Drugs Advisory Committee	February 10, May 4, May 5, July 20, July 21, September 1, September 2, December 1, December 2	3014512542

Committee Name	Tentative Date of Meeting(s)	Advisory Committee 10-Digit Information Line Code
Peripheral and Central Nervous System Drugs Advisory Committee	March 23, March 24, June dates to be announced	3014512543
Pharmaceutical Science and Clinical Pharmacology, Advisory Committee	March 17	3014512539
Psychopharmacologic Drugs Advisory Committee	To be announced	3014512544
Pulmonary Allergy Drugs Advisory Committee	March 9, March 10, April dates to be announced	3014512545
Reproductive Health Drugs, Advisory Committee	May dates to be announced	3014512537
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH		
Device Good Manufacturing Practice Advisory Committee	July 22, September 16	3014512398
Medical Devices Advisory Committee (Comprised of 18 Panels)		
Anesthesiology and Respiratory Therapy Devices Panel	April 30, June 23, September 15, November 10	3014512624
Circulatory System Devices Panel	February 25, May 27, September 23, December 8–9	3014512625
Clinical Chemistry and Clinical Toxicology Devices Panel	March 17–18, June 16–17, October 20–21	3014512514
Dental Products Panel	March 23, April 13, May 11, July 13, September 14	3014512518
Ear, Nose, and Throat Devices Panel	February 24, May 19, August 25, November 3–4	3014512522
Gastroenterology-Urology Devices Panel	March 11–12, June 17–18, September 9–10, December 2–3	3014512523
General and Plastic Surgery Devices Panel	February 4–5, May 20–21, August 12–13, November 4–5	3014512519
General Hospital and Personal Use Devices Panel	March 5, July 28–29, November 17–18	3014512520
Hematology and Pathology Devices Panel	January 21–22, April 22–23, July 8–9, October 21–22	3014512515
Immunology Devices Panel	April 26, September 15, December 6	3014512516
Medical Devices Dispute Resolution Panel	Meetings occur as needed	3014510232
Microbiology Devices Panel	March 19, September 23	3014512517
Molecular and Clinical Genetics Panel	April 15, October 5–6	3014510231
Neurological Devices Panel	March 11–12, May 13–4, July 8–9, October 7–8, December 9–10	3014512513
Obstetrics and Gynecology Devices Panel	April 22–23, July 15–16, October 21–22, December 16–17	3014512524
Ophthalmic Devices Panel	February 25–26, April 22–23, June 24–25, October 28–29, November 18–19	3014512396
Orthopedic and Rehabilitation Devices Panel	March 23, June 9–10, October 13–14, December 1–2	3014512521
Radiological Devices Panel	April 28, July 21, September 15, November 17	3014512526
National Mammography Quality Assurance Advisory Committee	January 25	3014512397
Technical Electronic Product Radiation Safety Standards Committee	No meeting tentatively scheduled for 2010	3014512399
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION		
Food Advisory Committee	May 20–21	3014510564
CENTER FOR VETERINARY MEDICINE		
Veterinary Medicine Advisory Committee	March 18–19	3014512548
NATIONAL CENTER FOR TOXILOGICAL RESEARCH (NCTR)		

Committee Name	Tentative Date of Meeting(s)	Advisory Committee 10-Digit Information Line Code
Science Advisory Board to NCTR	November 17–18	3014512559
Center for Tobacco		
Tobacco Products Scientific Advisory Committee	March, May, July, and November dates to be announced	8732110002

Dated: December 24, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–30973 Filed 12–29–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Second Annual Sentinel Initiative Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing the following workshop: Second Annual Sentinel Initiative Public Workshop. This 1-day workshop, organized and hosted by the Engelberg Center for Health Care Reform at Brookings, is supported by a grant from FDA. This workshop is intended to communicate the current status and future vision of active medical product surveillance activities and explore stakeholder perspectives on a broad range of issues. The workshop will feature a series of presentations on recently completed FDA contracts to inform various aspects of the development of the Sentinel System; an update on FDA's ongoing pilot projects in active surveillance of medical product safety; and a discussion of three issues of broad interest: maintaining patient privacy while conducting medical product safety surveillance, developing the Sentinel System as a national resource for medical product safety surveillance for others outside of FDA, and developing a multi-purpose distributed system that can be used to conduct safety surveillance, comparative effectiveness research, product quality assessment and to address other types of public health questions.

Date and Time: The workshop will be held on January 11, 2010, from 8:30 a.m. to 4:45 p.m.

Location: The workshop will be held at Marriott Metro Center at 775 12th Street NW., Washington, DC 20005.

Contact: Kayla Garvin, Center for Drug Evaluation and Research, Bldg. 22, rm. 4339, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–3755, e-mail: *Kayla.Garvin@fda.hhs.gov.*

Registration: To attend the workshop, please register at *http://tinyurl.com/yce6c3z.* When registering, provide the following information: Your name, title, company or organization (if applicable), address, phone number, and e-mail address. There is no fee to register for the public workshop and because seating is limited, registration will be on a first-come, first-served basis. A 1-hour lunch break is scheduled; however no food will be provided. There are multiple restaurants within walking distance of the hotel where attendees can purchase lunch. If you need special accommodations due to a disability, please contact Brookings' event coordinator at 202–797–4391 or by e-mail: *sentinelevent@brookings.edu* at least 7 days in advance.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.fda.gov/Safety/FDAsSentinelInitiative/ucm149341.htm.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: December 23, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–30971 Filed 12–29–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: February 1, 2010.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12:40 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD

20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: February 1, 2010.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: February 1, 2010.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: February 1, 2010.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30865 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: January 26, 2010.

Open: 8 a.m. to 12:40 p.m.

Agenda: Report of the Director and other Institute staff.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1:30 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PhD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023, *louiser@ncrr.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.ncrr.nih.gov/newspub/minutes.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30870 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Biosensors for Early Cancer Detection and Risk Assessment.

Date: March 11–12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Donald L. Coppock, PhD, Scientific Review Officer, Scientific Review and Logistic Branch, Division of Extramural Activities, NCI, National Institutes of Health, 6116 Executive Blvd., Rm. 7151, Bethesda, MD 20892, 301–451–9385, *donald.coppock@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology

Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 21, 2009

Jennifer Spaethm,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30922 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: January 10–12, 2010.

Time: 7 p.m. to 11:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Diplomat/Ambassador Room, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, PhD, Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders & Stroke, NIH, 35 Convent Drive, Room 6A 908, Bethesda, MD 20892. 301–435–2232. *koretskya@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30921 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PA09–164 Healthcare Clinical Science Member Conflicts.

Date: January 28, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Katherine N. Bent, PhD, Scientific Review Officer, Center for Scientific Review, National Institites of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *bentkn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30907 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Integrative Neuroscience.

Date: January 12–13, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892. 301–435–1033. *hoshawb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vision and Cognition.

Date: January 20–21, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. 301–408–9041. *claytone@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30890 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: February 2, 2010.

Open: 8:30 a.m. to 2 p.m.

Agenda: To discuss administrative details relating to the Council's business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Susana Serrate-Sztein, MD, Director, Division of Skin and Rheumatic Diseases, NIAMS/NIH, 6701 Democracy Blvd, Suite 800, Bethesda, MD 20892–4872. (301) 594–5032. *szteins@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30889 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Medical Device Interoperability; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), Center for Devices and Radiological Health, in co-sponsorship with Continua Health Alliance and the Center for Integration of Medicine & Innovative Technology (CIMIT) is announcing a public workshop entitled ''Medical Device Interoperability.'' The purpose of the workshop is to facilitate discussion among FDA, industry, academia, professional societies, clinical investigators and other interested parties on issues related to safe and effective interoperable medical devices.

Dates and Times: The public workshop will be held on January 25 and 26, 2010, from 9 a.m. to 5 p.m. and on January 27, 2010, from 9 a.m. to 12 noon. Participants are encouraged to arrive early to ensure time for parking and security screening before the meeting. Security screening will begin at 8 a.m. and registration will begin at 8:30 a.m.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Silver Spring, MD 20993.

Contact Persons: Sandy Weininger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., WO62/rm. 4212, Silver Spring, MD 20993, 301–796–2582, *sandy.weininger@fda.hhs.gov*; or John Murray, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., WO66/rm. 2634, Silver Spring, MD 20993, 301–796–5543, *john.murray@fda.hhs.gov.*

Registration: To register for the public workshop, please visit the following Web site: *http://mdpnp.org/FDA_Interop_Workshop.php.* There is a registration fee of $500 to attend the public workshop to cover the expenses and attendees must register in advance. The registration process will be handled by Continua Health Alliance. In person, attendance is limited to 200 participants.

Registration may be limited to achieve balanced participation. Upon registering, you will receive a notice indicating that your registration has been received and is pending confirmation. You will receive an additional email within 1 week notifying you if your registration was accepted or declined. You may also register to attend the public workshop via Web cast for a reduced fee.

Non-U.S. citizens are subject to additional security screening, and they should register as soon as possible. If you need special accommodations because of a disability, please contact Susana Rosales (*Susana.Rosales@fda.hhs.gov*) at least 7 days before the public workshop.

SUPPLEMENTARY INFORMATION:

I. Why Are We Holding This Public Workshop?

The purpose of the public workshop is to facilitate discussion among FDA and other interested parties regarding the safety and effectiveness of interoperable medical devices.

II. What Are the Topics We Intend to Address at the Public Workshop?

We hope to discuss a large number of issues at the public workshop, including, but not limited to the following:

- What are the types of clinical scenarios that would make use of medical device interoperability?
- What are the issues associated with premarket and postmarket studies for interoperable medical devices?
- What tools (e.g., standards, guidances) are in place or need to be developed to assure safety and effectiveness of interoperable medical device systems? What issues should they address?
- What are the risks associated with medical device interoperability and ''system of systems'' composing medical devices?
- What are other issues relevant to assuring the safety and effectiveness of interoperable medical devices?

III. Where Can I Find Out More About This Public Workshop?

Background information on the public workshop, registration information, the agenda, information about lodging, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/cdrh/meetings.html* and at *http://mdpnp.org/FDA_Interop_Workshop.php.*

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at *http://www.regulations.gov.*

Dated: December 18, 2009.

Jeffrey Shuren,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. E9–30871 Filed 12–29–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, ''Ancillary Studies in Immunomodulation Clinical Trials.''

Date: January 19, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call.)

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–402–7098. *pamstad@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, ''Immunobiology of Mesenchymal Stem Cells.''

Date: January 26, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call.)

Contact Person: Maryam Feili-Hariri, PhD, Scientific Review Officer, Immunology Review Branch, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–402–5658. *haririmf@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Atopic Dermatitis Research Network (ADRN).

Date: February 2, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–402–7098. *pamstad@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Atopic Dermatitis Research Network: Statistical and Clinical Coordinating Center (ADRN SACCC).

Date: February 2, 2010.

Time: 12 p.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Potomac Room, Washington, DC 20037.

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–402–7098. *pamstad@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Highly Innovative Tactics to Interrupt Transmission of HIV (HIT–IT).

Date: February 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Waterford Suite, Bethesda, MD 20814.

Contact Person: Betty Poon, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–402–6891. *poonb@mail.nih.ogv.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 22, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30868 Filed 12–29–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 1084 West Lathrop Ave., Savannah, GA 31402, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on September 16, 2009. The next triennial inspection date will be scheduled for September 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 15, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–30899 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 33 Rigby Road, South Portland, ME 04106, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on August 19, 2009. The next triennial inspection date will be scheduled for August 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 23, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–30901 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Pan Pacific Surveyors, Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Pan Pacific Surveyors, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Pan Pacific Surveyors, Inc., 444 Quay Ave., Suite #7, Wilmington, CA 90744, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Pan Pacific Surveyors, inc., as commercial gauger and laboratory became effective on September 15, 2009. The next triennial inspection date will be scheduled for September 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 15, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–30903 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation of R. Markey & Sons, Inc., as a Commercial Laboratory

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

ACTION: Notice of accreditation of R. Markey & Sons, Inc., as a commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, R. Markey & Sons, Inc., 5 Hanover Square, 12th Floor, New York, NY 10004, has been accredited to analyze sugar, sugar syrups and confectionery products under Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS) for customs purposes, in accordance with the provisions of 19 CFR 151.12. Specifically, R. Markey & Sons has been granted accreditation to perform the following test methods only: (1) Polarization of Raw Sugar, ICUMSA GS 1/2/3–1; (2) The Determination of the Polarization of Raw Sugar Without Wet Lead Clarification, ICUMSA GS 1/2/3–2; (3) Sugar Moisture by Loss of Drying, ICUMSA GS 2/1/3–15; (4) Polarization of White Sugar, ICUMSA GS 2/3–1. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation of R. Markey & Sons, Inc., as a commercial laboratory became effective on June 03, 2009. The next triennial inspection date will be scheduled for June 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 15, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–30910 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Inspectorate America Corporation, as a Commercial Gauger

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

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, 1331 N. Ave. I, Suite E, Freeport, TX 77541, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of Inspectorate America Corporation, as commercial gauger became effective on August 20, 2009. The next triennial inspection date will be scheduled for August 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 15, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–30906 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Amspec Services LLC, as a Commercial Gauger

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

ACTION: Notice of approval of Amspec Services LLC, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Amspec Services LLC, 834 Post Oak, Sulphur, LA 70663, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of Amspec Services LLC, as commercial gauger became effective on July 21, 2009. The next triennial inspection date will be scheduled for July 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 15, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–30909 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Inspectorate America Corporation, as a Commercial Gauger

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

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, 178 Mortland Road, Searsport, ME 04974, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of Inspectorate America Corporation, as commercial gauger became effective on August 20, 2009. The next triennial inspection date will be scheduled for August 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 15, 2009.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E9–30904 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1861–DR; Docket ID FEMA–2008–0018]

Arkansas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA–1861–DR), dated December 3, 2009, and related determinations.

DATES: *Effective Date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arkansas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of December 3, 2009.

Drew County for Public Assistance. The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–30941 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

National Customs Automation Program Test Concerning Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR III) Capabilities Relating to the Filing and Processing of AD/CVD Entries and Case Management

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

ACTION: General notice.

SUMMARY: This document announces Custom and Border Protection's (CBP's) plan to conduct a National Customs Automation Program (NCAP) test concerning new Automated Commercial Environment (ACE) Entry Summary, Accounts and Revenue (ESAR III) capabilities. These new capabilities include functionalities specific to the filing and processing of anti-dumping and countervailing duty (AD/CVD) entries and case management. This notice announces the test's commencement, describes the eligibility, procedural and documentation requirements for voluntary participation in the test, outlines CBP's development and evaluation methodology, and invites public comment concerning any aspect of the test.

DATES: The ESAR III test will commence no earlier than January 17, 2010, and will continue until concluded by way of announcement in the **Federal Register**. Comments concerning this notice and any aspect of the test may be submitted at any time during the test period to the address set forth below.

ADDRESSES: Comments concerning this notice should be submitted via e-mail to Joe Palmer at *ESARinfoinbox@dhs.gov.* Please indicate ''ESAR III (AD/CVD Entry Summary Processing/Case Mgt Notice)'' in the subject line of your e-mail.

FOR FURTHER INFORMATION CONTACT: For policy-related questions, contact Christine Furgason at *christine.furgason@dhs.gov.* For technical questions related to ABI transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to the Client Representative Branch at (703) 650–3500.

SUPPLEMENTARY INFORMATION:

Background

I. ACE Test Programs

A. ACE Portal Accounts

On May 1, 2002, the former U.S. Customs Service, now U.S. Customs and Border Protection (CBP), published a General Notice in the **Federal Register** (67 FR 21800) announcing a plan to conduct a National Customs Automation Program (NCAP) test of the first phase of the Automated Commercial Environment (ACE). The test was described as the first step toward the full electronic processing of commercial importations with a focus on defining and establishing an importer's account structure. The notice announced that importers and authorized parties would be allowed to access their customs data via a web-based Account Portal. The notice set forth eligibility criteria for companies interested in establishing Account Portals accessible through ACE. Subsequent notices revised the eligibility criteria (*see* General Notice published in the **Federal Register** on February 1, 2005 (67 FR 5199)) and expanded the universe of eligible participants in the ACE test and the types of ACE Portal Accounts.

On February 4, 2004, CBP published two General Notices in the **Federal Register** that established ACE Truck Carrier Accounts and opened the application period for authorized importers and their designated brokers to participate in the NCAP test to implement the Periodic Monthly Statement (PMS) process (*see* 69 FR 5360 and 69 FR 5362, respectively). Brokers were invited to establish Broker Accounts in ACE in order to participate in the NCAP test to implement PMS. In both of the February 4, 2004, General Notices, CBP advised participants that they could designate only one person as the Account Owner for the company's ACE Portal Account. The Account Owner was identified as the party responsible for safeguarding the company's ACE Portal Account information, controlling all disclosures of that information to authorized persons, authorizing user access to the ACE Portal Account information, and ensuring the strict control of access by authorized persons to the ACE Portal information.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) inviting customs brokers to participate in the ACE Portal test generally and informing interested parties that once they had been notified by CBP that their request to participate in the ACE Portal test had been

accepted, they would be asked to sign and submit a Terms and Conditions document. CBP subsequently contacted those participants and asked them to also sign and submit an ACE Power of Attorney form and an Additional Account/Account Owner Information form.

B. Terms and Conditions for Access to the ACE Portal

On May 16, 2007, CBP published a General Notice in the **Federal Register** (72 FR 27632) announcing a revision of the terms and conditions that must be followed as a condition for access to the ACE Portal. These terms and conditions superseded and replaced the Terms and Conditions document previously signed and submitted to CBP by ACE Portal Trade Account Owners. The notice specified that no further action would be required by ACE Portal Trade Account Owners for those ACE Portal Accounts already established with CBP with the proper Account Owner listed. The principal changes to the ACE Terms and Conditions included a revised definition of ''Account Owner'' to permit either an individual or a legal entity to serve in this capacity, new requirements relating to providing notice to CBP when there has been a material change in the status of the Account and/or Trade Account Owner, and explanatory provisions as to how the information from a particular account may be accessed through the ACE Portal when that account is transferred to a new owner.

On July 7, 2008, CBP published a General Notice in the **Federal Register** (73 FR 38464) which revised the terms and conditions set forth in the May 16, 2007, General Notice regarding the period of Portal inactivity which will result in termination of access to the ACE Portal. The July 7, 2008, General Notice provided that if 45 consecutive days elapse without an Account Owner, Proxy Account Owner, or Account User accessing the ACE Portal, access to the Portal will be terminated. The time period for allowable Portal inactivity previously was 90 days.

C. ACE Non-Portal Accounts

CBP has also permitted certain parties to participate in specified ACE tests without establishing ACE Portal Accounts (''Non-Portal Accounts''). On October 24, 2005, CBP published a General Notice in the **Federal Register** (70 FR 61466) announcing that importers could establish ACE Non-Portal Accounts and participate in the PMS test under certain conditions. On March 29, 2006, CBP published another General Notice in the **Federal Register** (71 FR 15756) announcing that truck carriers who do not have ACE Truck Carrier Accounts may use third parties to transmit truck manifest information on their behalf electronically in the ACE Truck Manifest system via Electronic Data Interface (EDI) messaging

D. ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities

On October 18, 2007, CBP published a General Notice in the **Federal Register** (72 FR 59105) announcing CBP's plan to conduct a new test concerning ACE Entry Summary, Accounts and Revenue (ESAR) capabilities, providing enhanced account management functions for ACE Portal Accounts and expanding the universe of ACE account types. This General Notice is commonly referred to as ESAR I. As stated in that notice, ACE is now the lead system for CBP-required master data elements (*e.g.,* company name, address, and point of contact) as well as related reference files (*e.g.,* country code, port code, manufacturer ID, and gold currency exchange rate and conversion calculator). *See* ACE Systems of Record Notice, published in the **Federal Register** on January 19, 2006 (71 FR 3109). This means that the creation and maintenance of specified master data elements will originate in ACE and will be distributed to other CBP systems such as the Automated Commercial System (ACS).

In addition to announcing that importer Portal Accounts are capable of creating and maintaining specified importer data via the ACE Portal, ESAR I stated that filers have the ability to create a new CBP Form 5106 (Importer ID Input Record) via the ACE Portal or the Automated Broker Interface (ABI), and view applicable Participating Government Agency (PGA) licenses, permits and certificates via the ACE Portal. Through this notice, Broker Portal Accounts were provided the capability through the ACE Portal of maintaining organizational demographic data (*e.g.,* addresses, points of contact, etc.), license and permit qualifiers, data on managing officials, employee lists, information on relationships to individual licensed brokers, points of contact and address information (at filer code level for each local broker permit and each port covered by the local permit, and for the national broker permit). Truck Carrier Portal Accounts were provided the capability through the ACE Portal to view any applicable PGA licenses, permits and certificates, and to maintain through the ACE Portal addresses and points of contact and pre-registered truck conveyance information, including equipment, shipper, and consignee data. Truck Carrier Portal Accounts were also provided with the ability to create and maintain driver accounts and search for and correlate existing driver accounts to their Carrier Account. Finally, ESAR I also announced the expansion of Portal Account Types to include: carriers (all modes: air, rail, sea); cartman; lighterman; driver/crew; facility operator; filer; foreign trade zone (FTZ) operator; service provider; and surety.

E. ACE Entry, Summary, Accounts and Revenue (ESAR II) Capabilities

On August 26, 2008, CBP published a General Notice in the **Federal Register** (73 FR 50337) announcing the agency's plan to conduct a new test concerning ACE Entry Summary, Accounts, and Revenue (ESAR II) functionality that would provide new Portal and EDI capabilities specific to entry summary filing and processing of consumption and informal entries. The notice stated that functionality will include ABI Census Warning Overrides and issuance of CBP requests for information and notices of action through the ACE Portal, and that new functionality will enhance Portal Account Management and allow for ACE Secure Data Portal reporting. The notice indicated that this release of ESAR II initially would be limited only to formal entries, commonly referred to in the Automated Commercial System (ACS) as type 01 entries, and informal entries, commonly referred to in ACS as type 11 entries. The notice listed the ports where the test was expected to be deployed and requested that interested ABI participants wishing to submit type 01 and 11 entries for this test provide to CBP, within 60 days of the date of publication of that notice, the number of expected ACE entry summaries that will be submitted to the listed ports. Importer and broker volunteers interested in benefiting from Portal functionality available in this test were also advised that they must have an ACE Portal Account. ABI volunteers were advised that for this test, they must have the ability to file entries on a statement (*i.e.,* no non-statement; single pay entry summaries would be allowed) and must use a software package that has completed ABI certification testing for ACE.

CBP subsequently published a General Notice in the **Federal Register** on March 6, 2009 (74 FR 9826) announcing the port-by-port phased deployment strategy for the ESAR II functionality. In that notice, CBP invited any additional interested ABI applicants meeting the eligibility criteria specified in the August 26, 2008, notice to participate in the ESAR II test. Eligible

ABI trade volunteers interested in submitting type 01 and 11 entries for the ESAR test were advised to contact their assigned client representative directly. Similarly, interested software developers were also advised to contact their client representative with regard to their interest in ABI certification testing for ACE. To date, the ESAR II functionality is available at all ports, nationwide.

II. Test Concerning New ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities Relating to the Filing and Processing of AD/CVD Entries and Case Management

A. In General

This document announces CBP's plan to conduct a test concerning new ACE Entry Summary, Accounts and Revenue (ESAR III) functionalities that provide new Portal and EDI capabilities specific to the filing and processing of anti-dumping and countervailing duty (AD/CVD) entries (commonly referred to in ACS as type 03 entries) and AD/CVD case management. Functionality for other entry types will be implemented as it becomes available and will be announced via subsequent publication in the **Federal Register**. It is noted that type 03 ACE entry summaries and AD/CVD case data that are processed under this test are covered by the ACE Systems of Record Notice (DHS/CBP–001), published in the **Federal Register** on January 19, 2006 (71 FR 3109). For all others who are not participating in the ESAR III, data is processed under ACS Systems of Record Notice (DHS/CBP–015) published in the **Federal Register** on December 19, 2008 (73 FR 77759).

The procedures and criteria related to participation in the prior ACE tests, referenced above in Section I of this document, remain in effect unless otherwise explicitly changed by this or subsequent General Notices published in the **Federal Register**.

B. Portal Capability

AD/CVD case management will include the capability to search, display and print both AD/CVD case information and AD/CVD messages. The case reference file will provide the ability to record and track the life cycle of an AD/CVD case and will contain important case information such as the duty deposit rates, entry summary suspension status, bond/cash status, administrative review information and events related to the case history (*e.g.,* ''initiation,'' ''preliminary,'' ''Final,'' ''Order,'' ''Terminated''). The AD/CVD messages now resident in ACE will also house additional information in one location such as additional message header data elements (*e.g.,* ''message status,'' ''Federal Register Notice cite,'' ''Federal Register Notice publication date,'' ''court order number'') and the ability to run searches for all types of messages related to a particular case via the Portal.

Importers with an ACE Portal Account who have selected ''portal'' as their mode of communication will now also be able to respond to CBP Forms 28, 29 and 4647 regarding AD/CVD entries via the ACE Portal as well as all entry summaries (that is, both ACS and ACE entry summaries).

Brokers with an ACE Portal Account will now also be able to create declarations for their Non-Portal Accounts for AD/CVD entries. Brokers with clients possessing their own importer Portal Accounts, however, will not be able to create declarations on behalf of their clients. Brokers will have to be granted access as a ''user'' on the importer's Portal Account in order to create the declaration.

ACE Secure Data Portal Reports will also be enhanced to include AD/CVD Entry Summary Data.

C. EDI Capability

Trade participants may begin to file entry summaries electronically in ACE for entry types 03 using a better organized, more descriptive ACE ABI CATAIR (Customs and Trade Automated Interface Requirements) document. CATAIR documentation provides complete information describing how importers and/or their agents provide electronic import information to ABI, and receive transmissions from ABI once they have become a participant.

Type 03 entries filed under this ESAR III test will now require the submission of the ''sold to'' party and ''foreign exporter'' at the line level. This requirement differs from the ESAR I and II tests that apply to 01 and 011 entry types. The CATAIR should be consulted for further guidance pertaining to the definitions for each of these new data elements. Additionally, 01 entry types filed under this test will now require the ''sold to'' party and ''consignee'' party; this is a change from the previous ESAR II test where only the ''consignee'' party was required. As previously, mentioned, the CATAIR document should be consulted for further guidance pertaining to the definitions for the referenced data elements.

Filers will have the ability to make an AD/CVD Non-Reimbursement statement on any line item that includes AD/CVD information. Accompanying the case information, the filer will also have the ability to identify the actual AD/CVD Non-Reimbursement declaration that cites the case and that is on file with CBP.

Filers will have the ability to run an ABI query of AD/CVD case information. Information returned in the query output will include data required by ABI filers to successfully file AD or CVD entry summaries in ACE. The available queries will include: (1) Specific case numbers—input Q1–Record; and, (2) Case criteria (such as country, Manufacturer Identification Number (MID), and date since last update)—input Q2–Record.

Additionally there will be 10 different output records to provide case details including:

- Case general information (status, related case, short description, etc.)
- Case official name
- Manufacturer details
- Foreign exporter details
- Department of Commerce contact information
- Deposit rate details
- Case events
- Bond/cash details
- Tariff details
- Entry summary liquidation suspension details

Revisions to CATAIR chapters will include:

- Entry Summary Create/Update (AE/AX)
- Entry Summary Query (JC/JD)
- Appendix G—ACE Condition Codes and Narrative Text
- ACE ABI CATAIR—Table of Contents
- AD/CVD Case Information Query

Interested parties are directed to *cbp.gov* for more detailed information regarding these new ACE ABI CATAIR formats.

III. Confidentiality

All data submitted and entered into the ACE Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law (*see* 19 U.S.C. 1431(c)). As stated in previous notices, participation in this or any of the previous ACE tests is not confidential and upon a written Freedom of Information Act request, a name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552. If necessary, CBP will reserve the right to limit the number of participants and locations during the initial stages of the test.

IV. Waiver of Affected Regulations

Any provision in title 19 of the Code of Federal Regulations including, but not limited to, provisions found in parts

141, 142, 143 and 151 relating to entry/entry summary processing that are inconsistent with the requirements set forth in this notice are waived for the duration of the test. *See* 19 CFR 101.9(a). Additionally, any previous practice pertaining to party definitions, including but not limited to ''ultimate consignee,'' that are inconsistent with the requirements set forth in this notice are waived for the duration of the test. The CATAIR should be consulted for appropriate terms and definitions for the purposes of this test.

V. Misconduct Under the Test

An ACE test participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or suspension from this test for any of the following:

- Failure to follow the terms and conditions of this test.
- Failure to exercise reasonable care in the execution of participant obligations.
- Failure to abide by applicable laws and regulations.
- Failure to deposit duties or fees in a timely manner.
- Misuse of the ACE Portal.
- Engagement in any unauthorized disclosure or access to the ACE Portal.
- Engagement in any activity which interferes with the successful evaluation of the new technology.

Suspensions for misconduct will be administered by the Executive Director, Commercial Targeting and Enforcement, Office of International Trade, CBP Headquarters. A notice proposing suspension will be provided in writing to the participant. Such notice will apprise the participant of the facts or conduct warranting suspension and will inform the participant of the date that the suspension will begin. Any decision proposing suspension of a participant may be appealed in writing to the Assistant Commissioner, Office of International Trade, within 15 calendar days of the notification date. Should the participant appeal the notice of proposed suspension, the participant must address the facts or conduct charges contained in the notice and state how compliance will be achieved. In cases of non-payment, late payment, willful misconduct or where public health interests or safety is concerned, the suspension may be effective immediately.

VI. Test Evaluation Criteria

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested parties to comment on the design, implementation and conduct of the test at any time during the test period. CBP will publish the final results in the **Federal Register** and the Customs Bulletin as required by 19 CFR 101.9(b).

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis.
2. Questionnaires from both trade participants and CBP addressing such issues as:

- Workload impact (workload shifts/volume, cycle times, etc.).
- Cost savings (staff, interest, reduction in mailing costs, etc.).
- Policy and procedure accommodation.
- Trade compliance impact.
- Problem resolution.
- System efficiency.
- Operational efficiency.
- Other issues identified by the participant group.

Dated: December 24, 2009.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E9–31006 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14– P (50%)– 9111–15– P(50%)

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1865–DR; Docket ID FEMA–2008–0018]

Alaska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1865–DR), dated December 18, 2009, and related determinations.

DATES: *Effective Date:* December 18, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 18, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Alaska resulting from severe storms, flooding, mudslides, and rockslides during the period of October 6–11, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Alaska have been designated as adversely affected by this major disaster:

Kodiak Island Borough for Public Assistance.

All boroughs and Regional Educational Attendance Areas in the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–31018 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1864–DR; Docket ID FEMA–2008–0018]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1864–DR), dated December 16, 2009, and related determinations.

DATES: *Effective Date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 16, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from a severe winter storm during the period of November 16–17, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Stephen R. Thompson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this major disaster:

Gage, Jefferson, Johnson, Nemaha, Pawnee, Richardson, and Thayer Counties for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–31016 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Request for Applicants for Appointment to the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management: request for applicants for appointment to the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee.

SUMMARY: U.S. Customs and Border Protection (CBP) is requesting individuals who are interested in serving on the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee (or the Committee) to apply for appointment. The Committee provides advice and makes recommendations to the Commissioner of CBP on issues related to the performance of airport and seaport inspections involving agriculture, customs, and immigration concerns.

DATES: Applications for membership should reach CBP on or before March 1, 2010.

ADDRESSES: If you wish to apply for membership, your application should be sent to CBP by one of the following methods:

- *E-mail: Traderelations@dhs.gov.*
- *Facsimile:* (202) 344–1969.
- *Mail:* Ms. Elizabeth Williamson, Program Management Analyst, Office of Trade Relations, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.2A, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Williamson, Program Management Analyst, Office of Trade Relations, U.S. Customs and Border Protection, (202) 344–1440, FAX (202) 344–1969.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee was established as an advisory committee in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. This Advisory Committee was originally established pursuant to section 286(k) of the Immigration and Nationality Act (INA), codified at title 8 U.S.C. 1356(k), which references the Federal Advisory Committee Act (5 U.S.C. App.). With the merger of the Immigration and Naturalization Service into the U.S. Department of Homeland Security (DHS), the Advisory Committee's responsibilities were transferred from the Attorney General to the Commissioner of U.S. Customs and Border Protection (CBP) pursuant to section 1512(d) of the Homeland Security Act of 2002.

The Committee

Purpose and Objective: The purpose of the Committee is to provide advice to the Commissioner of CBP and the Secretary of DHS on issues related to the performance of airport and seaport inspections involving agriculture, customs, and immigration concerns on a regular basis in an open and candid atmosphere. The Committee provides a critical and unique forum for distinguished representatives of diverse industry sectors to present their views and advice directly to CBP officials on issues concerning staffing levels, inspectional programs, and user fees.

Balanced Membership Plans: The members will be selected by the

Commissioner of CBP (subject to approval by the Secretary of DHS) to represent the point of view of the airline, cruise ship, transportation, and other industries who may be subject to immigration and agriculture and/or customs inspection user fees. It is intended that the committee will be composed of candidates with diverse views, thus creating a balanced forum.

Committee Meetings

The Committee generally meets biannually, although additional meetings may be scheduled. The Committee is co-chaired by the Deputy Assistant Commissioner for CBP's Office of Administration (formerly the Office of Finance), and the Deputy Assistant Commissioner for CBP's Office of Field Operations.

Committee Membership

CBP is increasing the membership of this committee from the existing 10 members up to 15 members. New members will be appointed to serve a term of up to twenty-four months.

Membership on the Committee is personal to the appointee. Under the Charter, a member may not send an alternate to represent him or her at a Committee meeting. However, since Committee meetings are open to the public, another person from a member's organization may attend and observe the proceedings in a nonparticipating capacity. Regular attendance is essential; the Charter provides that a member who is absent for two consecutive meetings or two meetings in a calendar year may be recommended for replacement on the Committee.

Members who are currently serving on the Committee are eligible to re-apply for membership. A new application letter (*see* **ADDRESSES** above) is required, but it may incorporate reference materials previously filed (please attach courtesy copies).

Members of the Airport and Seaport Inspections User Fee Advisory Committee will represent their respective interest groups and are not Special Government Employees as defined in section 202(a) of title 18, United States Code.

Members will not be compensated by the Federal Government for their service as members of the Airport and Seaport Inspections User Fee Advisory Committee.

Application for Advisory Committee Appointment

There is no prescribed format for the application. Applicants may send a letter describing their interest and qualifications and enclose a resume.

Any interested person wishing to serve on the Committee must provide the following:

- Statement of interest and reasons for application; and
- Complete professional biography or resume.

In support of the policy of the DHS on gender and ethnic diversity, qualified women and members of minority groups are encouraged to apply for membership.

Dated: December 23, 2009.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. E9–31007 Filed 12–29–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

National Park System Advisory Board Re-establishment

AGENCY: National Park Service, Interior.

ACTION: Notice of Re-establishment of the National Park System Advisory Board.

SUMMARY: The Secretary of the Interior intends to re-establish the National Park System Advisory Board. This action is necessary and in the public interest in connection with the performance of statutory duties imposed upon the Department of the Interior and the National Park Service.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley S. Smith, 202–208–7160.

SUPPLEMENTARY INFORMATION: The Board was established initially by section 3 of the Act of August 21, 1935 (49 Stat. 667; 16 U.S.C. 463), and has been in existence almost continuously since then. Pursuant to Public Law 111–8, the legislative authorization will expire January 1, 2010. However, due to the importance of the issues on which the Board advises, in the event the Board is not extended by legislation prior to that termination date, the Secretary of the Interior intends to exercise the authority contained in Section 3 of Public Law 91–383 (16 U.S.C. 1a–2(c)) to re-establish and continue the Board as a discretionary committee from January 1, 2010, until such time as it may be legislatively reauthorized. If the Board is renewed legislatively after January 1, 2010, the discretionary Board will revert to a legislative Board.

The advice and recommendations provided by the Board and its subcommittees fulfill an important need within the Department of the Interior and the National Park Service, and it is necessary to re-establish the Board to ensure its work is not disrupted. The Board's twelve members will be balanced to represent a cross-section of disciplines and expertise relevant to the National Park Service mission. The re-establishment of the Board comports with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix), and follows consultation with the General Services Administration.

Certification: I hereby certify that the re-establishment of the National Park System Advisory Board is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.*, and other statutes relating to the administration of the National Park System.

Ken Salazar,

Secretary of the Interior.

[FR Doc. E9–31051 Filed 12–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Agency Information Collection Activities; Proposals, Submissions, and Approvals

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of an extension of an information collection (1028–0092).

SUMMARY: The U.S. Geological Survey is requesting renewal of an existing information collection that received emergency clearance on October 22, 2009. We will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 (PRA) and as part of our continued effort to reduce paperwork and respondent burden, we invite the general public and other federal agencies to take this opportunity to comment on this IC. We 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.

DATES: You must submit comments on or before March 1, 2010.

ADDRESSES: Send your comments on this information collection directly to Phadrea Ponds, Information Collections Clearance Officer, U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Use Information Collection Number 1028–0092 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information please contact Teresa Dean at (703) 648–4825 or e-mail at *tdean@usgs.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

During FY10, the NGP of the USGS will provide funding under the American Recovery and Reinvestment Act (ARRA) for the collection of orthoimagery and elevation data. We will accept applications from State, local or tribal governments and academic institutions to advance the development of *The National Map* and other national geospatial databases. This effort will support our need to supplement ongoing data collection activities to respond to an increasing demand for more accurate and current elevation data and orthoimagery. To submit a proposal, a completed project narrative and application must be submitted via Grants.gov. Grant recipients must complete a final technical report at the end of the project period. All application instructions and forms are available on the Internet through Grants.gov (*http://www.grants.gov*). Hard/paper submissions and electronic copies submitted via e-mail will not be accepted under any circumstances. All reports will be accepted electronically via e-mail.

II. Data

OMB Control Number: 1028–0092.

Title: National Map: Imagery and Elevation Maps Grants Program.

Type of Request: Extension of currently approved collection.

Respondent Obligation: Required to receive benefits.

Frequency of Collection: Annually.

Description of Respondents: State, Local and Tribal Governments, private and non-profit firms, and academic institutions.

Estimated Number of Annual Responses: 40 applications and 20 final reports.

Estimated Annual Reporting and Recordkeeping: ''Hour'' Burden: 2,680 hours. We expect to receive approximately 40 applications. It will take each applicant approximately 60 hours to complete the narrative and present supporting documents. This includes the time for project conception and development, proposal writing, reviewing, and submitting the proposal application through Grants.gov (totaling 2,400 burden hours). We anticipate awarding 20 grants per year. The award recipients must submit quarterly and final reports during the project. Within 7 days of the beginning of each quarter, a report must be submitted summarizing the previous quarter's progress. The quarterly report will take at least 1 hour to prepare (totaling 80 burden hours). A final report must be submitted within 90 calendar days of the end of the project period. We estimate that approximately 10 hours will be used to complete the final report (totaling 200 hours).

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done. To comply with the public process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60 day public comment period.

Dated: December 23, 2009.

Julia Fields,

Deputy Director, National Geospatial Program.

[FR Doc. E9–30939 Filed 12–29–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission of Study Package to Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior; National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 36 CFR Part 51, Subpart C, regarding the Solicitation, Selection and Award Procedures, the National Park Service invites comments on a currently approved collection of information (OMB Control # 1024–0125).

The OMB has up to 60 days to approve or disapprove the requested information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments within 30 days of the date on which this notice is published in the **Federal Register**.

The National Park Service published the 60-day **Federal Register** notice to solicit comments on this proposed information collection on August 6, 2009, on pages 39335–39336.

DATES: Public comments on the proposed Information Collection Request (ICR) will be accepted for 30 days from the date of publication in the **Federal Register**.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior, (OMB #1024–0125) Office of Information and Regulatory Affairs, OMB by fax at 202/395–5806, or by electronic mail at *OIRA_DOCKET@omb.eop.gov.* Please also send a copy of your comments to Ms. Jo A. Pendry, Concession Program Manager, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240, or electronically to *jo_pendry@nps.gov*.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, phone: 202–513–7156, fax: 202–371–6662, or at the address above. You are entitled to a copy of the entire ICR package free-of-charge.

There were no public comments received as a result of publishing in the **Federal Register** a 60-day Notice of Intention to Request Clearance of Information Collection for this survey.

SUPPLEMENTARY INFORMATION:

Title: Submission of Offers in Response to Concession Opportunities.

OMB Control Number: 1024–0125.

Expiration Date of Approval: January 31, 2010.

Type of Request: Extension of a currently approved information collection.

Description of Need: The regulations at 36 CFR Part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which provides new legislative authority, policies and requirements for the solicitation, award

and administration of National Park Service (NPS) concession contracts. The regulations require the submission of offers by parties interested in applying for a NPS concession contract.

NPS has submitted a request to OMB to renew approval of the collection of information in 36 CFR Part 51, Subpart C, regarding Solicitation, Selection, and Award Procedures. NPS is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1024–0125, and is identified in 36 CFR Section 51.104.

Estimate of Burden: Approximately 480 hours per response for large operations. Approximately 240 hours per response for small operations.

Estimated Number of Respondents: Approximately 160 for small operations. Approximately 80 for large operations.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 38,400 hours for small operations. 38,400 hours for large operations. 76,800 Total.

Send comments on (1) The accuracy of the agency's burden estimates; (2) ways to minimize the burden, including the use of automated collection techniques or other forms of information technology; (3) or any other aspect of this collection to the Office of Management and Budget at the following address. Please refer to OMB control number 1024–0125 in all correspondence.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: December 16, 2009.

Cartina A. Miller,

NPS Information Collection Clearance Officer, Washington Administrative Program Center.

[FR Doc. E9–31021 Filed 12–29–09; 8:45 am]

BILLING CODE 4313–53–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2009–N233; 40120–1113–4044–D2–FY10]

Marine Mammal Protection Act; Stock Assessment Report

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final 2009 revised marine mammal stock assessment reports for two stocks of West Indian manatee; response to comments.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service), announce that we have revised our stock assessment report (SAR) for each of the two West Indian manatee stocks in the southeastern United States: The Florida manatee (*Trichechus manatus latirostris*) stock and the Puerto Rico stock of Antillean manatee (*Trichechus manatus manatus*), including incorporation of public comments. We now make these two final 2009 revised SARs available to the public.

ADDRESSES: To obtain the SARs for either or both of the West Indian manatee subspecies, *see* Document Availability under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: West Indian Manatee in Florida: Jim Valade, (904) 731–3116 (telephone) or *Jim_Valade@fws.gov* (e-mail). West Indian Manatee in Puerto Rico: Marelisa Rivera, (787) 851–7297 (telephone) or *Marelisa_Rivera@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

Under the MMPA (16 U.S.C. 1361 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 18, we regulate the taking, transportation, purchasing, selling, offering for sale, exporting, and importing of marine mammals. One of the MMPA's goals is to ensure that stocks of marine mammals occurring in waters under U.S. jurisdiction do not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its *optimum sustainable population level* (OSP). OSP is defined as ''the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.''

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, section 117 of the MMPA requires us and the National Marine Fisheries Service (NMFS) to prepare a SAR for each marine mammal stock that occurs in waters under U.S. jurisdiction. A SAR must be based on the best scientific information available; therefore, we prepare it in consultation with established regional scientific review groups. Each SAR must include: (1) A description of the stock and its geographic range; (2) a minimum population estimate, maximum net productivity rate, and current population trend; (3) an estimate of human-caused mortality and serious injury; (4) a description of commercial fishery interactions; (5) a categorization of the status of the stock; and (6) an estimate of the *potential biological removal* (PBR) level. The PBR is defined as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP.'' The PBR is the product of the minimum population estimate of the stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0, which is intended to compensate for uncertainty and unknown estimation errors.

Section 117 of the MMPA also requires us and NMFS to review the SARs (a) at least annually for stocks that are specified as strategic stocks; (b) at least annually for stocks for which significant new information is available; and (c) at least once every 3 years for all other stocks.

A *strategic stock* is defined in the MMPA as a marine mammal stock (a) for which the level of direct human-caused mortality exceeds the PBR; (b) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA), within the foreseeable future; or (c) which is listed as a threatened or endangered species under

the ESA, or is designated as depleted under the MMPA.

Before releasing our draft SARs for public review and comment, we reviewed the drafts with the Atlantic Regional Scientific Review Group, which was established under the MMPA, and submitted them for an internal technical review. In a June 12, 2009 (74 FR 28062), **Federal Register** notice, we made available our draft SARs for the MMPA-required 90-day public review and comment period. Following the close of the comment period, we revised the SARs based on public comments we received (*see* below) and prepared the final 2009 revised SARs. Between publication of the draft and final revised SARs, we have not revised the status of either stock (*i.e.,* strategic); however, we updated the N_{min} for the Florida manatee stock from 3,807 to 3,802, based on a revised count provided by the Florida Fish and Wildlife Conservation Commission. We addressed other concerns identified in the public comments in the following section of this notice or by adding text to the SARs for clarity.

The following table summarizes the final 2009 revised SARs for the Florida and Puerto Rico stocks of the West Indian manatee, listing each stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and status.

TABLE 1—SUMMARY: FINAL REVISED STOCK ASSESSMENT REPORTS FOR THE FLORIDA AND PUERTO RICO STOCKS OF WEST INDIAN MANATEE

West Indian manatee stocks	N_{min}	R_{max}	F_r	PBR	Annual estimated average human-caused mortality	Stock status
Florida	3,802	0.06	0.1	12	87	Strategic.
Puerto Rico	72	0.04	0.1	0	2	Strategic.

Document Availability

Final Revised SAR for West Indian Manatee in Florida

You may obtain copies by any one of the following methods:

- *Internet: http://www.fws.gov/northflorida.*
- Write to or visit (during normal business hours) the Field Supervisor, U.S. Fish and Wildlife Service, Jacksonville Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256–7517; telephone (904) 731–3336.

Final Revised SAR for West Indian Manatee in Puerto Rico

You may obtain copies by any one of the following methods:

- *Internet: http://www.fws.gov/caribbean/ES.*

Write to or visit (during normal business hours) the Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Office, P.O. Box 491, Boquerón, PR 00667; telephone: (787) 851–7297.

Responding to Public Comments

West Indian Manatee in Florida

We received comments on the draft SAR (74 FR 28062) from the Atlantic Scientific Review Group, the Marine Mammal Commission, the Center for Biological Diversity, The Humane Society of the United States, the Save the Manatee Club, Defenders of Wildlife, and a private citizen. We present issues raised in those comments, along with our responses, below.

Comment 1: Commenters stated that the identification of four stocks would facilitate management efforts, because SARs, developed for each management unit, could more accurately identify unit-specific threats and, therefore, better promote recovery within the management units.

Response: Current and previous Florida manatee management activities have relied on the use of a state-of-the-art core biological model (CBM) to assess manatee population status and threats to the population as a whole and to assess status and threats in each of the four management units. Service and State manatee management efforts rely on the CBM for information on threats and consequently target identified threat levels through management activities described in respective recovery and management plans. For listed species, the Service uses recovery plans to identify and address threats as indicated by the ESA. Recovery Plans have been used effectively by the Service and other resource agencies for over 30 years. Unit-specific SARs for each of the four management units would be redundant and provide no additional benefits to efforts to manage manatees within these areas. As such, the Service will continue to assess and manage threats to the population as a whole and within each of the four management units. The SAR has been revised to more completely explain this strategy.

Comment 2: Commenters took issue with the Service's conclusion that total commercial fishery-related mortality and serious injury for the Florida stock of manatees should be considered insignificant and approaching a zero mortality and serious injury rate.

Response: For the period of record (2003–2007), manatee carcass salvage and rescue programs recorded no commercial fishery-related mortalities or any serious injuries related to commercial fisheries activities. While the total number of manatee deaths attributed to other anthropogenic sources exceeds the calculated PBR, the absence of deaths and serious injuries specifically from commercial fishing supports the Service's contention that commercial fisheries-related takings, in and of themselves, should be considered insignificant and approaching a zero mortality and serious injury rate.

Comment 3: Commenters stated that the Service's analysis of seriously injured manatees was problematic.

Response: Absent a Service definition of ''serious injury,'' an agency interpretation and analysis of manatee injury records is difficult at best and a thorough, meaningful analysis cannot be concluded at this time. The SAR has been revised to reflect this concern.

Comment 4: A commenter recommended that the Service include a table showing the results of abundance surveys over time.

Response: The Service elected not to include such a table because many readers may misinterpret differences in counts as indicative of changing population trends. The most recent minimum population estimate is the most significant, relevant data point and is included in the final SAR for the Florida manatee.

Comment 5: A commenter questioned the Service's determination that six cited fishing line and associated gear-related deaths did not involve actively fishing commercial fisheries-related gear.

Response: Each of the cited deaths involved the ingestion of lengths of monofilament line accompanied by a single hook, a lure, and/or a fishing weight. Given the manatees' herbivorous nature, it is unlikely that a manatee would be attracted to actively fished gear of this nature. Furthermore, nearshore, commercial fisheries that rely on gear of this nature are virtually unknown (commercial trotline fishers do fish in these waters; however, their gear typically includes lengths of monofilament line or other line types containing multiple hooks). Given the absence of inshore commercial line fisheries that utilize the gear found in these animals, these deaths should not be correlated with commercial fishing activities.

Comment 6: Two commenters questioned the use of an R_{max} based on the maximum net productivity rate calculated for the Upper St. Johns River management unit.

Response: Guidance for developing SARs supports using measured growth rates greater than recommended default values, especially when using data that includes the entirety of a closed population to minimize unknown biases. Growth rates for the manatees in the Upper St. Johns River management unit have been accurately assessed and the population in this unit most closely approximates a closed population. As such, the Service believes that it has identified a proper R_{max}.

Comment 7: Commenters questioned using serious injury and mortality data from the 2003 through 2007 period when more recent data are apparently available.

Response: Pertinent datasets used to prepare the SAR included data from the Florida Manatee Rescue, Rehabilitation, and Release Database and the Florida Manatee Mortality Database. At the time of writing, data from the manatee rescue program database were complete through December 31, 2007 and data for calendar year 2008 were not then available. Preliminary mortality database information was available through December 31, 2008, although data for calendar year 2008 had not been verified for accuracy at the time of writing. Consistent with mandates to use the best available information, the Service elected to use data from the 2003 through 2007 period inasmuch as data from this period had been thoroughly reviewed for completeness and accuracy at the time of writing.

Comment 8: Commenters recommended that the Service continue to take the steps needed to better define OSP and to gather more information on manatees in the Southwest management unit.

Response: The Service is supporting research activities that will provide greater insights into OSP for the Florida manatee and provide more current assessments of population trends and threat levels in both the stock and management unit populations.

West Indian Manatee in Puerto Rico

We received comments on the draft SARs (74 FR 28062) from the Atlantic Scientific Review Group, the Marine Mammal Commission, the Center for Biological Diversity, and The Humane Society. We present issues raised in those comments, along with our responses, below.

Comment 1: The Service should provide a better explanation for recognizing the Puerto Rico manatee as a single stock instead of recognizing the Puerto Rico manatee as consisting of different stocks based on the geographical distribution of haplotypes in Puerto Rico.

Response: We have revised the SAR to discuss recent research regarding the geographic distribution of haplotypes in Puerto Rico. Slone *et al.* 2006 indicates that haplotype (mitochondrial DNA) distribution is further geographically divided in Puerto Rico. For example, only the A haplotype (a haplotype also unique to Florida) was found on the north side of the island and only the B haplotype was observed in the south. A mixture of A and B haplotypes was observed on both the east and west coasts of the island, suggesting that mixing occurs between the northern and southern groups. However, the mitochondrial DNA is maternally inherited and is not reflective of gene flow from the more adventurous males. Radio-tagging techniques in Puerto Rico have documented general behavior of manatee populations, in which males seem to move more extensively than females (Slone *et al.* 2006). Males may travel hundreds of kilometers while mother/calf distribution patterns could be more restricted. The authors state that if male movements are made during the breeding season, then relatively healthy mixing between geographical areas established by females might be expected. Further research by Kellogg (2008) indicates that nuclear DNA subpopulation separation was not as severe, suggesting that the manatees in Puerto Rico do travel and breed throughout the population to some degree. Based on the above information, we believe that the Puerto Rico manatee stock should not be divided into two separate stocks.

Comment 2: The commenter suggested that the current population trend of the Puerto Rico manatee appears to be relatively stable rather than increasing.

Response: The Service agrees with the comment and has revised the SAR accordingly.

Comment 3: The commenter recommended that the statement ''the number of strandings currently reported to DNER may represent a true value of mortality'' should be considered as a hypothesis rather than a conclusion.

Response: The Service agrees and has revised the SAR accordingly.

Comment 4: The commenter recommended that the Service obtain information necessary to determine the optimum sustainable population (OSP).

Response: OSP has not been determined for any population stock of West Indian manatee; however, both the Florida and Puerto Rico stocks are considered strategic based on their listing under the ESA. From 1992–2002 and 2009, Service synoptic aerial surveys have consistently counted calves and the entire population is considered stable. We are evaluating aerial census methodology with the goal of establishing more reliable population estimates.

Comment 5: The commenter recommended the Service fill in data gaps by gathering more information on entanglements, collisions, and bycatch.

Response: As stated in the SAR, manatee deaths in Puerto Rico have been reported for decades. Since 1990, the documentation of manatee mortalities in Puerto Rico has been conducted by the Caribbean Stranding Network (CSN). In 2006, the Department of Natural and Environmental Resources (DNER) Marine Mammal Stranding Program (MMSP) took over these duties. This program is implemented with the assistance from the CSN, the Puerto Rico Zoo, and commonwealth law enforcement officials. We believe that the manatee death reports provided by the DNER MMSP, with all the help mentioned above, are a consistent and reliable manner to gather data on entanglements, collisions, and bycatch.

Comment 6: Commenters disagree with the Service's conclusion that commercial fisheries-related incidental mortality and serious injury of manatees in Puerto Rico and the U.S. Virgin Islands should be considered minimal or approaching zero.

Response: The Service acknowledges that there may be limitations on the available fisheries data because some takings could occur and may not be observed or reported. However, protocols for necropsies and assigning probable cause of death categories are reviewed thoroughly. Table 1 of this SAR shows watercraft as the only human related deaths. The only possible evidence for commercial fisheries interaction would be within the 34 percent undetermined cause of death (COD) category. Undetermined COD means that assessment of a natural or human related cause was negative (no evidence that COD can be assigned to any of the available categories, either natural or human related). In addition, we believe that manatees injured by commercial fisheries interactions would most likely present signs of the activity and every necropsy includes a specific evaluation of human interactions. From 1990–2008, only one manatee had COD related to commercial fisheries interaction. In 2006, one freshly dead manatee was found with its right flipper entangled in monofilament and still this COD was deemed undetermined. In accordance with the previous statements and the presence of current bans and restrictions prohibiting the use of nets in coastal Puerto Rican waters, the Service believes that incidental mortality and serious injury related to commercial fisheries in Puerto Rico and the U.S. Virgin Islands should be considered minimal or approaching zero.

Comment 7: The SAR should provide at least some summary information to indicate the type(s) of habitat degradation adversely affecting manatees.

Response: We have revised the SAR to include examples of habitat degradation.

Comment 8: The commenter recommended that the Puerto Rico manatee stock be considered separately from the Florida manatees in terms of recommendation for down-listing.

Response: The Service acknowledges the comment made; however, the SAR is conducted according to the MMPA and does not address issues under Section 4 of the ESA.

Comment 9: The commenter opposed any efforts to down-list the status of manatees from endangered to threatened.

Response: The Service acknowledges the comment made; however, the SAR is conducted according to the MMPA and does not address issues under Section 4 of the ESA.

Comment 10: The commenter is concerned about the lack of reliable data on abundance and mortality.

Response: The Service acknowledges the commenter's concern and is currently evaluating aerial census methods to establish more reliable population estimates. We do not believe that mortality records lack reliability. As provided in our response to Comment 5 above, CSN had been documenting manatee mortalities in Puerto Rico since 1990. Although the DNER MMSP took over these duties in 2006, the program is implemented with assistance from the CSN, the Puerto Rico Zoo, and commonwealth law enforcement officials. We believe that the manatee death reports provided by the DNER MMSP, with all assistance of these partners, are a consistent and reliable manner to gather mortality data.

Comment 11: The commenter asked why so many released manatees have died in Puerto Rico.

Response: After reviewing the data received by the CSN, we recognized there was an error and have revised the SAR accordingly. From 1990 to 2005, a total of 23 manatees were rescued by the CSN. Of these, two were rehabilitated and released, two were released immediately after rescue, 17 died in rehabilitation, one died in transport, and one is currently in rehabilitation. Of the four manatees that were released, one died one year after its release.

Additional References Cited

West Indian Manatee in Puerto Rico

Kellogg, M.E. 2008. Sirenian Conservation Genetics and Florida Manatee (*Trichechus manatus latirostris*) cytogenetics. Doctoral dissertation, University of Florida, Gainesville, FL. 159 pp.

Sloan, D.H., J.P. Reid, R.K. Bonde, S.M. Butler, and B.M. Stith. 2006. Summary of the West Indian manatee (*Trichechus manatus*) tracking by USGS–FISC Sirenia Project in Puerto Rico. Report Prepared for the U.S. Fish and Wildlife Service. 9 pp.

Authority: The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et al.*).

Dated: December 14, 2009.

Sam Hamilton,

Director, Fish and Wildlife Service.

[FR Doc. E9–30900 Filed 12–29–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2009–N234; 71490–1351–0000–M2–FY10]

Marine Mammal Protection Act; Stock Assessment Report

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of final 2009 revised marine mammal stock assessment reports for the Pacific walrus stock and two stocks of polar bears; response to comments.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service), announce that we have revised our stock assessment reports (SARs) for the Pacific walrus (*Odobenus rosmarus divergens*) stock and for each of the two polar bear (*Ursus maritimus*) stocks in Alaska: The Southern Beaufort Sea polar bear stock and the Chukchi/Bering Seas polar bear stock, including incorporation of public comments. We now make these three final 2009 revised SARs available to the public.

ADDRESSES: To obtain the SARs for the Pacific walrus or either polar bear stock, see Document Availability under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rosa Meehan, Marine Mammals Management Office, (800) 362–5148 (telephone) or *r7_mmm_comment@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

Under the MMPA (16 U.S.C. 1361 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 18, we regulate the taking, transportation, purchasing, selling, offering for sale, exporting, and importing of marine mammals. One of the MMPA's goals is to ensure that stocks of marine mammals occurring in waters under U.S. jurisdiction do not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its *optimum sustainable population level* (OSP). OSP is defined as ''the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.''

To help accomplish the goal of maintaining marine mammal stocks at

their OSPs, section 117 of the MMPA requires us and the National Marine Fisheries Service (NMFS) to prepare a SAR for each marine mammal stock that occurs in waters under U.S. jurisdiction. A SAR must be based on the best scientific information available; therefore, we prepare it in consultation with established regional scientific review groups. Each SAR must include: (1) A description of the stock and its geographic range; (2) a minimum population estimate, maximum net productivity rate, and current population trend; (3) an estimate of human-caused mortality and serious injury; (4) a description of commercial fishery interactions; (5) a categorization of the status of the stock; and (6) an estimate of the *potential biological removal* (PBR) level. The PBR is defined as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP.'' The PBR is the product of the minimum population estimate of the stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0, which is intended to compensate for uncertainty and unknown estimation errors.

Section 117 of the MMPA also requires us and NMFS to review the SARs (a) at least annually for stocks that are specified as strategic stocks, (b) at least annually for stocks for which significant new information is available, and (c) at least once every 3 years for all other stocks.

A *strategic stock* is defined in the MMPA as a marine mammal stock (a) for which the level of direct human-caused mortality exceeds the PBR; (b) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; ESA), within the foreseeable future; or (c) which is listed as a threatened or endangered species under the ESA, or is designated as depleted under the MMPA.

Before releasing our draft SARs for public review and comment, we submitted them for technical review internally and also for scientific review by the Alaska Regional Scientific Review Group, which was established under the MMPA. In a June 18, 2009 (74 FR 28946), **Federal Register** notice, we made available our draft SARs for the MMPA-required 90-day public review and comment period. Following the close of the comment period, we revised the SARs based on public comments we received (*see* below) and prepared the final 2009 revised SARs. Between publication of the draft and final SAR for the Pacific walrus, the estimate of walrus population size resulting from the 2006 survey was completed, and we revised the SAR using the new information. We have not revised the status of the Pacific walrus stock itself (*i.e.,* strategic). However, as a result of the new analyses, we estimate the size of the Pacific walrus population as 129,000 individuals within the surveyed area. This estimate does not account for areas not surveyed, and is therefore negatively biased to an unknown degree. To compensate for this bias, we are using our estimate of population size, 129,000, as N_{min}. In response to a comment, we revised F_r to 0.50. Therefore, the updated estimate of PBR is 2,580. We addressed other concerns identified in the public comments in the following section or by adding text to the SAR for clarity. Between publication of the draft and final SARs for both polar bear stocks, we also have not revised the status for either, *i.e.,* both are strategic. We addressed the public comments received in the following section or by adding text to the SAR for clarity.

The following table summarizes the final 2009 revised SARs for the Pacific walrus, the Southern Beaufort Sea polar bear, and the Chukchi/Bering Seas polar bear stocks, listing each stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and status.

TABLE 1—SUMMARY: FINAL REVISED STOCK ASSESSMENT REPORTS FOR THE PACIFIC WALRUS, SOUTHERN BEAUFORT SEA POLAR BEAR, AND CHUKCHI/BERING SEAS POLAR BEAR

Stock	N_{min}	R_{max}	F_r	PBR	Annual estimated average human-caused mortality and serious injury	Stock status
Pacific Walrus	129,000	0.08	0.5	2,580	4,963–5,460	Strategic.
Southern Beaufort Sea Polar Bear	1,397	0.0603	0.5	22	33 (Alaska) 21 (Canada)	Strategic.
Chukchi/Bering Seas Polar Bear	2,000	0.0603	0.5	30	37 (Alaska) —(Russia)	Strategic.

Document Availability

Final Revised SARs for Pacific Walrus, Southern Beaufort Sea Polar Bear, and Chukchi/Bering Seas Polar Bear

You may obtain copies by any one of the following methods:

- *Internet: http://alaska.fws.gov/fisheries/mmm/walrus/reports.htm* (for the walrus stock) and *http://alaska.fws.gov/fisheries/mmm/polarbear/reports.htm* (for both polar bear stocks).
- Write to or visit (during normal business hours from 8 a.m. to 4:30 p.m. Monday through Friday) the Chief, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503; telephone: (800) 362–3800.

Responding to Public Comments

Pacific Walrus

We received five sets of comments on the draft Pacific walrus SAR (74 FR 28946). We present issues raised in those comments, along with our responses, below.

Comment 1: The Service should complete analysis of the 2006 walrus survey data as soon as possible, and use a final estimate of Pacific walrus population size for the stock assessment report.

Response: The estimate of walrus population size resulting from the 2006 survey has been completed, and the stock assessment report has been revised using the new information.

Comment 2: The population estimate will not be meaningful without accounting for the numbers of walrus in areas not surveyed, hauled out on land, and in the water, and the SAR should state that the estimate ''is negatively biased to an unknown degree,'' and that the bias is most likely quite large.

Response: The estimate of walrus population size resulting from the 2006 survey accounts for individuals in the water. During April, when the aerial survey took place, virtually the entire population of Pacific walrus uses sea ice habitats, and few if any haul out on land

at that time. The 2006 estimate does not account for areas not surveyed, and the Service therefore recognizes that the estimate is negatively biased to an unknown degree. This is stated in the stock assessment report.

Comment 3: If a final estimate of population size resulting from a complete analysis of the 2006 survey data is not available, the ''Minimum Population Estimate'' section should read as follows: ''A reliable minimum population estimate (N_{min}) for this stock can not presently be determined because current reliable estimates of abundance are not available.''

Response: Results of the 2006 survey are now available. An estimated 129,000 Pacific walrus were found within the surveyed area. This estimate does not account for areas not surveyed, and is therefore negatively biased to an unknown degree. To counterbalance this bias, we are using our estimate of population size, 129,000, as N_{min} for the Pacific walrus stock assessment report. This provides reasonable assurance that the stock size is equal to or greater than the estimate.

Comment 4: The use of a recovery factor of 1.0 is too high, and assumes the stock is stable; a recovery factor of 0.50 for unknown status should be used instead.

Response: Results of the 2006 walrus survey, in combination with other estimates of walrus population size and sources of information on walrus, do not provide a definitive basis for determining Pacific walrus population status. We agree that status of the population should be considered ''unknown,'' and have reduced the recovery factor to 0.50.

Comment 5: If a final estimate of population size resulting from a complete analysis of the 2006 survey data is not available, the ''Potential Biological Removal'' section should read as follows: ''However, because a reliable estimate of minimum abundance (N_{min}) is currently not available, the PBR for this stock is unknown.''

Response: The Service used the 2006 estimate of population size of 129,000 for $N_{min.}$ This provides reasonable assurance that the stock size is equal to or greater than the estimate, and is therefore a reasonable basis for estimating PBR.

Comment 6: The draft report contained a population estimate that was only a snapshot of walrus population size in a certain area in a certain period of time, and does not support determination of PBR.

Response: The Service acknowledges the shortcomings of the 2006 estimate of Pacific walrus population size. However, the 2006 estimate remains the best scientific information available at this time, as specified under Section 117 of the MMPA.

Comment 7: The PBR value of 607 is so low in relation to harvested numbers that it cannot be correct, or there would be no walrus remaining.

Response: We recalculated an estimate for PBR using the revised N_{min} of 129,000 and revised F_r of 0.50. The estimate of R_{max} remained the same at 0.08. These revisions yielded an estimated PBR of 2,580, which is greater than the preliminary estimate in the draft stock assessment report. Estimated total human-caused removals of 4,963–5,460 walrus per year are higher than estimated PBR. However, estimated PBR is not the appropriate mechanism for assessing the sustainability of the subsistence harvest.

Comment 8: Take is above PBR, so the Service should promptly begin a status review of the Pacific walrus under 16 U.S.C. 1383b(a) to determine whether the stock may warrant listing as ''depleted,'' and whether rulemaking pursuant to 16 U.S.C. 1371(b) is warranted.

Response: In February 2008, the Service received a petition to list the Pacific walrus as threatened or endangered under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The 90-day finding on this petition was published in the **Federal Register** on September 10, 2009 (74 FR 46548), and found that there was substantial information in the petition to indicate that listing the Pacific walrus under the ESA may be warranted. The Service has initiated a status review of the Pacific walrus to determine whether the stock should be listed under the ESA. If the species is listed under the ESA, it is considered depleted under the MMPA. The finding on the merits of the listing petition will be published in the **Federal Register** on or before September 10, 2010.

Comment 9: The Pacific walrus should not be declared a ''strategic'' stock until a final estimate of walrus population size is completed.

Response: The estimate of walrus population size resulting from the 2006 survey has been completed, and we revised the stock assessment report using the new information. PBR was re-estimated using the revised N_{min} of 129,000; the revised F_r of 0.50; and the same estimate of $R_{max,}$ 0.08. The revisions yielded an estimated PBR of 2,580. The estimated level of total direct human-caused mortality is 4,963–5,460 walrus per year, which exceeds the estimated PBR level. Therefore, the Pacific walrus is classified as strategic as defined under the MMPA.

Comment 10: Information provided in Garlich-Miller *et al.* (2006) regarding the use of population information derived from harvested walruses (*e.g.*, age at harvest, fecundity, age at first reproduction) to evaluate population status should be included in the assessment of population status.

Response: Information provided in Garlich-Miller *et al.* 2006 is equivocal regarding population status, and text has been updated in the stock assessment to make this clearer.

Comment 11: The Service should state the variances and biases of all walrus surveys from 1975 through 1990 in the SAR.

Response: Many scientific articles have been published on estimating walrus population size, including survey methods, sources of variation, and sources of bias. Surveys from 1975, 1980, 1985, and 1990 do not have estimates of variance associated with the total population estimate, because part of each estimate was derived from highest counts of walruses using terrestrial haulouts, for which variance cannot be estimated. Biases for most surveys are simply unknown. For the interested reader, Table 1 in the SAR cites the original sources of literature for each U.S.-Russia joint estimate of walrus population size. Other summary works are cited in the ''Population Size'' section of the SAR.

Comment 12: How many walrus were not counted in the unsurveyed areas?

Response: To date, the Service has not attempted to estimate the number of walrus in areas that were not surveyed in 2006. However, the Service is considering how this might be done. Once completed, this analysis would be used to update future Pacific walrus SARs.

Comment 13: The new method used to count walrus and make an estimate is no better than the method used before.

Response: The 2006 walrus survey covered more area than earlier surveys, more accurately estimated numbers of walrus in groups, accounted for the probability of detecting groups of different sizes, accounted for the proportion of the population that was in the water, and fully quantified the uncertainty associated with the estimation process. It produced the most accurate estimation of Pacific walrus population size to date. However, other longstanding issues were still problematic, such as the extreme spatial and temporal aggregation of this species on ice, the vast ice-covered area it inhabits, and severity of weather.

Discussions of methods for future efforts to estimate Pacific walrus population size are ongoing.

Comment 14: Destruction of walrus by the U.S. Navy is not being regulated.

Response: The Service is not aware of any cases of walrus destruction by the U.S. Navy.

Comment 15: The estimates of take by commercial fisheries identified in the SAR are inaccurate by at least 50 percent because we do not receive reports from Russian commercial fisheries.

Response: In accordance with the MMPA, NMFS is required to place all U.S. commercial fisheries into one of three categories based on the level of serious injury and mortality of marine mammals that occur incidental to that fishery. Any vessel owner or operator or gear owner or operator participating under these categories must report to NMFS all incidental injuries and mortalities that occur during commercial fishing operations. The Service used information from these reports, which are provided to us by NMFS, to estimate take by commercial fisheries in the preparation of the SAR for the Alaska stock of Pacific walrus. We acknowledge the limitations of the data; however, this constitutes the best available scientific information. A complete list of fisheries and marine mammal interactions is published annually by NMFS, the most recent of which was published on December 1, 2008 (73 FR 73032).

Comment 16: The Service should explain the calculations for estimating the total number harvested in more detail.

Response: Information about the subsistence harvest is collected through several observer programs. We have added information to the SAR to clarify this point.

Comment 17: The Service should state that Fay *et al.* (1994) used data collected between 1952 and 1972, and that changes may have occurred over the last 35 years that would result in the need to re-evaluate the struck and lost rate of 42 percent.

Response: We agree with this comment, and the stock assessment text has been revised accordingly. However, we continue to use the value of 42 percent estimated by Fay *et al.* (1994) because it is the only estimate available and, therefore, the best available scientific information for preparation of the SAR.

Polar Bear

We received four sets of comments on the draft polar bear SARs (74 FR 28946). We present issues raised in those comments, along with our responses, below.

Southern Beaufort Sea Polar Bear

Comment 1: The Service should reassess all relevant data on polar bear distribution and movements to determine the eastern boundary of the Southern Beaufort Sea stock in the most scientifically credible manner and then reassess the minimum population estimate to account for the new stock boundary.

Response: A new population estimate could be determined once the new eastern boundary for the Southern Beaufort Sea is determined and agreed upon by the Board of Commissioners for the Inuvialuit/Inupiat Agreement. However, this decision has not been made and given the current staffing and previous commitments by the polar bear program of U.S. Geological Survey, Alaska Science Center, a new analysis cannot be done in a timely manner. In addition, boundaries for many of the polar bear populations may be changing in response to changes in the sea ice habitat. Thus we chose to use the old boundary for the Southern Beaufort Sea SAR at this time.

Comment 2: The Service should revise downward its estimate of maximum net productivity rate for this population to reflect ongoing and predicted changes in polar bear habitat that will prevent polar bear stock from achieving growth rates that might be expected in a favorable environment.

Response: Currently there is not enough data to estimate maximum net productivity rate (R_{max}) based on ongoing and predicted changes in the sea ice habitat. Thus we used the best scientific information available for $R_{max.}$

Comment 3: The Service should work with the North Slope Borough, the Inuvialuit Game Council, and the Canadian authorities to review whether the current harvest limits for this population are sustainable and consider whether they should be reduced.

Our Response: We have made recommendations that the current harvest limits should be reduced.

Comment 4: The second paragraph states that the boundaries delineated by Bethke et al. (1996) will continue to be used for the Southern Beaufort Sea SAR. However, prior to that statement there is substantial information presented pertinent to boundary considerations, yet Bethke *et al.* is not mentioned.

Response: We corrected the citation from Bethke *et al.* (1996) to Amstrup *et al.* (2000) and added a sentence referring to the southern boundary, which was based on Bethke *et al.* (1996).

Comment 5: For the Southern Beaufort Sea stock, revise the last sentence such that the estimate from Regehr et al. 2006 is recognized as the most current and valid estimate of abundance to use in calculating $N_{min.}$

Response: We revised the sentence accordingly. The discussion of N_{min} in the last paragraph in the ''Population Size'' section of the SAR clearly states that the population estimate of 1,526 was used in the calculation.

Comment 6: The last sentence in the Chukchi/Bering Seas SAR states that ''Harvest levels are not limited at this time.'' If this also applies to the Southern Beaufort Sea stock, it should be included; if it does not, the means by which the harvest is limited should be presented.

Response: The harvest for the Southern Beaufort Sea has been actively managed since the passage of the Polar Bear Agreement for the Southern Beaufort Sea between the Inuvialuit of Canada and the Inupiat in the United States (Alaska) in 1988. Using Maximum Sustained Yield Method (Taylor *et al.* 1987) and a two-to-one male-to-female sex ratio in the harvest, a sustainable yield was calculated for the Southern Beaufort Sea population. The average annual harvest level since 1988 (56.9) has been well below the sustainable harvest of 80 bears (40 for the United States and 40 for Canada) since 1988. To minimize confusion with the discussion of PBR, we did not include this information in the SAR.

Comment 7: The recent harvest levels are above PBR, and thus the Service should discuss the effects of the harvest on the population and the potential for recovery in the section *Conservation Issues and Concerns—Subsistence Harvest.* The Service should mention the management agreements that are in place to determine sustainable harvest levels if PBR is not used.

Response: We added a paragraph at the end of this section to clarify the concern of overharvest with a declining population and how the quota is managed relative to PBR. The estimated PBR is not the appropriate mechanism for assessing the sustainability of the subsistence harvest.

Chukchi/Bering Seas Polar Bear

Comment 8: The Service should give its highest priority to reaching an agreement with Russia on a joint strategy to determine the status of this stock, identify current levels of productivity in major denning areas, and establish a management and research program to monitor this stock.

Response: The first meeting of the commissioners for the U.S/Russia

Bilateral Agreement for the conservation of the polar bears occurred in Moscow, Russia in September, 2009. The Scientific Working Group, which is established under this Bilateral Agreement, will make recommendations on management and research needs to the four commissioners.

Comment 9: The Service should provide an explanation as to why it believes that 2,000 can be used as the best population estimate as well as the minimum population size.

Response: The population estimate of 2,000 is based on extrapolated den data and is over 10 years old. Although this number is not considered reliable for management purposes, it is currently the best scientific information available for these calculations.

Comment 10: The Service should revise downward its estimate of the maximum net productivity rate for this population to reflect ongoing and predicted changes in polar bear habitat that will prevent polar bear stocks from achieving growth rates that might be expected in a favorable environment.

Response: See response to Comment 2 for the Southern Beaufort Sea SAR.

Comment 11: The Service should use the first meeting of the United States–Russia Polar Bear Commission to address the over harvest of this stock.

Response: This is one of the action items assigned to the Scientific Working Group, which will make recommendations to the Bilateral Commission in 2010.

Comment 12: The Service should mention that since the stock is now considered depleted under the MMPA, the Federal Government now has authority to regulate harvest levels.

Response: Although we concur with the above statement, the Service would rather work through the U.S. Russia Bilateral Agreement for the Conservation of Polar Bears to develop management and research priorities, including guidelines for determining appropriate harvest levels for this population stock. We believe that working cooperatively with our Russian colleagues will result in a more effective management strategy for this population.

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Authority: The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et al.*).

Dated: December 14, 2009.

Sam Hamilton,

Director, Fish and Wildlife Service.

[FR Doc. E9–30908 Filed 12–29–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB07900 09 L10100000.PH0000 LXAMANMS0000]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of

Land Management (BLM), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The Western Montana RAC will meet Feb. 10, 2010 at 9 a.m. The public comment period for the meeting will begin at 11:30 a.m. and the meeting is expected to adjourn at approximately 3 p.m.

ADDRESSES: The meeting will be held at the Butte Field Office, 106 N. Parkmont, Butte, Montana.

FOR FURTHER INFORMATION CONTACT: David Abrams, Western Montana Resource Advisory Council Coordinator, Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in western Montana. At the February meeting, agenda items include: The BLM's Access Manager Program and a review of Forest Service fee proposals.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

Richard M. Hotaling,

District Manager, Western Montana District.

[FR Doc. E9–31028 Filed 12–29–09; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 12, 2009. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 14, 2010 .

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARKANSAS

Boone County

Twelve Oaks, 7210 AR 7 S, Harrison, 09001237

Carroll County

Sanitarium Lake Bridges Historic District, (Historic Bridges of Arkansas MPS) Carroll Co. Rd. 317, approx. .5 mi. S. of Greenwood Hollow Rd., Eureka Springs, 09001238

Clark County

DeGray Creek Bridge, (Historic Bridges of Arkansas MPS) Co. Rd. 50 over DeGray Creek, Arkadelphia, 09001239

Columbia County

Cross and Nelson Hall Historic District, (New Deal Recovery Efforts in Arkansas MPS) Southern Arkansas University Campus at 100 E. University, Magnolia, 09001240

Crawford County

Lee Creek Bridge, (Historic Bridges of Arkansas MPS) W. of W. Rena Rd. over Lee Creek, Van Buren, 09001241

Old U.S. 64—Van Buren Segment, (Arkansas Highway History and Architecture MPS) Oak Ln. N. of US 64, Van Buren, 09001242

Crittenden County

Riverside Speedway, 151 Legion Rd., West Memphis, 09001243

Wilson Power and Light Company Ice Plant, 120 E. Broadway St., West Memphis, 09001244

Desha County

McGehee Post Office, 201 N. Second St., McGehee, 09001245

Garland County

Malco Theatre, 817 Central Ave., Hot Springs, 09001246

Hempstead County

Southwestern Proving Ground Building No. 5, (World War II Home Front Efforts in Arkansas, MPS) 259 Hempstead Co. Rd. 279, Hope, 09001247

Independence County

Central Avenue Bridge, (Historic Bridges of Arkansas MPS) AR 69 over Polk Bayou, Batesville, 09001248

Miller Creek Bridge, (Historic Bridges of Arkansas MPS) Co. Rd. 86 over Miller Creek, Batesville, 09001249

Jefferson County

Taylor Field, (New Deal Recovery Efforts in Arkansas MPS) 1201 E. 16th St., Pine Bluff, 09001250

Lawrence County

Commandant's House, (World War II Home Front Efforts in Arkansas, MPS) 264 McClellan Dr., Walnut Ridge, 09001251

Logan County

Liberty Schoolhouse, 12682 Spring Lake Rd., Corley, 09001252

Marion County

Crooked Creek Bridge, (Historic Bridges of Arkansas MPS) US 62 Spur N. over Crooked Creek, Pyatt, 09001253

Miller County

Beech Street Historic District, Roughly Beech St. between 14th and 23rd Sts., Texarkana, 09001254

Newton County

Jasper Commercial Historic District, Roughly bounded by Sycamore St., E. Elm St., N. Spring St., and Clark St., Jasper, 09001255

Ouachita County

Washington Street Historic District, 404–926 W. Washington, 619–816 Graham, 116–132 N. Cleveland, 131–139 N. Agee and 132 N. California, Camden, 09001256

Poinsett County

Poinsett Lumber and Manufacturing Company Manager's House, 512 Poinsett Ave., Trumann, 09001257

Pulaski County

Oakland-Fraternal Cemetery, 2101 Barber St., Little Rock, 09001258

Seed Warehouse No. 5, (Cotton and Rice Farm History and Architecture in the Arkansas Delta MPS) SW corner of US 165 and AR 161, Scott, 09001259

Van Buren County

Middle Fork of the Little Red River Bridge, Co. Rd. 125 over the Middle Fork of the Little Red River, Shirley, 09001260

Washington County

Cane Hill Road Bridge, (Historic Bridges of Arkansas MPS) AR 170 over the Little Red River, Prairie Grove, 09001261

Goff Farm Stone Bridge, (Historic Bridges of Arkansas MPS) Goff Farm Rd. approx. ½ mi. E. of Dead Horse Mountain Rd., Fayetteville, 09001262

Yell County

Petit Jean River Bridge, (Historic Bridges of Arkansas MPS) Co. Rd. 49 over the Petit Jean River, Ola, 09001263

DISTRICT OF COLUMBIA

District of Columbia

Fort View Apartments, (Apartment Buildings in Washington, DC, MPS) 6000–6020 and 6030–6050 13th Place, N.W., Washington, 09001264

MISSOURI

St. Louis Independent city

Central Carondelet Historic District (Boundary Increase III), Roughly bounded by Bates St. on the N., Interstate 55 on the W., S. Broadway on E. and Holly Hills on S., St. Louis, 09001265

Wellston Loop commercial Historic District, Bounded by the city limits, the alleys S. and N. of Martin Luther King Dr. and Clara Ave., St. Louis, 09001266

NEW MEXICO

Eddy County

Artesia Residential Historic District, (Artificial Stone Houses of Artesia TR) Roughly bounded by W. Main St. on the N.; W. Missouri Ave. on the S.; S. 2nd St. on the E.; S. 10th St. on the W., Artesia, 09001267

NEW YORK

Columbia County

New Concord Historic District, Co. Rt. 9, New Concord, 09001268

Oswego County

Tanner Block, (Oswego, Oswego County, New York) 175–177 W. First St., Oswego, 09001269

Washington Square Historic District, (Oswego, Oswego County, New York) E. 4th St., E. Oneida St., E. 3rd St., Oswego, 09001270

Saratoga County

Victory Mills, 42 Gates Ave., Schuylerville, 09001271

WISCONSIN

Brown County

South Broadway Historic District, 101–129 (odd only) S. Broadway, De Pere, 09001272

Walworth County

Whitewater Hotel, 226 W. Whitewater St., Whitewater, 09001273

Request for REMOVAL has been made for the following resources:

ARKANSAS

Jefferson County

Hospital and Benevolent Association, (Thompson, Charles L., Design Collection), 11th and Cherry, Pine Bluff, 82000841

Pulaski County

Center Theater, 407 S. Main St., Little Rock, 03000422

Sevier County

Hotel Dee Swift (Railroad Era Resources of Southwest Arkansas MPS), 123 N. Port Arthur St., DeQueen, 96000644

[FR Doc. E9–31062 Filed 12–29–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from October 13, to October 16, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St. NW., Washington, DC 20240; in person (by appointment), 1201 Eye St. NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: December 24, 2009.

Rustin Quaide,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name.

CALIFORNIA

Orange County

Stroschein, Carl, House, 31682 EL Camino Real, San Juan Capistrano, 09000823, LISTED, 10/14/09.

CONNECTICUT

Litchfield County

Lime Rock Park Race Track, 497 Lime Rock Rd., Salisbury, 08001380, LISTED, 10/16/09.

GEORGIA

Fulton County

Hapeville Historic District, 1–75 E., Mt. Zion Rd. N., I–85 W., and Airport Loop Rd. S., Sylvan and Springdale Rds. W. of I–85, Hapeville, 09000824, LISTED, 10/14/09.

IOWA

Cerro Gordo County

East Park Band Shell, E. State St. between North Carolina and Kentucky, Mason City, 09000825, LISTED, 10/14/09.

IOWA

Davis County

''Lockkeeper's'' House, Whitefish Trail, Eldon vicinity, 09000826, LISTED, 10/14/09.

MASSACHUSETTS

Worcester County

West Village Historic District, Allen Hill, Goodnow, Hubbardston, and Radford Rds., Princeton, 09000827, LISTED, 10/16/09.

MINNESOTA

ST. Louis County

ROBERT WALLACE (bulk carrier) shipwreck site, Address Restricted, Palmers vicinity, 09000828, LISTED, 10/14/09 (Minnesota's Lake Superior Shipwrecks MPS).

MISSOURI

Cape Girardeau County

South Middle Street Historic District, 513 William St., 202–230 S. Middle St., and 203–229 S. Middle, Cape Girardeau, 09000829, LISTED, 10/14/09.

NEW YORK

Bronx County

Tremont Baptist Church, 324 E. Tremont Ave., Bronx, 09000831, LISTED, 10/16/09.

NEW YORK

Queens County

Astoria Center of Israel, 27–35 Crescent St., Astoria, 09000833, LISTED, 10/16/09.

Free Synagogue of Flushing, 41–60 Kissena Blvd., Flushing, 09000834, LISTED, 10/16/09.

Wayne County

Alasa Farms, 6450 Shaker Rd., Alton vicinity, 09000835, LISTED, 10/16/09

Palmyra Village Historic District, Portions of Canandaigue, Church, Cuyler, E. and W. Jackson, Market, E. and W. Main Sts., Palmyra, 09000836, LISTED, 10/16/09.

Westchester County

New Rochelle Railroad Station, Between N. Ave. and Memorial Hwy., New Rochelle, 09000837, LISTED, 10/14/09.

Wyoming County

Fleming, Bryant, House, 1024 Tower Rd., Wyoming vicinity, 09000838, LISTED, 10/14/09.

TEXAS

Collin County

Celina Public School, 205 S. Colorado St., Celina, 09000839, LISTED, 10/14/09.

MATAGORDA COUNTY

Hill, R.J., Building, 401 Commerce St., Palacios, 09000840, LISTED, 10/14/09.

Price-Farwell House, 308 S. Bay Blvd., Palacios, 09000841, LISTED, 10/14/09.

[FR Doc. E9–30964 Filed 12–29–09; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–695]

In the Matter of: Certain Silicon Microphone Packages and Products Containing Same Designation of Investigation as ''More Complicated''

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge (''ALJ'') has designated the above-captioned investigation ''more complicated.''

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3112. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 (''section 337''), on December 16, 2009, based on a complaint, as supplemented, filed by Knowles Electronic LLC of Itasca, Illinois alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain silicon microphone packages and products containing the same by reason of infringement of certain claims of U.S. Patent No. 6,781,231 (''the '231 patent'') and U.S. Patent No. 7,242,089 (''the '089 patent''). The complainant named Analog Devices Inc. of Norwood, MA as the respondent, and requested that the Commission find a violation of section 337 and issue an exclusion order and a cease and desist order. The complainant also filed a motion for temporary relief requesting that the Commission issue a temporary limited exclusion order and temporary cease and desist order prohibiting the importation into and the sale within the United States after importation of certain silicon microphone packages and products containing the same that infringe claim 1 of the '231 patent and claims 1, 2, 7, 15, 16, 17, 18, and 20 of the '089 patent during the pendency of the Commission's investigation.

On December 18, 2009, the ALJ issued Order No. 4 designating the investigation ''more complicated'' pursuant to Commission Rule 210.60, 19 CFR 210.60, on the basis of the complexity of the issues raised in the complainant's motion for temporary relief.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.60 of the Commission's Rules of Practice and Procedure (19 CFR 210.60).

Issued: December 23, 2009.
By order of the Commission.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. E9–30878 Filed 12–29–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–679]

In the Matter of: Certain Products Advertised as Containing Creatine Ethyl Ester Notice of Commission Decision Not To Review an Initial Determination Finding Respondent EST Nutrition in Default and Terminating the Investigation; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 12) issued by the presiding administrative law judge finding respondent EST Nutrition LLC d/b/a Engineered Sport Technology, Inc. (''EST'') in default. EST is the last remaining respondent in this investigation. Accordingly, the Commission requests written submissions, according to the schedule set forth below, on remedy, public interest, and bonding with respect to the respondents in default.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on June 23, 2009, based upon a complaint filed on behalf of UneMed Corp. of Omaha, Nebraska (''UneMed'') on June 5, 2009, and supplemented on June 8 and 10, 2009. 74 FR 29717 (June 23, 2009). The complaint alleged violations of section 337(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain products advertised as containing creatine ethyl ester by reason of false advertising in violation of Section 43(a) of the Lanham Act, 15 U.S.C. 1125(a)(1)(B) and the Nebraska Uniform Deceptive Trade Practices Act, R.R.S. Neb. § 87–302 (2008). The complaint named as respondents Bodyonics, Ltd. of Hicksville, New York (''Bodyonics''); EST of Oviedo, Florida; Proviant Technologies, Inc. of Champaign, Illinois (''Proviant''); NRG–X Labs. of Bentonville, Arkansas (''NRG–X''); and San Corporation of Oxnard, California.

On September 29, 2009, the Commission issued notice of its decision not to review an ID terminating the investigation with respect to San Corporation on the basis of a consent order. On October 19, 2009, the Commission issued notice of its decision not to review an ID finding Bodyonics, NRG–X, and Proviant in default.

Because the original service upon EST had been ineffective, actual service was effected on October 6, 2009, by personal service pursuant to special permission granted by Order No. 7. On November 4, 2009, UneMed filed a motion for an order directing EST to show cause why it should not be found in default for failing to respond to the complaint and Notice of Investigation. UneMed noted that it seeks only a limited exclusion order against all defaulting respondents. The Commission investigative attorney did not oppose the motion for an order to show cause. On November 17, 2009, the presiding administrative law judge issued Order No. 11, directing EST to show cause by December 3, 2009, why it should not be found in default pursuant to Commission Rule 210.16, 19 CFR 210.16. No response to Order No. 11 was filed by the deadline date. On December 4, 2009, the administrative law judge issued the subject ID, finding EST in default and terminating the

investigation. No petitions for review were filed.

EST is the last remaining respondent in this investigation. The investigation has been terminated with respect to all other respondents based on consent order and default.

Section 337(g)(1) and Commission Rule 210.16(c) authorize the Commission to order relief against a respondent found in default unless, after consideration of the public-interest factors, it finds that such relief should not issue. UneMed has declared, pursuant to Commission Rule 210.16(c)(2), that it does not seek a general exclusion order.

In conjunction with the final disposition of this investigation, therefore, the Commission may: (1) Issue an order that could result in the exclusion of articles manufactured or imported by any or all of the defaulting respondents; and/or (2) issue one or more cease and desist orders that could result in any or all of the defaulting respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties, are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to state the dates that any relevant intellectual property rights terminate and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on January 6, 2010. Reply submissions must be filed no later than the close of business on January 18, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof with the Office of the Secretary on or before the aforementioned deadlines. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.16 and 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.16; 210.42–46).

By order of the Commission.

Issued: December 23, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–30952 Filed 12–29–09; 8:45 am]

BILLING CODE 7020–02–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 22, 2009, a proposed Consent Decree in *United States* v. *Ausimont Industries, Inc., et al.*, Civil Action No. 1:09–cv–12169, was filed with the United States District Court for the District of Massachusetts, Eastern Division.

In this action, the United States sought injunctive relief for remedial cleanup, recovery of response costs, and damages for injuries to natural resources against 49 defendants (''Settling Defendants), relating to the Sutton Brook Disposal Area Superfund Site in Tewksbury, Massachusetts (''Site''), pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607(a). The Commonwealth of Massachusetts (''Commonwealth'') has asserted parallel claims under CERCLA and related State provisions, and is a co-plaintiff to the proposed Consent Decree.

To resolve the United States' injunctive relief claim under Section 106 of CERCLA, 42 U.S.C. 9606, the proposed Consent Decree requires 20 Settling Defendants to perform the Remedial Design/Remedial Action set forth in the Record of Decision for the Site (''Performing Settling Defendants''). This remedial cleanup includes construction of a multi-layer, impermeable cap over the area of the Site that was a former landfill; construction of a groundwater pump and treatment system to collect and treat contaminated groundwater; long-term monitoring; and implementation of restrictions on future uses of the Site. The total estimated cost of the remedial cleanup for the Site is approximately $30 million ($29.98 million).

To resolve the United States' claims for cost recovery and damages for injuries to natural resources under Section 107 of CERCLA, 42 U.S.C. 9607, the Consent Decree requires Settling Defendants to reimburse the United States for all future response costs, and costs incurred to oversee the remedy, as set forth in the Consent Decree. Settling

Defendants will also reimburse the Commonwealth for all future response costs, costs incurred to oversee the remedy, and $512,000 in past response costs. In addition, Settling Defendants will pay $825,000 to the U.S. Department of Interior, which includes $62,752 in assessment costs, to be used to fund restoration projects in connection with the Site for natural resources under the Federal and/or joint Federal and State trusteeship. Settling Defendants will also pay $825,000 to the Commonwealth, which includes $44,270 in assessment costs, to be used to fund restoration projects in connection with the Site for natural resources under the Commonwealth's trusteeship.

Beside the 20 Performing Settling Defendants, the proposed Consent Decree includes six Cashout Settling Defendants and 23 *De Minimis* Settling Defendants, each of whom will pay its respective allocated share of responsibility for the Site contamination, including standard premiums, into a trust to be used by the Performing Settling Defendants to pay for the remedial cleanup, response costs, and damages for injuries to natural resources. In exchange for the payments to be made and work to be performed, the Settling Defendants will receive contribution protection and a covenant not to sue under Sections 106 and 107 of CERCLA for remedial cleanup, response costs, and natural resources damages relating to the Site, subject to certain reservation of rights.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to either: *United States* v. *Ausimont Industries, Inc., et al.,* Civil Action No. 1:09–cv–12169, D.J. Ref. 90–11–2–07854/1 and 90–11–2–07854/2. The Consent Decree may be examined at the Office of the United States Attorney for the District of Massachusetts, One Courthouse Way, Suite 9200, Boston, Massachusetts, and at U.S. EPA Region 1, 5 Post Office Square—Suite 100, Boston, Massachusetts. During the public comment period, the Consent Decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check, payable to the U.S. Treasury, in the amount of $112.75 (25 cents per page reproduction cost), or, if by e-mail or fax, forward a check in the applicable amount to the Consent Decree Library at the stated address. In requesting a copy exclusive of exhibits and signature pages, please enclose a check, payable to the U.S. Treasury, in the amount of $18 (25 cents per page reproduction cost).

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–30960 Filed 12–29–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request; Petition for Finding Under Section 3(40) of ERISA

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This program helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collections contained in regulations pertaining to the Department's procedures to making a finding under section 3(40) of the Employee Retirement Income Security Act of 1974 (ERISA) as to whether an employee benefit plan is established and maintained pursuant to one or more collective bargaining agreements. A copy of the information collection request (ICR) can be obtained by contacting the office shown in the **ADDRESSES** section of this notice or at *http://www.RegInfo.gov.*

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before March 1, 2010.

ADDRESSES: Direct all written comments to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: *ebsa.opr@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Rules codified beginning at 29 CFR 2570.150 set forth an administrative procedure (''procedural rules'') for obtaining a determination by the Department as to whether a particular employee benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40) of ERISA. These procedural rules concern specific criteria set forth in 29 CFR 2510.3–40 (''criteria rules''), which, if met, constitute a finding by the Department that a plan is collectively bargained. Plans that meet the requirements of the criteria rules are not subject to state law. Among other requirements, the procedural rules require submission of a petition and affidavits by parties seeking a finding. The Department has obtained approval from the Office of Management and Budget (OMB), under OMB Control No. 1210–0119, for the information collections contained in its rules for a finding under section 3(40). This approval is currently scheduled to expire on April 30, 2010.

II. Current Actions

This notice requests comments on an extension of OMB's approval of the information collections included in 29 CFR 2510.3–40. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval of the information collection contained in 29 CFR 2510.3–40. No change to the existing ICR is proposed or made at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid

OMB control number. A summary of the ICR and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Petition for Finding under Section 3(40) of ERISA.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0119.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Respondents: 45.

Responses: 45.

Estimated Total Burden Hours: 0.

Estimated Total Burden Cost (Operating and Maintenance): $120,420.

III. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

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

Dated: December 24, 2009.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. E9–30996 Filed 12–29–09; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0574; Docket Nos. 50–259; 50–260; 50–296; 50–327; 50–328; 50–390; 50–391; License Nos. DPR–33; DPR–52; DPR–68; DPR–77; DPR–79; NPF–90; CPPR–92; EA–09–009; EA–09–203]

In the Matter of U.S. Tennessee Valley Authority, Browns Ferry Nuclear Plant, Sequoyah Nuclear Plant and Watts Bar Nuclear Plant; Confirmatory Order Modifying License (Effective Immediately)

I

U.S. Tennessee Valley Authority (TVA or Licensee) is the holder of Operating License Nos. DPR–33; DPR–52; DPR–68; DPR–77; DPR–79; DPR–90; and Construction Permit No. CPPR–92 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The licenses authorize the operation of the Browns Ferry Nuclear Plant, Units 1, 2 and 3 (BFN), Sequoyah Nuclear Plant, Units 1 and 2, and Watts Bar Nuclear Plant, Unit 1 and construction activities associated with Watts Bar, Unit 2, in accordance with conditions specified therein. These facilities are located in Athens, Alabama; Soddy Daisy, Tennessee; and Spring City, Tennessee, respectively.

This Confirmatory Order is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on December 4, 2009.

II

Two investigations were initiated by the NRC Office of Investigations (OI) to determine if a former contractor in one instance and a TVA employee in the other were discriminated against for engaging in protected activities.

On January 6, 2009, the NRC's Office of Investigations (OI) issued its investigative report regarding whether a former contracted Senior Assessor (SA) hired to work in the Nuclear Assurance (NA) organization, in connection with the BFN Unit 1 Restart Project, was the subject of employment discrimination in violation of 10 CFR 50.7, ''Employee protection.'' In OI Report No. 2–2006–025, OI concluded that a SA was discriminated against for raising concerns regarding the independence of his manager.

On July 30, 2009, OI issued its investigative report regarding whether a maintenance mechanic (MM) employed by TVA at BFN was the subject of employment discrimination in violation of 10 CFR 50.7, ''Employee protection.'' In OI Report No. 2–2009–003, OI concluded that the MM was discriminated against for raising concerns regarding the licensee's compliance with its Fitness for Duty program.

By letter dated October 22, 2009, and by teleconference on November 24, 2009, the NRC identified to the Licensee two separate apparent violations of 10 CFR 50.7, and offered TVA the opportunity to provide a written response, attend a pre-decisional enforcement conference, or to request ADR in which a neutral mediator with no decision-making authority would facilitate discussions between the NRC and TVA and, if possible, assist the NRC and TVA in reaching an agreement. TVA chose to participate in ADR.

III

On December 4, 2009, the NRC and TVA met in an ADR session in Maryland, mediated by a professional mediator, which was arranged through Cornell University's Institute on Conflict Resolution. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process. The elements of the agreement consisted of the following:

1. The NRC acknowledged that TVA, prior to the ADR session, took numerous actions that address the issues underlying the apparent violations. These actions include:

a. Browns Ferry Nuclear Plant (BFN) management conducts regular ''Town Hall'' meetings with TVA and contractor employees, which address topics of interest to the site, and during which feedback is solicited from employees. A regular area of focus is ''Safety Culture'' and the related topic of safety conscious work environment (SCWE).

b. TVA issued ''One Team, One Fleet, One TVA'' pocket-size booklets which identify focus areas for site and corporate success. These booklets include a discussion of the need for a free flow of information where individuals can raise nuclear safety concerns without fear of retribution and have confidence that their concerns will be addressed. These booklets are widely used and form a key part of daily communications.

c. SCWE-oriented brochures (''How Do I Speak Up for Safety'' and ''Voice Your Concerns'') are distributed and are placed throughout the sites for TVA and contractor employees. These brochures and other Concerns Resolution Program (CRP) information are also made available to contractor employees through placement in their individual in-processing packages.

d. ''Speak Up For Safety'' message pens, which also provide CRP contact

telephone numbers, are regularly handed out to TVA and contractor employees.

e. Additional fleet-wide posters promoting the CRP and encouraging the raising of concerns have been placed in strategic areas.

f. CRP representatives provide regular SCWE-oriented presentations to TVA and contractor employees during mid-shift briefings, morning turnover meetings, and tailgate meetings.

g. CRP representatives regularly attend contractor in-processing sessions prior to station outages to orient contractors about the Program's availability for raising concerns.

h. Additional ''Drop Boxes'' have been placed in high-traffic areas where TVA and contractor employees can identify problems or concerns and have the option of doing so anonymously if they wish.

i. TVA's procedure for the Corrective Action Program has been modified to prevent altering problem evaluation report (PER) statements initiated by TVA or contractor employees. (Certain non-intent changes are permitted such as removing employee names, SSNs, Safeguards Information, etc.).

j. CRP staff conduct periodic ''Pulsings'' of individual TVA and contractor employees (approximately 50 individuals per quarter per site) in which feedback is sought regarding work environment issues including willingness to raise concerns.

k. Site electronic bulletin boards regularly communicate SCWE-related messages which encourage raising/voicing problems and concerns.

l. An online computer-based training course was added which discusses the components of a nuclear safety culture, what is meant by a SCWE, and the avenues available to raise concerns. The training is required annually as a refresher for TVA employees as well as for long-term contract personnel that re-badge on an annual basis.

m. Representatives from TVA's Office of the General Counsel (OGC) and the CRP completed training for TVA and contractor managers and supervisors addressing 10 CFR 50.7 ''Employee Protection'' and promoting a safety conscious work environment. The training covered managers and supervisory staff (TVA and contractor) on all shifts.

n. An ''employment flag'' has been placed on the file of the contractor manager involved in the case discussed in NRC's letter dated October 22, 2009. The employment flag provides, as a condition of being hired as an employee, individual TVA contractor, or as an employee of any TVA contractor, that the individual be required to attend a personal training session with representatives of the TVA OGC and the CRP regarding TVA's and NRC's requirements protecting employees who raise concerns (TVA Communications Practice 5, ''Expressing Concerns and Differing Views'' and 10 CFR 50.7, ''Employee Protection''), as well as methods for promoting a safety conscious work environment.

o. The apparent violations have been entered into TVA's Corrective Action Program.

2. In addition, TVA agreed to take the following actions:

a. By no later than ninety (90) calendar days after the issuance of this Confirmatory Order, TVA shall implement a process to review proposed licensee adverse employment actions at TVA's nuclear plant sites before actions are taken to determine whether the proposed action comports with employee protection regulations, and whether the proposed actions could negatively impact the SCWE. Such a process should consider actions to mitigate a potential chilling effect if the employment action, despite its legitimacy, could be perceived as retaliatory by the workforce. By no later than one hundred twenty (120) calendar days after the issuance of this Confirmatory Order, TVA shall implement a process to review proposed significant adverse employment actions by contractors performing services at TVA's nuclear plant sites before the actions are taken to determine whether the proposed action comports with employee protection regulations, and whether the proposed action could negatively impact the SCWE. Such a process will likewise consider actions to mitigate a potential chilling effect if the employment action, despite its legitimacy, could be perceived as retaliatory by the workforce.

b. By no later than seven (7) calendar days after the issuance of the Confirmatory Order, a member of TVA's executive management responsible for the licensee's nuclear power plant fleet will, in writing, communicate TVA's policy, and the expectations of management, regarding the employees' rights to raise concerns without fear of retaliation in the context of this Confirmatory Order.

c. By no later than the end of calendar year 2013, TVA shall perform two (2) independent safety culture assessments comparable to the independent survey conducted in February 2009. The surveys shall be administered in approximately two-year intervals. TVA shall assess and evaluate the results compared with the results of the prior years' surveys. TVA shall make the results of each survey and the planned corrective actions available for NRC review within sixty (60) calendar days after the development of the planned corrective actions.

d. Through the end of calendar year 2013 and on approximately a quarterly basis, TVA shall continue to analyze SCWE trends and develop planned actions, as appropriate.

e. By no later than sixty (60) calendar days after the issuance of the Confirmatory Order, representatives from the TVA's OGC and Human Resources shall conduct a lessons learned training session with the manager associated with the apparent violation discussed with TVA on November 24, 2009. The training shall be documented and made available to the NRC upon request.

f. Through calendar year 2013, TVA shall conduct ''Town Hall''-type meetings at least annually at its nuclear power plants and corporate office with TVA and contractor employees which address topics of interest, including a discussion on TVA's policy regarding fostering a SCWE.

g. TVA shall incorporate a discussion of NRC's employee protection rule in the next revision of the ''One Team, One Fleet, One TVA'' booklet. The next revision will be completed by no later than December 31, 2010.

h. By no later than ninety (90) calendar days after the issuance of the Confirmatory Order, TVA shall modify its contractor in-processing program to ensure that a TVA representative provides a presentation regarding the CRP program and the TVA's SCWE policy during the contractor in-processing sessions at its nuclear power plants.

i. By no later than ninety (90) calendar days after the issuance of the Confirmatory Order, TVA shall revise its training program for new supervisors to incorporate a classroom discussion of the NRC's employee protection rule and the Company's policy on SCWE.

j. TVA's annual online computer-based training course initiative, which discusses the components of a nuclear safety culture, what is meant by a SCWE, and the avenues available to raise concerns, shall be maintained through calendar year 2013.

On December 16, 2009, TVA consented to issuing this Confirmatory Order with the commitments, as described in Section V below. TVA further agreed that this Confirmatory Order is to be effective upon issuance and it has waived its right to a hearing.

IV

Since TVA has agreed to take additional actions to address NRC concerns, as set forth in Item III above, and NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order and thereby has agreed not to issue a Notice of Violation or civil penalty in this matter.

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Confirmatory Order. Based on the above and the Licensee's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It is hereby ordered,* effective immediately, that TVA shall:

1. By no later than ninety (90) calendar days after the issuance of this Confirmatory Order, TVA shall implement a process to review proposed licensee adverse employment actions at TVA's nuclear plant sites before actions are taken to determine whether the proposed action comports with employee protection regulations, and whether the proposed actions could negatively impact the SCWE. Such a process should consider actions to mitigate a potential chilling effect if the employment action, despite its legitimacy, could be perceived as retaliatory by the workforce. By no later than one hundred twenty (120) calendar days after the issuance of the confirmatory order, TVA shall implement a process to review proposed significant adverse employment actions by contractors performing services at TVA's nuclear plant sites before the actions are taken to determine whether the proposed action comports with employee protection regulations, and whether the proposed action could negatively impact the SCWE. Such a process will likewise consider actions to mitigate a potential chilling effect if the employment action, despite its legitimacy, could be perceived as retaliatory by the workforce.

2. By no later than seven (7) calendar days after the issuance of this Confirmatory Order, a member of TVA's executive management responsible for the licensee's nuclear power plant fleet will, in writing, communicate TVA's policy, and the expectations of management, regarding the employees' rights to raise concerns without fear of retaliation in the context of this Confirmatory Order.

3. By no later than the end of calendar year 2013, TVA shall perform two (2) independent safety culture assessments comparable to the independent survey conducted in February 2009. The surveys shall be administered in approximately two-year intervals. TVA shall assess and evaluate the results compared with the results of the prior years' surveys. TVA shall make the results of each survey and the planned corrective actions available for NRC review within sixty (60) calendar days after the development of the planned corrective actions.

4. Through the end of calendar year 2013 and on approximately a quarterly basis, TVA shall continue to analyze SCWE trends and develop planned actions, as appropriate.

5. By no later than sixty (60) calendar days after the issuance of this Confirmatory Order, representatives from the TVA's OGC and Human Resources shall conduct a lessons learned training session with the manager associated with the apparent violation discussed with TVA on November 24, 2009. The training shall be documented and made available to the NRC upon request.

6. Through calendar year 2013, TVA shall conduct ''Town Hall''-type meetings at least annually at its nuclear power plants and corporate office with TVA and contractor employees which address topics of interest, including a discussion on TVA's policy regarding fostering a SCWE.

7. TVA shall incorporate a discussion of NRC's employee protection rule in the next revision of the ''One Team, One Fleet, One TVA'' booklet. The next revision will be completed by no later than December 31, 2010.

8. By no later than ninety (90) calendar days after the issuance of this Confirmatory Order, TVA shall modify its contractor in-processing program to ensure that a TVA representative provides a presentation regarding the CRP program and the TVA's SCWE policy during the contractor in-processing sessions.

9. By no later than ninety (90) calendar days after the issuance of this Confirmatory Order, TVA shall revise its training program for new supervisors to incorporate a classroom discussion of the NRC's employee protection rule and the Company's policy on SCWE.

10. TVA's annual online computer-based training course initiative, which discusses the components of a nuclear safety culture, what is meant by a SCWE, and the avenues available to raise concerns, shall be maintained through calendar year 2013.

11. In the event of the transfer of the operating license of a facility to another entity, if any, the commitments for such facility shall survive any transfer of ownership.

12. For clarity purposes, TVA's commitments herein are applicable to the above-captioned nuclear plants unless otherwise stated.

VI

Any person adversely affected by this Confirmatory Order, other than TVA, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or

representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than the Licensee) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this confirmatory order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for hearing shall not stay the immediate effectiveness of this order.

Dated this 22nd day of December 2009.

For the Nuclear Regulatory Commission.

Roy Zimmerman,

Director, Office of Enforcement.

[FR Doc. E9–31019 Filed 12–29–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08502; NRC–2009–0036]

Notice of the Nuclear Regulatory Commission Consent to Indirect Change of Control and Issuance of License Amendment to Materials License SUA–1341 for Cogema Mining, Inc, Irigaray and Christensen Ranch Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of approval of indirect change of control and issuance of license amendment.

FOR FURTHER INFORMATION CONTACT: Ron C. Linton, Project Manager, Uranium Recovery Licensing Branch,

Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–7777; fax number: (301) 415–5369; e-mail: *ron.linton@nrc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 10 CFR 2.106, the U.S. Nuclear Regulatory Commission (NRC) is providing notice of NRC consent to the indirect change of control and issuance of license amendment 15 to Source Materials License No. SUA–1341. This license authorizes Cogema Mining, Inc., to possess uranium and 11.e (2) byproduct material at its Irigaray and Christensen Ranch in situ recovery (ISR) facilities in Johnson and Campbell Counties, Wyoming. The facilities are currently in operating status, but are not producing uranium at this time.

By letter dated September 18, 2009, and supplemental information dated October 23, 2009, November 18, 2009, and December 3, 2009, Cogema and Uranium One Exploration U.S.A., Inc., submitted an application to the NRC requesting approval of the change of control of Source Materials License SUA–1341 and the Irigaray and Christensen Ranch facilities. The change of control involves a share purchase agreement whereby all shares in Cogema—a subsidiary of Cogema Resources, Inc., which in turn is a subsidiary of Areva, NC (both of which are Delaware corporations)—will be acquired by Uranium One Exploration U.S.A., which is also a Delaware corporation. Uranium One Exploration U.S.A., is a subsidiary of Uranium One Americas, Inc. (a Nevada corporation). Uranium One Americas is a subsidiary of Uranium One Investments, which, in turn, is a subsidiary of Uranium One, Inc. (both of which are Canadian companies).

NRC's receipt of the request to take this licensing action was previously noticed in the **Federal Register** on October 30, 2009 (74 FR 56241), with a notice of an opportunity to request a hearing by November 19, 2009. No requests for a hearing were received.

By Order dated December 17, 2009, NRC approved the indirect transfer. The order was accompanied by a Safety Evaluation Report (SER) documenting the basis for the NRC staff's approval and a license amendment. These actions comply with the standards and requirements of the Atomic Energy Act of 1954, as amended, and NRC's rules and regulations.

FOR FURTHER INFORMATION CONTACT: In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' the details with respect to this action, including the SER and accompanying documentation, and license amendment, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

1	Applicant's application, September 18, 2009	ML092660641
2	Supplementary information, October 23, 2009	ML093090468
3	Supplementary information, November 18, 2009	ML093290146
4	Supplementary information, November 18, 2009	ML093360303
5	Supplementary information, December 3, 2009	ML093420030
6	NRC Letter approving change of control, December 17, 2009	ML093290021
7	NRC Order dated December 17, 2009	ML093290068
8	NRC Materials License SUA–1341, Amendment 15, December 17, 2009	ML093290083
9	NRC Safety Evaluation Report dated December 17, 2009	ML093290074

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or via e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 22nd day of December, 2009.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–31036 Filed 12–29–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

Agency Holding the Meetings: Nuclear Regulatory Commission.

Date: Weeks of December 28, 2009, January 4, 11, 18, 25, and February 1, 2010.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Week of December 28, 2009

There are no meetings scheduled for the week of December 28, 2009.

Week of January 4, 2010—Tentative

Thursday, January 7, 2010

12:15 p.m. Affirmation Session (Public Meeting) (Tentative).

a. *PPL Bell Bend, LLC* (Combined License Application for Bell Bend Nuclear Power Plant), LBP–09–18 (Ruling on Standing and Contention Admissibility) (Tentative).

b. *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning the Newfield Site), Shieldalloy's Amended Motion for Stay Pending Judicial Review of Commission Action Transferring Regulatory Authority Over Newfield, New Jersey Site to the State of New Jersey (Oct. 14, 2009) (Tentative).

Week of January 11, 2010—Tentative

Tuesday, January 12, 2010

9:30 a.m. Briefing on Office of Nuclear Security and Incident Response—Programs, Performance, and Future Plans (Public Meeting) (Contact: Marshall Kohen, 301–415–5436).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1).

Week of January 18, 2010—Tentative

Tuesday, January 19, 2010

9:30 a.m. Briefing on the NRC Enforcement and Allegations

Programs (Public Meeting) (Contact: Shahram Ghasemian, 301–415–3591).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of January 25, 2010—Tentative

Tuesday, January 26, 2010

9:30 a.m. Briefing on Office of Nuclear Reactor Regulation—Programs, Performance, and Future Plans (Public Meeting) (Contact: Quynh Nguyen, 301–415–5844).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 1, 2010—Tentative

There are no meetings scheduled for the week of February 1, 2010.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: December 23, 2009.

Richard J. Laufer,

Office of the Secretary.

[FR Doc. E9–30974 Filed 12–28–09; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0226, Form RI 38–128]

Proposed Collection; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. ''It's Time to Sign Up for Direct Deposit'' (OMB Control No. 3206–0226; Form RI 38–128), is primarily used by OPM to give recent retirees the opportunity to waive Direct Deposit of their annuity payments. The form is sent only if the separating agency did not give the retiring employee this election opportunity. This form may also be used to enroll in Direct Deposit, which was its primary use before Public Law 104–134 was passed. This law requires OPM to make all annuity payments by Direct Deposit unless the payee has waived the service in writing.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 20,000 forms are completed annually. The form takes approximately 30 minutes to complete. The annual estimated burden is 10,000 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES:

Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415. (202) 606–4808.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. E9–30976 Filed 12–29–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0143; Form RI 30–1)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. ''Request to Disability Annuitant for Information on Physical Condition and Employment'' (OMB Control No. 3206–0143; Form RI 30–1), is used by persons who are not yet age 60 and who are receiving disability annuity and are subject to inquiry regarding their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

We estimate 8,000 RI 30–1 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 8,000 hours.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological

collection techniques or other forms of information technology.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For Further Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–31030 Filed 12–29–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0140; Forms RI 20–7 and RI 30–3]

Proposed Collection; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. ''Representative Payee Application'' (OMB Control No. 3206–0140; Form RI 20–7), is used by the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. ''Information Necessary for a Competency Determination'' (OMB Control No. 3206–0140; Form RI 30–3), collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 12,480 RI 20–7 forms are completed annually. The form requires approximately 30 minutes for completion. The annual burden is 6,240 hours. Approximately 250 RI 30–3 forms will be completed annually. The form requires approximately 1 hour for completion. The annual burden is 250 hours. The total annual burden is 6,490.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, Fax (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW–Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–31029 Filed 12–29–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0179; Form RI 30–10]

Proposed Collection; Comment Request for Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, ''Disabled Dependent Questionnaire'' (OMB Control No. 3206–0179; Form RI 30–10), is used to collect sufficient information about the medical condition and earning capacity for the Office of Personnel Management to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees Retirement System.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,500 RI 30–10 forms are completed annually. The form takes approximately 1 hour to complete. The annual estimated burden is 2,500 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via E-mail to *Cyrus.Benson@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415. (202) 606–4808.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. E9–30977 Filed 12–29–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Roland Edwards, Executive Resources Services Group, Center for Performance Management Systems and Evaluation, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between November 1, 2009 and November 30, 2009. These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr*. A consolidated listing of all authorities as of June 30 is also published each year. The following Schedules are *not* codified in the Code of Federal Regulations. These are agency specific exceptions.

Schedule A

The following Schedule A appointments were approved during November 2009.

Schedule A. Revoked November 19, 2009. Revocation effective in 30 days.

Department of Homeland Security

The Schedule A authority reads:

Section 213.3111(a) Federal Deposit Insurance Corporation

Up to 50 positions at the GS–5 through 15 grade levels at the Department of Homeland Security. No new appointments may be made under this authority after September 30, 2006.

Schedule A. New authority established November 10, 2009.

Department of Defense

Section 213.3106(b) Department of Defense

(11) Not to exceed 3000 positions that require unique qualifications not currently established by OPM to perform cyber risk and strategic analysis, incident handling and malware/vulnerability analysis, program management, distributed control systems security, cyber incident response, cyber exercise facilitation and management, cyber vulnerability detection and assessment, network and systems engineering, enterprise architecture, intelligence analysis, investigation, investigative analysis and cyber related infrastructure inter-dependency analysis. This authority may be used to make permanent, time-limited and temporary appointments in the following occupational series: Security (GS–0080), intelligence analysts (GS–0132), computer engineers (GS–0854), electronic engineers (GS–0855), computer scientists (GS–1550), operations research (GS–1515), criminal investigators (GS–1811), telecommunications (GS–0391), and IT specialists (GS–2210). Within the scope of this authority, the U.S. Cyber Command is also authorized to hire miscellaneous administrative and program (GS–0301) series when those positions require unique qualifications not currently established by OPM. All positions will be at the General Schedule (GS) grade levels 09–15. No new appointments may be made under this authority after December 31, 2012 or the date on which OPM establishes applicable qualification standards, whichever is earlier.

Schedule B

The following Schedule B appointments were approved during November 2009.

Section 213.3204 Department of State is amended to read:

Section 213.3204 Department of State

(d) Seventeen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

Schedule C

The following Schedule C appointments were approved during November 2009.

Department of State

DSGS69951 Staff Assistant to the Special Envoy with the Rank of Ambassador. Effective November 30, 2009.

DSGS69975 Special Assistant to the Secretary of State. Effective November 30, 2009.

Department of the Treasury

DYGS60390 Senior Advisor to the Assistant Secretary and Chief Financial Officer. Effective November 24, 2009.

Department of Defense

DDGS17262 Special Assistant to the Director, Operational Test and Evaluation. Effective November 06, 2009.

DDGS17265 Deputy White House Liaison to the Special Assistant for White House Liaison. Effective November 09, 2009.

DDGS17264 Special Assistant to the Principal Deputy Assistant Secretary of Defense for Legislative Affairs. Effective November 20, 2009.

DDGS17266 Special Assistant to the Deputy Assistant Secretary of Defense for Cyber and Space Policy. Effective November 20, 2009.

Department of Homeland Security

DMGS00817 Special Assistant to the Officer of Civil Rights and Civil Liberties. Effective November 13, 2009.

Department of the Interior

DIGS01175 Deputy Director to the Director, Congressional and Legislative Affairs. Effective November 20, 2009.

Department of Agriculture

DAGS00182 Special Assistant to the Administrator, Farm Service Agency. Effective November 24, 2009.

DAGS00301 Chief of Staff to the Assistant Secretary for Administration. Effective November 24, 2009.

DAGS02000 Chief of Staff to the Deputy Under Secretary for Marketing and Regulatory Programs. Effective November 27, 2009.

DAGS02001 Confidential Assistant to the Administrator. Effective November 27, 2009.

Department of Commerce

DCGS00074 Director, Office of Strategic Partnerships to the Assistant Secretary and Director General of United States/Foreign Commercial Service. Effective November 02, 2009.

DCGS00553 Director of Outreach to the Assistant Secretary for Economic Development. Effective November 02, 2009.

DCGS00427 Special Advisor to the Under Secretary of Commerce for Industry and Security. Effective November 17, 2009.

DCGS00446 Director of Legislative Affairs to the Under Secretary of Commerce for Industry and Security. Effective November 17, 2009.

DCGS00418 Confidential Assistant to the Under Secretary for Economic Affairs. Effective November 20, 2009.

Department of Labor

DLGS60225 Special Assistant to the Director of Scheduling and Advance. Effective November 05, 2009

DLGS60252 Special Assistant to the Director of Recovery for Auto Communities and Workers. Effective November 05, 2009.

Department of Health and Human Services

DHGS60419 Confidential Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective November 03, 2009.

DHGS60032 Special Assistant to the Commissioner of Food and Drugs. Effective November 16, 2009.

DHGS60463 Senior Advisor, Office of Health Reform to the Principal Deputy Assistant Secretary for Planning and Evaluation. Effective November 18, 2009.

DHGS60469 Director of Communications, Office of Health Reform to the Principal to the Deputy Assistant Secretary for Planning and Evaluation. Effective November 18, 2009.

DHGS60240 Regional Director, Dallas, Texas, Region VI to the Director of Intergovernmental Affairs. Effective November 23, 2009.

DHGS60244 Regional Director, Seattle, Washington, Region X to the Director of Intergovernmental Affairs. Effective November 23, 2009.

DHGS60255 Regional Director, Chicago, Illinois-Region V to the Director of Intergovernmental Affairs. Effective November 23, 2009.

DHGS60417 Regional Director, Kansas City, Missouri, Region VII to the Director of Intergovernmental Affairs. Effective November 23, 2009.

Department of Education

DBGS00192 Special Assistant to the Assistant Secretary for Civil Rights. Effective November 06, 2009.

DBGS00647 Special Assistant to the Assistant Secretary for Elementary and Secondary Education Effective November 09, 2009.

DBGS00353 Special Assistant to the Assistant Secretary for Planning, Evaluation, and Policy Development. Effective November 16, 2009.

DBGS00414 Press Secretary for Strategic Communications to the Assistant Secretary, Office of Communications and Outreach. Effective November 16, 2009.

DBGS00434 Press Secretary for Media Relations to the Assistant Secretary, Office for Communications and Outreach. Effective November 16, 2009.

Environmental Protection Agency

EPGS05005 Deputy Press Secretary to the Associate Administrator for Public Affairs. Effective November 02, 2009.

EPGS05016 Deputy Press Secretary to the Associate Administrator for Public Affairs. Effective November 02, 2009.

EPGS06032 Deputy to the Scheduler to the Administrator. Effective November 02, 2009.

EPGS06008 Advance Specialist to the Administrator. Effective November 13, 2009.

Department of Energy

DEGS00777 Special Assistant to the Deputy Chief of Staff. Effective November 24, 2009.

DEGS00778 Special Assistant to the Chief of Staff. Effective November 24, 2009.

DEGS00779 Special Assistant to the Deputy Secretary of Energy. Effective November 27, 2009.

Federal Deposit Insurance Corporation

FDOT00015 Writer-Editor to the Chairman of the Board of Directors. Effective November 20, 2009.

Federal Trade Commission

FTGS60001 Director, Office of Public Affairs to the Chairman. Effective November 09, 2009.

Department of Transportation

DTGS60377 Director, Office of Governmental, International and Public Affairs to the Deputy Administrator. Effective November 03, 2009.

DTGS60465 Press Secretary to the Assistant to the Secretary and Director of Public Affairs. Effective November 20, 2009.

DTGS60476 Deputy Press Secretary to the Secretary and Director of Public Affairs. Effective November 20, 2009.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–31027 Filed 12–29–09; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Amendment to System of Records

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed new Category of Records and a new Routine Use in OPM/GOVT–1 system of records.

SUMMARY: The U.S. Office of Personnel Management (OPM) proposes to add a new Category of Records and a new Routine Use to OPM/GOVT–1, General Personnel Records, System of Records. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)). OPM last published OPM/Govt–1 on June 19, 2006 (FR Vol. 71, Number 117).

DATES: This action will be effective without further notice on February 8, 2010 unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to the Office of Personnel Management, Deputy Associate Director, Center for Workforce Information and Systems Requirements, Room 7439, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Michael Trinite, Privacy Advisor 202–606–2016, fax 202–606–1719 or e-mail: *Michael.Trinite@opm.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552(a), this document provides public notice that the OPM is proposing to adopt a new Category of Records ''o'' and a new Routine Use ''pp'' in OPM/GOVT–1, General Personnel Records system of records. These changes will not affect any Privacy Act rights afforded individuals who are the subject of such records. A new Routine Use ''pp'' for OPM/GOVT–1 is being proposed to provide relevant and necessary information to Federal Government Web sites and to any person in support of E.O. 13490, January 21, 2009, Ethics Commitments by Executive Branch Personnel, and in support of the White House's core principles for the business of government; transparency, participation, collaboration and innovation.

A new Category of Records is being established to accommodate the requirements, as established in E.O. 13490, January 21, 2009, for retaining the ethics pledges and pledge waiver certifications thereof in the Official Personnel Folder.

The system report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Governmental Affairs of the United States Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Management and Budget.

Routine Use ''pp''

''pp'' to disclose on public and internally-accessible Federal Government Web sites, and to otherwise disclose to any person, including other departments and agencies, the signed ethics pledges and pledge waiver

certifications issued under E.O. 13490 of January 21, 2009, Ethics Commitments by Executive Branch Personnel.

Category of Records

''o'' records maintained in accordance with E.O. 13490, section 4(e), January 21, 2009. These records include the ethics pledge and all pledge waiver certifications with respect thereto.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–31026 Filed 12–29–09; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, December 29, 2009 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Deputy Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matter also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the item listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, December 29, 2009 will be:

[A] matter related to an enforcement proceeding.

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.

December 28, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–31076 Filed 12–28–09; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61221; File No. SR–NSX–2009–08]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NSX Rule 11 Governing Round Lots, Odd Lots and Mixed Lots.

December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2009, National Stock Exchange, Inc. (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to amend NSX Rules 11.2 and 11.11 governing round, odd and mixed lots.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, on the Commission's Web site at *http://www.sec.gov*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NSX Rules 11.2 and 11.11(c)(4) in order to clarify the Exchange's rules regarding round lots, odd lots and fixed lots. The proposed changes are part of an effort to provide clarity with respect to such definitions in the context of an overriding interest in maintaining a fair and orderly market, protecting investors and protecting the public interest. The proposed changes are more fully discussed below.

The definitions of ''round lot'', ''odd lot'' and ''mixed lot'' in Rule 11.2 are proposed to be modified in order to clarify their meanings and to conform with common usage and treatment within the financial industry.[3] The definition of ''round lot'' is being modified to mean a normal unit of trading, which is most frequently (but not always) 100 shares. Similarly, the definitions of ''odd lot'' and ''mixed lot'' are rephrased for purposes of clarity and transparency.

In addition, in proposed Rule 11.11(c)(4), the definition of ''Mixed Lot Order'' is modified in order to clarify the Exchange's treatment of the odd lot portion of Mixed Lot Orders. The newly added language in proposed Rule 11.11(c)(4) confirms that Mixed Lot Orders may be entered, and clarifies that the Exchange will treat the odd lot component of a Mixed Lot Order for purposes of order interaction as an Odd Lot Order. This language is intended to clarify for purposes of certainty and transparency how the Exchange treats the odd lot portions of Mixed Lot Orders. Consistent with the new language, the revised rule retains the existing statement that the odd lot components of Mixed Lot Orders are only eligible to be protected quotations if aggregated to form a round lot.[4] Providing this clarity with respect to the treatment of the odd lot component of a mixed lot order is consistent with the rules of other markets which specifically provide for the treatment of the odd lot components of mixed lot orders.[5] Further, such treatment is consistent with Reg NMS, including Rules 610 and 611, which permit market centers to establish rules for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* FINRA Rule 6320A (''Normal unit of trading' means 100 shares of a security unless, with respect to a particular security, FINRA determines that a normal unit of trading shall constitute other than 100 shares'').

[4] The round lot component of a Mixed Lot Order is treated as a round lot order.

[5] *See* NYSE Rule 124 on Odd Lot Orders and Supplementary Material .40 thereto; *see also* ISE Rule 2105(c)(3) (providing that the odd lot component of a mixed lot order will be treated the same as an odd lot order, i.e., rejected unless it meets certain requirements).

handling of odd-lot orders and the odd-lot portions of mixed-lot orders.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change advances these objectives by providing transparency and certainty with respect to the definitions of terms frequently used in the Exchange's rules and by clarifying the Exchange's treatment of the odd lot component of Mixed Lot Orders.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will take effect 30 days from the date of filing (or such shorter time as the Commission may designate) pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4[10] thereunder, because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; *provided* that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[11]

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[12] the Commission may designate a shorter time period if such action is consistent with the protection of investors and the public interest. The Exchange requests that the effective date for the instant rule change be thirty days after the date of filing of this rule change, or such earlier date as the Commission determines.

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.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2009–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2009–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NSX–2009–08 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30911 Filed 12–29–09; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, Question 7.03: Odd-Lot Orders and Odd-Lot Portions of Mixed-Lot Orders (''trading centers are permitted to establish their own rules for handling odd-lot orders and the odd-lot portions of mixed-lot orders'').

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) [sic].

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4.

[11] As required under Rule 19b–4(f)(6)(iii), NSX provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[12] 17 CFR 19b–4(f)(6)(iii).

[13] 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61224; File No. SR–NASDAQ–2009–110]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend IM–2110–7 To Reflect Changes to Corresponding FINRA Rule

December 22, 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 14, 2009, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend NASDAQ IM–1002–1 [sic] to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority (''FINRA''). The Exchange will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com*, on the Commission's Web site at *http://www.sec.gov*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers (''NASD'')). During 2008, FINRA embarked on an extended process of moving rules formerly designated as ''NASD Rules'' into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also has initiated a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it is not possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ IM–2110–7 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes), which provides that it shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other *bona fide* claim. NASDAQ IM 2110–7 formerly corresponded to NASD IM–2110–7.

In SR–FINRA–2008–052,[4] FINRA renumbered NASD IM–2110–7 as FINRA Rule 2140 in the Consolidated FINRA Rulebook with only minor changes. Specifically, IM–2110–7 was re-codified, with conforming revisions to establish it as a stand-alone FINRA rule rather than as interpretive material to NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade).

NASDAQ is proposing to re-number IM 2110–7 as NASDAQ Rule 2140 and to make conforming changes to the text of IM 2110–7 that mirror the changes made by FINRA. To accommodate new rule 2140, NASDAQ proposes to re-number existing Rule 2140 (Restrictions on Affiliation) as NASDAQ Rule 2160, without modifying the rule text itself. This will ensure that the NASDAQ Rule 2140 remains consistent with FINRA Rule 2140 for regulatory purposes and administrative ease. The proposal will have no substantive impact on NASDAQ members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform NASDAQ IM–2110–7 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

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

[3] 17 CFR 240.19b–4(f)(6).

[4] Securities Exchange Act Release No. 59495 (March 3, 2009), 74 FR 10632 (March 11, 2009) (approving SR–FINRA–2008–052); Securities Exchange Act Release No. 59495A (March 18, 2009), 74 FR 12417 (March 24, 2009) (amended approval).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

Number SR–NASDAQ–2009–110 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2009–110 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30914 Filed 12–29–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61223; File No. SR–NYSEAmex–2009–86]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Amending Commentary .10 to Rule 915 and Commentary .11 to Rule 916

December 22, 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 4, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .10 to Rule 915 and Commentary .11 to Rule 916 for the purpose of listing and trading options on the shares of the ETFS Silver Trust and the ETFS Gold Trust. The text of the proposed rule change is available on NYSE Amex's Web site at *www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at NYSE Amex, and at the Commission's Public Reference Room. A copy of this filing is available on the Exchange's Web site at *www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the U.S. Securities and Exchange Commission (''SEC'' or ''Commission'') authorized the Exchange to list and trade options on the SPDR Gold Trust[4] (''GLD'') and on the iShares COMEX Gold Trust (''IAU'') and the iShares Silver Trust (''SLV'').[5] Now, the Exchange proposes to list and trade options on the ETFS Silver Trust (''SIVR'') and the ETFS Gold Trust (''SGOL'').

Currently, Amex Rule 915 deems appropriate for options trading Exchange-Traded Fund Shares (''ETFs'' or ''Fund Shares'') that are traded on a national securities exchange and are defined as an ''NMS stock'' in Rule 600 of Regulation NMS and that represent (i) interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, stock index futures contracts, options on futures, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); or (ii) interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust; or (iii) commodity pool interests principally engaged,

[4] *See* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR–Amex–2008–15).

[5] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 238 (December 10, 2008) (order approving SR–Amex–2008–68).

directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool Units''), or (iv) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share'''').[6] In addition, pursuant to Commentary .10 to Rule 915 the Exchange may also list options based on shares of GLD, IAU, and SLV. This proposed rule change seeks to expand the current exception set forth in Commentary .10 to Rule 915 for Exchange-Traded Fund Shares that may be approved for options trading on the Exchange to include SIVR and SGOL.

Apart from allowing SIVR and SGOL to be underlyings for options traded on the Exchange as described above, the listing standards for Exchange-Traded Fund Shares will remain unchanged from those that apply under current Exchange rules. Exchange-Traded Fund Shares on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in Commentary .06 to Rule 915. Specifically, in addition to satisfying the listing requirements set forth above, Exchange-Traded Fund Shares must meet either (1) the criteria and guidelines under Commentary .01 to Rule 915; or (2) be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Exchange-Traded Fund Shares in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

This proposal is intended to provide appropriate standards for the listing and trading of options on SIVR and SGOL. The proposed revision to Commentary .11 to Rule 916 specifically provides that shares of SIVR and SGOL be deemed ''Exchange-Traded Fund Shares'' for purposes of Commentary .07 to Rule 916. Under the applicable continued listing criteria in Commentary .07 to Amex Rule 916, the Exchange will consider the suspension of opening transactions in SIVR or SGOL in any of the following circumstances: (1) Following the initial twelve-month period beginning upon the commencement of trading of SIVR or SGOL, there are fewer than 50 record and/or beneficial holders of SIVR or SGOL for 30 or more consecutive trading days; (2) the value of the underlying silver or underlying gold is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. In addition, SIVR shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering SIVR or SGOL, respectively, if SIVR or SGOL ceases to be an ''NMS Stock'' as provided for in Commentary .07(2) to Rule 916 or SIVR or SGOL is halted from trading on the primary listing market, or if SIVR or SGOL is delisted.

The Exchange represents that the listing and trading of SIVR options or SGOL options under NYSE Amex rules will not have any effect on the rules pertaining to position and exercise limits[7] or margin.[8]

The Exchange represents that it has an adequate surveillance program in place for options on SIVR and SGOL. The Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. The Exchange may also obtain trading information from various commodity futures exchanges worldwide that have entered into comprehensive surveillance sharing agreements with the Exchange. In connection with SIVR and SGOL, the Exchange represents that it may obtain information from the New York Mercantile Exchange, Inc. (''NYMEX''), pursuant to a comprehensive surveillance sharing agreement, related to any financial instrument that is based, in whole or in part, upon an interest in or performance of silver or gold. Prior to listing and trading options on SIVR or SGOL, the Exchange represents that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the underlying gold or silver.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[9] of the Securities Exchange Act of 1934 (the ''Act'') in general, and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[6] *See* Commentary .06 to Rule 915.

[7] *See* NYSE Amex Rules 904 and 905.

[8] *See* NYSE Amex Rule 462.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2009–86 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–2009–86. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2009–86 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30916 Filed 12–29–09; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61230; File No. SR–NYSE–2009–124]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Proposing To Amend Section 703.22 of the Listed Company Manual

December 23, 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 14, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend Section 703.22 of the Exchange's Listed Company Manual (the ''Manual''), the listing standard for Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities. The text of the Proposed Rule Change is attached as Exhibit 5. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 703.22 of the Manual, the Exchange's listing standard for Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities pursuant to Rule 19b–4[3] under the Securities and Exchange Act of 1934 (the ''Act''). The Exchange is proposing to amend the current generic listing standards under Section 703.22 and with respect to products that are listed pursuant to the amended standards, the Exchange will within five (5) business days after the commencement of trading of an Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities (collectively ''Index-Linked Securities'') pursuant to Section 703.22 of the Manual, file a Form 19b–4(e).[4] The Exchange's proposal will conform Section 703.22 to the current listing standards for Index-Linked Securities on NYSE Arca, Inc. (''NYSE Arca'').[5] Specifically, the proposal will amend the relevant provisions of Section 703.22 so that such provisions mimic the relevant standards in NYSE Arca Equities Rule 5.2(j)(6).

The Exchange proposes to renumber current subsections (C) through (F) of Section 703.22 as a result of the proposed changes. Unless otherwise indicated, references to rules being amended reflect such renumbering.

General Issuer Listing Standards

Consistent with the last sentence of NYSE Arca Equities Rule 5.2(j)(6)(A)(e), the Exchange proposes to amend the issuer listing standard to allow for Index-Linked Securities to be issued by supranational entities, and proposes that such issuers will be evaluated on a case-by-case basis.[6] Specifically Section 703.22(A)(1) will be amended to read as follows:

If the issuer is a New York Stock Exchange-listed company, the entity must be a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(e).

[4] 17 CFR 240.19b–4(e)(2)(ii); 17 CFR 249.820.

[5] *See* NYSE Arca Equities Rule 5.2(j)(6).

[6] *See* Securities and Exchange Release No. 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR–NYSEArca–2007–92).

company in good standing (i.e., meets Continued Listing Criteria); if an affiliate of an NYSE-listed company, the NYSE-listed company must be a company in good standing; if not listed, the issuer must meet the size and earnings requirements of Sections 102.01–102.03 or Sections 103.01–103.05. (Sovereign issuers and supranational entities will be evaluated on a case-by-case basis.)

Limitation on Leverage

Currently, Section 703.22(B)(6) provides that the payment at maturity may not be based on a multiple of the negative performance of an underlying index or indexes, Commodity Reference Asset or Currency Reference Asset, as the case may be, although the payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes, Commodity Reference Asset or Currency Reference Asset, as the case may be.

Consistent with NYSE Arca Equities Rule 5.2(j)(6)(A)(d), the Exchange proposes to amend Section 703.22(B)(6) to allow the Exchange to consider for listing and trading Index-Linked Securities that provide that in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds three times the performance of an underlying Reference Asset.[7] Specifically, Section 703.22(B)(6) will be amended to read as follows:

The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying Reference Asset; however, in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds three times the performance of an underlying Reference Asset.

In connection with Index-Linked Securities that seek to provide a loss or payment at maturity that will be accelerated by an inverse multiple that exceeds three times the performance of an underlying Reference Asset, the Exchange's proposal would continue to require specific Commission approval pursuant to Section 19(b)(2) of the Act.[8] In particular, Section 703.22 would expressly prohibit Index-Linked Securities that seek to provide such results from being approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Act.[9] Fees and expenses are excluded for the purposes of determining whether such results exceed three times the performance of an underlying Reference Asset.

Equity Index-Linked Securities

Equity Index-Linked Securities are linked to the performance of an underlying index or indexes of equity securities. The Exchange proposes to add the following paragraph to the beginning of Section 703.22:

The payment at maturity with respect to Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities is based on the performance of:

The Exchange proposes to clarify Section 703.22 by designating that an underlying index or indexes of equity securities will be referred to as an Equity Reference Asset. Section 703.22(i) will define an Equity Reference Asset as:

In the case of Equity Index-Linked Securities, an underlying index or indexes of equity securities (an ''Equity Reference Asset''), or

The Exchange proposed to amend the initial and continued listing standards for Equity Index-Linked Securities. Accordingly, the Exchange proposes to add new Section 703.22(C). The relevant subsections of current Section 703.22(B) will be renumbered and amended as Section 703.22 (C) as discussed below.

1940 Act Securities

Currently, component securities in the underlying equity index for Equity Index-Linked Securities must be either: (1) Securities that are (a) issued by a reporting company under the Act that is listed on a national securities exchange and (b) an ''NMS stock,'' as defined in Rule 600 of Regulation NMS;[10] or (2) foreign country securities or American Depository Shares, subject to limitations.

Consistent with NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1), the Exchange proposes to amend Section 703.22(C)(I)(1) to permit the listing and trading of Equity Index-Linked Securities where the underlying index consists in whole or in part of closed-end fund securities or exchange-traded fund (ETF) securities, which, in each case, are registered under the 1940 Act and are listed on national securities exchanges.[11] Accordingly, Section 703.22(C)(I)(1) for initial listing will be amended as follows:

The Exchange will consider listing Equity Index-Linked Securities that meet the requirements of this subparagraph (C)(I), where the payment at maturity or earlier redemption is based on an index or indexes of equity securities, securities of closed-end management investment companies registered under the Investment Company Act of 1940 (the ''1940 Act'') and/or investment company units. The issue must meet the following initial listing criteria:

Further, Section 703.22(C)(I)(1)(b)(vii)(A) for continued listing will be renumbered to Section 703.22(C)(I)(1)(b)(v)(A) and, consistent with NYSE Arca Rule 5.2(j)(6)(B)(I)(1)(v)(A) will be amended as follows:

Securities (other than foreign country securities and American Depository Receipts (''ADRs'') that are (i) issued by a 1934 Act reporting company or by an investment company registered under the 1940 Act, which in each case is listed on a national securities exchange and (ii) an ''NMS stock'' (as defined in Rule 600 of SEC Regulation NMS); or

Index Weighing Criteria and Notional Volume

Consistent with NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(1)(b)(ii) and 5.2(j)(6)(B)(I)(2)(a)(ii), the Exchange proposes to conform the equity index weighting requirements and adopt criteria based upon the notional volume traded per month to both the listing standards and continued listing standards for Equity Index-Linked Securities.

Currently for initial listing, Section 703.22(C)(I)(1)(b)(ii) provides that each component security of an equity index shall have trading volume in each of the last six months of not less than 1,000,000 shares per month, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume will be at least 500,000 shares per month in each of the last six months.

The Exchange is proposing to delete the current requirement and adopt criteria that looks to a minimum global notional volume (''Global Notional Volume'')[12] traded per month averaged over the last six months.[13] Proposed Section 703.22(C)(I)(1)(b)(ii) will be amended as follows:

Component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 1,000,000 shares, or minimum Global Notional Volume traded per month of $25,000,000, averaged over the last six months.

[7] *See* Securities and Exchange Release No. 59332 (January 30, 2009), 74 FR 6338 (February 6, 2009) (SR–NYSEArca–2008–136).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 240.19b–4(e).

[10] *See* 17 CFR 242.600(b)(47).

[11] *See* Securities and Exchange Release No. 56879 (December 3, 2007), 72 FR 69271 (December 7, 2007) (SR–NYSEArca–2007–110).

[12] Global Notional Volume is defined as the total shares traded globally times the price per share.

[13] *See* Securities and Exchange Release No. 58376 (August 18, 2008), 73 FR 49726 (August 22, 2008) (SR–NYSEArca–2008–70).

With respect to the continued listing criteria, Section 703.22(B)(I)(2)(a)(iii) currently sets forth that the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the dollar weight of the index, trading volume must be at least 400,000 shares for each of the last six months.

The Exchange is proposing to delete the current requirement and adopt criteria that looks to minimum Global Notional Volume traded per month averaged over the last six months. Proposed Section 703.22(C)(I)(2)(a)(iii) will be renumbered to Section 703.22(C)(I)(2)(a)(ii) and will be amended as follows:

Component stocks that in the aggregate account for at least 90% of the weight of the index each shall have a minimum global monthly trading volume of 500,000 shares, or minimum Global Notional Volume traded per month of $12,500,000, averaged over the last six months.

With respect to both the initial and continued listing standards, the Exchange believes that considering the weighting of the bottom 10% component securities is insignificant for determining the liquidity of the index. Rather, the Exchange proposes that focusing on 90% of the top weighed index component securities is a better indication as to whether the index or indexes has sufficient liquidity for listing and trading of the related Equity Index-Linked Security.

Index Rebalancing

Consistent with NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a)(i), the Exchange proposes to (i) conform equity index rebalancing criteria, and (ii) amend the quarterly index rebalancing requirement for equal-dollar or modified equal-dollar weighed indexes and relocate the requirement for initial listing standards to the continued listing standards for Equity Index-Linked Securities.[14]

For Equity Index-Linked Securities, the Exchange proposes to remove, from the current Section 703.22(B)(I)(2)(a)(i), the requirement that only capitalization weighted, modified capitalization weighted and price weighted indexes be reviewed as of the first day of January and July in each year. Instead, the Exchange proposed that Section 703.22(B)(I)(2)(a)(i) will require all Indexes to be subject to the standard at the time the index is rebalanced. Specifically, the newly renumbered Section 703.22(C)(I)(2)(a)(i) will be amended as follows:

The criteria that no single component represent more than 25% of the dollar weight of the index and the five highest dollar weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the dollar weight of the index, need only be satisfied at the time the Index is rebalanced; and

Consistent with NYSE Arca Equities Rule 5.6(j)(6)(B)(I)(2)(d), the Exchange proposes to relocate and amend Section 703.22(C)(I)(1)(b)(iii) from the initial listing standards to the continued listing standards to new paragraph Section 703.22(C)(I)(2)(d), which currently requires that equity indexes based upon the equal-dollar, or modified equal-dollar weighting method be rebalanced at least semiannually. Instead, the Exchange proposes that an index be rebalanced at least annually. Specifically, new paragraph Section 703.22(C)(I)(1)(b)(iii) will be relocated and amended as follows:

Index Rebalancing—Indexes will be rebalanced at least annually.

Capitalization Weighted Index Methodologies

Consistent with NYSE Arca Equities Rule 5.2(j)(6)(B)(I), the Exchange proposes to (1) eliminate initial and continued listing capitalization weighted and modified capitalization weighted index requirements for Equity Index-Linked Securities.[15] Specifically, the Exchange proposes to eliminate Section 703.22(C))(I)(1)(b)(iv)[sic], the current initial listing requirement, that in the case of a capitalization weighted index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, must have an average monthly trading volume of at least 2,000,000 shares over the previous six months. The Exchange also proposes to eliminate Section 703.22(C)(I)(2)(a)(iv), the current continued listing requirement, that in the case of a capitalization-weighted index or modified capitalization weighted index, the lesser of the five highest dollar weighted component securities in the index or the highest dollar weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have an average monthly trading volume of at least 1,000,000 shares over the previous six months.

Consistent with the NYSE Arca Rule, the Exchange proposes that capitalization-weighted index or modified capitalization weighted indexes comply with the initial and continued listing requirements currently applicable to all other equity indexes under Section 703.22(C)(I) regardless of the index methodology.

Index Standardized Option Criteria

Consistent with NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(iv) as well as the criteria applied by options exchanges to securities underlying exchange-traded options,[16] the Exchange also proposes to amend current Equity Index-Linked Securities Section 703.22(C)(I)(1)(b)(vi) to incorporate a limited exception to the requirement that 90% of the index's numerical value and at least 80% of the total number of component securities underlying and Equity Reference Asset, as defined above, must meet the then current criteria for standardized options trading on a national securities exchange. The Exchange proposes that an underlying index would not be subject to such requirement if (1) no underlying component security represents more than 10% of the dollar weight of such index and (ii) such index has a minimum of 20 component securities.[17] Specifically, Section 703.22(C)(I)(1)(b)(vi) for initial listing will be renumbered to Section 703.22(C)(I)(1)(b)(iv) and will be amended as follows:

90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading on a national securities exchange; an index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index and (b) the index has a minimum of 20 components; and

Comprehensive Surveillance Sharing Agreements

Currently, the Exchange's listing standards for Equity Index-Linked Securities limit the permissible aggregate weight of underlying foreign country securities to 20% of the overall index where the primary trading markets of the foreign country securities or American Depository Receipts (''ADRs'') are not members of the

[14] *See* Securities and Exchange Release No. 57634 (April 8, 2008), 73 FR 20081 (April 14, 2008) (SR–NYSEArca–2008–35).

[15] *See* Footnote 13.

[16] *See, e.g.,* Rule 5.3 of NYSE Arca, Inc.; Rule 1009 of the Philadelphia Stock Exchange, Inc.; Rule 5.3 of the Chicago Board Options Exchange, Incorporated: and Rule 502 of the International Securities Exchange, LLC.

[17] *See* Footnote 11.

Intermarket Surveillance Group (''ISG'') or are not otherwise parties to comprehensive surveillance sharing agreements (''CSSA'') with the Exchange. Consistent with NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(b)(1)(v)(B) as well as NYSE Arca Options Rule 5.3(g)(2)(A), the Exchange proposes to amend Section 703.22(C)(I)(1)(b)(vii)(B) to increase the permissible aggregate weight of underlying foreign country securities up to 50% of the overall index. According to the proposal, the Exchange will permit the listing and trading of Equity Index-Linked Securities where the underlying foreign country securities or ADRs, which trade on foreign markets that are not ISG members or are not otherwise subject to a CSSA agreement with the Exchange, account for up to 50% of the aggregate dollar weight of the index, so long as: (i) the securities of any one primary foreign market which is not an ISG member or does not have a CSSA with the Exchange do not represent more than 20% of the dollar weight of the index, and (ii) the securities of any two primary foreign markets which are not ISG members or do not have a CSSA with the Exchange do not represent more than 33% of the dollar weight of the index. Specifically, Section 703.22(C)(I)(1)(b)(vii)(B) will be renumbered to Section 703.22(C)(I)(1)(b)(v)(B) and will be amended as follows:

Foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group (''ISG'') or parties to comprehensive surveillance sharing agreements with the Exchange will not in the aggregate represent more than 50% of the dollar weight of the index, provided further that:

(i) the securities of any one such market do not represent more than 20% of the dollar weight of the index, and

(ii) the securities of any two such markets do not represent more than 33% of the dollar weight of the index.

Clarify the Applicability of the Continued Listing Criteria

Consistent with NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2)(a), (b) and (c), the Exchange proposes to clarify (1) that the applicable continued listing criteria apply unless the Commission has approved continued trading of the Equity Index-Linked Securities,[18] and (2) which initial listing criteria will continuously be maintained. Specifically, Sections 703.22(C)(I)(2)(a), (b) and (c) will be amended as follows:

(a) The Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Index-Linked Security), if any of the initial listing criteria described in paragraphs (1)(a) and (1)(b)(2) above are not continuously maintained, except that:

(b) In connection with an Equity Index-Linked Security that is listed pursuant to Section 703.22, the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Index-Linked Security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(c) The Exchange will also commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Index-Linked Security), under any of the following circumstances:

Index Rebalancing After 33⅓ Change to Underlying Components and Greater Than Ten Components Requirement

Consistent with NYSE Arca Equities Rules, the Exchange proposes to delete Section 703.22(B)(I)(2)(a)(ii), the continued listing requirement for Equity Index-Linked Securities that prohibit an index from increasing or decreasing by 33⅓% the number of index components initially listed and also prohibit an index from having less than 10 components.[19]

Index Dissemination Requirements for Foreign Country Securities

Section 703.22(C)(I)(2)(c)(ii) provides that the Exchange will commence delisting proceedings of an issue of Equity Index-Linked Securities (unless the Commission has approved continued trading) if the value of the index or composite value of the indexes underlying such issue is no longer calculated or widely disseminated on at least a 15-second basis. Consistent with NYSE Arca Equities Rules 5.2(j)(6)(B)(I)(2)(c)(ii) and 5.2(j)(3), Commentary .01(b)(2)[20], the Exchange proposes to amend Section 703.22(C)(I)(2)(c)(ii) to distinguish between indexes consisting solely of U.S. equity securities and those consisting of foreign securities or a combination of U.S. and foreign equity securities. The proposed amendment provides that the Exchange will commence delisting proceedings if the underlying index value or values are no longer calculated or widely disseminated on at least a 15-second basis with respect to an index or indexes containing only securities listed on a national securities exchange, or at least a 60-second basis with respect to an index or indexes containing foreign country securities. Specifically, Section 703.22(C)(I)(2)(c)(ii) will be amended as follows:

If the value of the index or composite value of the indexes, if applicable, is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout the Exchange's trading hours; or

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[21] of the Securities Exchange Act of 1934 (the ''Act''),[22] in general, and furthers the objectives of Section 6(b)(5)[23] of the Act in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 NYSE's listing requirements for Index-Linked Securities as amended by the proposed rule change remain at least as stringent as those of any other national securities exchange and, consequently, the proposed amendment is consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[18] *See* Securities and Exchange Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR–PCX–2006–63) [sic].

[19] *See* Securities and Exchange Release No. 57132 (January 11, 2008), 73 FR 3300 (January 17, 2008) (SR–NYSEArca–2007–125).

[20] The requirements for Investment Company Units were approved by the Commission in Securities Exchange Act Release No. 34–55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78a.

[23] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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–2009–124 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–NYSE–2009–124. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2009–124 and should be submitted on or before January 20, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[24] The Commission believes that the proposal is consistent with Section 6(b)(5) [25] of the Act in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange is proposing to amend provisions of Section 703.22 of the Listed Company Manual to conform certain provisions with corresponding provisions in NYSE Arca Equities Rule 5.2(j)(6). As such, provisions relating to (i) general issuer listing standards; (ii) limitation on leverage; (iii) 1940 Act securities and underlying equity indexes; (iv) index weighing criteria and notional volume; (v) index rebalancing; (vi) capitalization weighted index methologies; (vii) index standardized option criteria; (viii) aggregate weight of underlying foreign country securities where these are no comprehensive surveillance sharing agreements; (ix) the applicability of continued listing criteria; (x) index rebalancing after 33⅓ change to underlying components, and (xi) index dissemination requirements for foreign country securities will be amended in a manner consistent with the corresponding provision in NYSE Arca Equities Rule 5.2(j)(6). The Commission notes that it has previously approved these changes as made to NYSE Arca Equities Rule 5.2(j)(6).[26] The Commission believes that the NYSE's proposal to amend Section 703.22 of the Listed Company Manual is consistent with the Act for the reasons contained in the previous approval orders.[27] In addition, the Commission also believes that the technical changes to Section 703.22 of the Listed Company Manual clarify the format and application of the proposed amendments. In addition, the Commission believes that the Exchange's amendment to Section 703.22 of the Listed Company Manual relating to the listing and trading of Equity Index-Linked Securities should fulfill the intended objective of Rule 19b–4(e) under the Act [28] by allowing such derivative securities products to be listed and traded without separate Commission approval. The Commission believes that the proposed rule change should facilitate the listing and trading of additional types of Equity Index-Linked Securities and reduce the timeframe to bringing these securities to market.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[29] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. With this proposal, the Exchange is adopting changes that have previously been approved by the Commission,[30] and that will conform provisions of Section 703.22 of the Listed Company Manual to corresponding provisions of NYSE Arca Equities Rule 5.2(j)(6). The Commission does not believe that this proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[31] to approve the proposed rule change on an accelerated basis.

[24] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] *See* Securities Exchange Act Release Nos. 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR–NYSEArca–2007–92) (general issuer listing standards); 59332 (January 30, 2009), 74 FR 6338 (February 6, 2009) (SR–NYSEArca–2008–136) (limitation on leverage); 56879 (December 3, 2007), 72 FR 69271 (December 7, 2007) (SR–NYSEArca–2007–110) (1940 Act securities and underlying equity indexes; index standardized option criteria); 58376 (August 18, 2008), 73 FR 49726 (August 22, 2008) (SR–NYSEArca–2008–70) (index weighing criteria and notional volume; capitalization weighted index methodologies); 57634 (April 8, 2008), 73 FR 20081 (April 14, 2008) (SR–NYSEArca–2008–35) (index rebalancing); 59180 (December 30, 2008), 74 FR 754 (January 7, 2009) (SR–NYSEArca–2008–121) (aggregate weight of underlying foreign country securities where there are no comprehensive surveillance sharing agreements); 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR–PCX–2005–63) (applicability of continued listing criteria); 57132 (January 11, 2008), 73 FR 3300 (January 17, 2008) (SR–NYSEArca–2007–125) (index rebalancing after 33⅓ change to underlying components and ten-component minimum); and 57389 (February 27, 2008) 73 FR 11973 (March 5, 2008) (SR–NYSEArca–2008–06) (index dissemination requirements for foreign country securities).

[27] *Id.*

[28] 17 CFR 240.19b–4(e).

[29] 15 U.S.C. 78s(b)(2).

[30] *See supra* note 26.

[31] 15 U.S.C. 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NYSE–2009–124) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30948 Filed 12–29–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61232; File No. SR–CBOE–2009–094]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Increasing the Session Fee for the Regulatory Element of Continuing Education Requirements

December 23, 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 17, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule to increase the session fee for the Regulatory Element of the Continuing Education requirements of Rule 9.3A with an implementation date January 4, 2010. The text of the proposed rule change is available on the Exchange's Web site at *http://www.cboe.org/Legal,* at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Regulatory Element, a computer-based education program administered by the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry, is a component of the Securities Industry Continuing Education Program (''Program'') under Rule 9.3A. The Securities Industry/Regulatory Council on Continuing Education (''Council'') was organized in 1995 to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element component of the Program, and developing and updating information about the Program for industry-wide dissemination.[5]

It is the Council's responsibility to maintain the Program on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.[6] CBOE members currently pay $75 each time one of their registered persons participates in the Regulatory Element. Following the consolidation of NASD's and NYSE Regulation's member regulation operations and the creation of FINRA, FINRA assumed responsibility for all aspects of the Program and thereafter conducted a financial review and evaluation of the program's budget. Based on this assessment, FINRA determined that an increase in the Regulatory Element session fee is necessary to cover the full costs associated with the Program, including costs associated with the redesign of the Regulatory Element.[7]

CBOE's proposed implementation date is January 4, 2010.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act'')[9], in general, and furthers the objectives of Sections 6(b)(4)[10] and 6(b)(5)[11] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities, and that CBOE rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. CBOE believes that the proposed rule change is designed to accomplish these ends by enabling the Program to be maintained on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of [sic] purposes of the Act.

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[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.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Council currently consists of 20 individuals, 14 of whom are securities industry professionals and six of whom represent self-regulatory organizations, including CBOE.

[6] The Regulatory Element session fee was initially set at $75 when NASD established the continuing education requirements in 1995.

[7] The redesign updates the presentation and content of the Regulatory Element to take advantage of the latest innovations in adult learning theories and technological advances. This is the first such large-scale redesign since the inception of the Program and should result in a significantly improved product and experience for members. FINRA will first implement the redesign of the General Program (S101) and the Series 6 Program (S106). The redesign of the Supervisors Program (S201) will be implemented at a later stage.

[8] The Commission notes that this proposed rule change would increase the Regulatory Element session fee from $75 to $100.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–094 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–094. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–094 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30928 Filed 12–29–09; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61233; File No. SR–NYSE–2009–111]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving the Proposed Rule Change, as Modified by Amendment No. 1, Amending NYSE Rule 123C To Modify the Procedures for Its Closing Process and Making Conforming Changes to NYSE Rules 13 and 15

December 23, 2009.

I. Introduction

On November 9, 2009, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the procedures for its closing process in Rule 123C and make conforming changes to NYSE Rules 13 (''Definitions of Orders'') and Rule 15 (''Pre-Opening Indications''). The proposed rule change was published for comment in the **Federal Register** on November 17, 2009.[3] On November 25, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received one comment letter on the proposal.[5] This order approves the proposed rule change as amended.

II. Description of the Proposal

The Exchange seeks to amend NYSE Rule 123C to modify its closing process.[6] Specifically, the Exchange proposes to amend NYSE Rule 123C to: (i) Extend the time for the entry of Market ''At-The-Close'' (''MOC'') and Limit ''At-The-Close'' (''LOC'') orders from 3:40 p.m. to 3:45 p.m.; (ii) amend the procedures for the entry of MOC/LOC orders in response to imbalance publications and regulatory trading halts; (iii) change to the cancellation time for MOC/LOC orders to 3:58 p.m.; (iv) require only one mandatory imbalance publication; (v) rescind the provisions governing Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements; (vi) modify the dissemination of Order Imbalance Information pursuant to NYSE Rule 123C(6) to commence at 3:45

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60974 (November 9, 2009), 74 FR 59299 (''Notice'').

[4] In Amendment No. 1, the Exchange proposes to correct an erroneous cross-reference in Exhibit 5. Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment.

[5] *See* Letter from John F. Neary, Managing Director, Morgan Stanley, to Elizabeth M. Murphy, Secretary, Commission, dated December 8, 2009 (''Morgan Stanley Letter'').

While the Morgan Stanley Letter welcomed the incremental progress under the proposal with regard to transperancy, the commenter urged NYSE to adopt additional changes to the closing process, including mandating a final and absolute cutoff time for participation in the closing process and instituting a more transparent and accurate calculation of the real time closing imbalance feed.

On December 18, 2009, NYSE responded to the Morgan Stanley letter. *See* Letter from Janet M. Kissane, Senior Vice President—Legal & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission (''Response Letter''). In the Response Letter, NYSE noted that it took into consideration input provided by its diverse constituent base, including Morgan Stanley, in crafting the changes to the closing process, as well as accommodating the interests of diverse constituencies whose business models vary widely, and ensuring that changes are implemented in a way that minimizes the possibility of unintended consequences. NYSE stated that, given available development resources and the complexity of modern markets, it was hesitant to introduce a level of incremental change that could have broad-ranging and unforeseen consequences. NYSE noted further that, as it implements the changes to the closing process, it will continue to work with its varied constituency, including Morgan Stanley, to assess the operation of the closing process, with an eye toward any potential changes in the behavior of market participants and to identify further ways to enhance the efficiency and transparency of the Close.

[6] Conforming changes related to the information disseminated prior to the opening transaction are also proposed.

p.m.; (vii) include additional information in both the pre-opening and pre-closing Order Imbalance Information data feeds; (viii) amend NYSE Rule 13 to create a conditional-instruction limit order type called the Closing Offset Order (''CO order''); (ix) delete the ''At the Close'' order type from NYSE Rule 13 and replace it with the specific definitions of MOC and LOC orders; and (x) codify the hierarchy of allocation of interest in the closing transaction in NYSE Rule 123(C). Similar changes are proposed to the rules of its affiliate, NYSE Amex LLC.[7]

The Exchange stated in its filing that it seeks to build on changes it made earlier this year to simplify its closing procedures in order to provide customers with a more efficient closing process.[8] The closing transaction on the Exchange continues to be a manual auction, which the Exchange believes facilitates greater price discovery and allows for the maximum interaction between market participants. While the Exchange currently provides DMM units with electronic tools to facilitate an efficient closing process, the Exchange believes that the proposed changes would maximize the use of those tools and allow for an even more efficient closing process.

Order Entry, Cancellation, Mandatory MOC/LOC Imbalance and Informational Imbalance Publications

The Exchange proposes to amend NYSE Rule 123C to require electronic entry of all MOC and LOC orders, including those entered to offset imbalances.[9] The Exchange stated that electronic entry of MOC and LOC interest would obviate the need to have imbalance publications at both 3:40 p.m. and 3:50 p.m. because the DMM would not have to manually keep track of the MOC/LOC interest; rather, Exchange systems would track the electronically entered MOC/LOC interest, which the Exchange believes would allow its systems to disseminate imbalance information to all market participants in a more accurate and timely fashion. In addition, according to the Exchange, its customers have expressed that in the current trading environment two imbalance publications ten minutes apart are not useful. Accordingly, the Exchange proposes to modify the order information available prior to the closing transaction and amend NYSE Rule 123C to provide for a single imbalance publication as soon as practicable after 3:45 p.m., to be referred to as the ''Mandatory MOC/LOC Imbalance Publication'' (herein ''Mandatory MOC/LOC Imbalance''), when there is an imbalance: (i) Of 50,000 shares or more; or (ii) of less than 50,000 shares that is deemed to be ''significant'' (*i.e.,* significant in relation to the average daily volume of the security).[10] The last sale price at 3:45 p.m. would serve as the basis for the Mandatory MOC/LOC Imbalance.

The proposal retains the current ability to publish an Informational Imbalance of any size. The Exchange seeks to extend the time for the publication of such imbalance from 3:40 p.m. until 3:45 p.m. in order to provide a mechanism for an imbalance publication prior to any Mandatory MOC/LOC Imbalance if the DMM, in consultation with a Floor Official or qualified NYSE Euronext employee as defined in Supplementary Material .10 of NYSE Rule 46, deems that such imbalance publication is warranted for the security. In extending the time to 3:45 p.m., the proposed rule would provide that a Mandatory MOC/LOC Imbalance or ''no imbalance'' notice must occur as soon as possible after 3:45 p.m.[11]

The proposed new rule would further explicitly state that the entry of MOC/LOC orders in response to a Mandatory MOC/LOC Imbalance after 3:45 p.m. may be entered only to offset the published imbalance.[12] In the case of a ''no imbalance'' notification, no offsetting MOC/LOC interest could be entered at all after 3:45 p.m.[13]

The Exchange's proposal also allows customers to cancel or reduce MOC/LOC orders only in cases of legitimate errors[14] between 3:45 p.m. and 3:58 p.m.[15] After 3:58 p.m., cancellations or reductions in the size of MOC/LOC orders, even in the event of legitimate error, would not be permitted.[16]

The Exchange further proposes to create a CO order type, which would provide all market participants an additional method to offset an order imbalance at the close. The CO order would not be guaranteed to participate in the closing transaction. CO orders would only be eligible to participate in the closing transaction when there is an imbalance of orders to be executed on the opposite side of the market from the CO order and there is no other interest remaining to trade at the closing price. CO orders must yield to all other eligible interest.

Unlike MOC/LOC orders, CO orders could be entered on any side of the market at anytime prior to the close.[17] CO orders would not be included in the calculation of the Mandatory MOC/LOC Imbalance and Informational Imbalance. Consistent with the cancellation requirements for MOC and LOC orders, a CO order could be cancelled or reduced for any reason up to 3:45 p.m. Between 3:45 p.m. and 3:58 p.m., a CO order could be canceled or reduced only in the case of a legitimate error. After 3:58 p.m., a CO order, like MOC/LOC orders, could not be cancelled or reduced for any reason.

CO orders would be eligible to participate in the closing transaction only to offset an imbalance and could not add to or flip the imbalance. If there is an imbalance at the close and the price of the closing transaction is at or within the limit of the CO order, the CO order would be eligible to participate in the closing transaction, subject to strict time priority of receipt in Exchange systems among such eligible CO orders and after yielding to all other interest in the closing execution, including MOCs, marketable LOCs, ''G'' orders, DMM interest, and at-priced LOCs. CO orders deemed eligible to participate in the close would be executed at the price of the closing transaction. If the number of shares represented by CO orders is larger than the number of shares required to offset the imbalance, Exchange systems would execute only those shares of CO orders required to complete the execution of the imbalance in full based on the time priority of receipt in Exchange systems of the CO orders. CO orders therefore would not be allowed to swing an imbalance to the opposite side of the market.

[7] *See* SR–NYSEAmex–2009–81.

[8] *See* Notice, *supra* note 3, at pp. 59299–304 for a detailed description of the current closing process.

[9] In the event a Floor broker's handheld device malfunctions, the DMM should assist the Floor broker by entering or cancelling MOC/LOC orders on the Floor broker's behalf. DMMs perform this administrative function on a best efforts basis. *See* NYSE Information Memos 09–26 (June 18, 2009); NYSE Member Education Bulletin 05–24 (December 9, 2005).

[10] *See* proposed NYSE Rule 123C(1)(d) and (4).

[11] *See* proposed NYSE Rule 123C(1)(b) and (4).

[12] *See* proposed NYSE Rule 123C(2)(b)(i).

[13] *See* proposed NYSE Rule 123C(2)(b)(ii).

[14] Pursuant to proposed NYSE Rule 123C(1)(c), a legitimate error is defined to be an error in any term of an MOC or LOC order, such as price, number of shares, side of the transaction (buy or sell) or identification of the security.

[15] *See* proposed NYSE Rule 123C(3) (Cancellation of MOC and LOC orders). The Exchange anticipates that DMMs will have sufficient time to perform the requisite calculations for the closing transaction while affording customers the ability to cancel or reduce in size an MOC/LOC order until 3:58 p.m.

[16] The Exchange could temporarily suspend the prohibitions on canceling or reducing an MOC or LOC order if there is an extreme order imbalance at or near the close. *See* proposed NYSE Rule 123C(9).

[17] *See* proposed NYSE Rule 123C(2)(b)(iv).

Modifications to Order Imbalance Information Data Feed Prior to the Closing and Opening Transaction

The Exchange further proposes to modify the Order Imbalance data feed disseminated prior to the closing transaction. Pursuant to proposed NYSE Rule 123C(6)(a)(iii), the Order Imbalance data feed would be disseminated approximately every five seconds between 3:45 pm and 4:00 pm. Moreover, the Exchange proposes to expand the order information included in the Order Imbalance Information data feed. Currently, the pre-closing Order Imbalance Information data feed includes the: (i) Reference price; (ii) MOC/LOC imbalance and the side of the market; (iii) d-Quotes and all other e-Quotes containing pegging instructions eligible to participate in the closing transaction; and (iv) MOC/LOC paired quantity at reference price. The proposed new data feed would also additionally include (i) CO orders on the opposite side of the imbalance and (ii) at-priced LOC interest eligible to offset the imbalance.

The proposed Order Imbalance Information data feed prior to the closing transaction would also make available two new data fields. The proposed new data fields would provide subscribers with a snap shot of the prices at which interest eligible to participate in the closing transaction would be executed in full against contra interest at the time data feed is disseminated. It would also provide subscribers with the price at which closing-only interest (*i.e.,* MOC orders, marketable LOC orders, and CO orders on the opposite side of the imbalance) may be executed in full and the price at which orders in the Display Book (*e.g.,* Minimum Display Reserve Orders, Floor broker reserve e-Quotes not designated to be excluded from the aggregated agency interest information available to the DMM, d-Quotes pegged e-Quotes,[18] and Stop orders) would be executed in full. Only those CO orders on the opposite side of the imbalance would be included in the calculation of the new data fields. If the price at which all closing orders in the Display Book would be executed in full is at or between the quote, then both data fields indicating imbalance information would publish the price at which the closing-only interest (*i.e.,* MOC orders, marketable LOC orders, and CO orders) could be executed in full.

Similarly the Exchange proposes to conform the pre-opening Order Imbalance Information data feed to provide its market participants with more information prior to the opening transaction. As such, the pre-opening Order Imbalance Information data feed would include the price at which all the interest eligible to participate in the opening transaction may be executed in full.[19] The Exchange does not propose to modify the time periods pursuant to NYSE Rule 15 when the pre-opening Order Imbalance data feed is disseminated. Moreover, the calculation of the reference price would also remain the same.

Execution of the Closing Transaction

The Exchange proposes to maintain its current execution logic and to codify the hierarchy of allocation logic applied to interest participating in the closing transaction. Proposed NYSE Rule 123C(7) would list all the interest that must be executed or cancelled as part of the closing transaction and the hierarchy of the interest that may be used to offset the closing imbalance. This codification would now also incorporate the new proposed CO order type into the closing transaction as the last interest eligible to participate in the closing transaction to offset an imbalance.

Trading Halts

The Exchange further proposes to amend NYSE Rule 123C to define ''trading halt'' as a halt in trading in any security pursuant to the provisions of NYSE Rule 123D (''Trading Halt'').[20] Under the proposal, when a Trading Halt is in effect at 3:45 p.m., a Mandatory MOC/LOC Imbalance would be published as close to the resumption of trading as possible if the Trading Halt is lifted prior to the close of trading. In this event, MOC/LOC orders could be entered to offset the published imbalance. If the Trading Halt is not lifted, the entry of MOC/LOC interest, including offsetting interest, would be prohibited.

Where a Trading Halt occurs in a security after a Mandatory MOC/LOC Imbalance is published, MOC/LOC orders could be entered to offset the published imbalance.[21] Where a Trading Halt occurs after 3:45 p.m. and there is no Mandatory MOC/LOC Imbalance in the security, the entry of MOC/LOC interest would not be allowed.[22]

Unlike MOC/LOC orders, the entry of CO orders on both sides of the market would be permitted when a Trading Halt occurs in a security, but is lifted prior to the close of trading in the security. Because CO orders are the interest of last resort in the closing transaction, entry of such orders is not restricted to offsetting the Mandatory MOC/LOC Imbalance.

Rescission of Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements

The Exchange proposes to rescind the provisions governing ''Expiration Friday Auxiliary Procedures for the Opening.'' According to the Exchange, the provisions governing Expiration Friday were created to facilitate a fair and orderly opening transaction in light of the additional order flow on Expiration Fridays. Because Exchange systems now allow the DMM to accommodate for such fluctuations in volume, the Exchange believes that these provisions are unnecessary. The order marking provisions were an accommodation to member organizations whose systems were unable to electronically affix the designation, and the Exchange states that all of its member organizations are capable of affixing appropriate order designations.

The Exchange further seeks to make the provisions of NYSE Rule 123C govern solely Market and Limit ''on the Close'' Policy. Therefore, the Exchange proposes to delete the ''Due Diligence Requirements'' from this rule as they are redundant with the provisions codified in NYSE Rule 405.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, it is consistent with Section 6(b)(5) of the Act,[24] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and

[18] d-Quotes and pegged e-Quotes included in this new data field of the Order Imbalance Information data feed would be included at the price indicated on the order as the base price to be used to calculate the range of discretion and not at prices within their discretionary pricing instructions.

[19] *See* Proposed NYSE Rule 15.

[20] *See* proposed NYSE Rule 123C(1)(f).

[21] *See* proposed NYSE Rule 123C(2)(c)(i).

[22] *See* proposed NYSE Rule 123C(2)(c)(iii).

[23] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change as amended is consistent with the provisions of Section 6(b)(8) of the Act,[25] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The electronic entry of MOC/LOC interest should increase the efficiency of NYSE's market and permit accurate information to be disseminated to market participants more quickly. The modification of the procedures for the entry of MOC/LOC orders in response to imbalance publications and regulatory trading halts should likewise improve transparency and efficiency.

In connection with the change from two imbalance publications to one, the Commission notes the Exchange's representation that its customers have expressed that two imbalance publications ten minutes apart in the current electronic environment are unnecessary. Moving the cut-off time for the entry of MOC/LOC orders from 3:40 p.m. to 3:45 p.m. should allow Exchange participants additional control of the handling of their orders to be executed in the closing transaction and additional participation in active markets.

In connection with the postponing of the cancellation time for MOC and LOC orders to 3:58 p.m, the Commission notes the Exchange's representations that, with the proposed requirement that all MOC/LOC orders be entered electronically, Exchange systems will keep track of the available interest thus making it more readily available for the DMM and that systemic tracking of MOC/LOC interest makes it entirely feasible for the DMM to review in two minutes the interest eligible to participate in the closing transaction and facilitate the execution of the closing transaction.

The creation of the CO order provides an additional source of liquidity to offset an imbalance going into the closing transaction, and thus should increase the greater efficiency of the closing process.

The Commission believes that these proposed modifications are consistent with the Act because, taken as a whole, they should enhance the efficiency and transparency of the closing transaction and provide customers with a more accurate depiction of market conditions prior to the closing transaction, and therefore allow them to make better-informed trading decisions.

The Commission believes that the remainder of the proposed changes, including the codification of the hierarchy of the allocation of interest in the closing, the clarification of the definition of MOC and LOC orders, the inclusion of additional information in the Order Imbalance Information data feeds, and the rescission of the provisions governing Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements are either non-substantive or non-controversial in nature, while enhancing the transparency of NYSE's market at the close, and therefore are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change, as amended (SR–NYSE–2009–111), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30927 Filed 12–29–09; 8:45 am]

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[25] 15 U.S.C. 78f(b)(8).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61229; File No. SR–BX–2009–083]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Fee Schedule of the Boston Options Exchange Facility

December 22, 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 16, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC (''BOX''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/,* and on the Commission's Internet Web site at *http://www.sec.gov/.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 13, 2006 BOX entered into a licensing agreement (''Agreement'') with The NASDAQ OMX Group, Inc. (''NASDAQ OMX'') (formerly known as the Nasdaq Stock Market, Inc.) to use various indices and trademarks in connection with the listing and trading of index options on the full value Nasdaq-100® (''NDX'')[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Nasdaq®, Nasdaq-100® and Nasdaq-100 Index® are registered trademarks of The NASDAQ OMX Group, Inc. (which with its affiliates are the ''Corporations'') and are licensed for use by the Boston Options Exchange Group, LLC in connection with the trading of options products based on the Nasdaq-100 Index®. The product(s) have not been passed on by the Corporations as to their legality or suitability. The product(s) are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the product(s). The Corporations do not guarantee the accuracy and/or uninterrupted calculation of the Nasdaq-100 Index® or any data included therein. The Corporations

and the reduced value Nasdaq-100® Index (Mini-NDX® Index (MNX)).[6] The Agreement established a license fee, currently $0.16 per contract, payable by BOX to NASDAQ OMX, for NDX and MNX options contracts traded on BOX.[7]

This Agreement between BOX and NASDAQ OMX was set to expire on December 31, 2009. BOX and NASDAQ OMX have entered into an extension of the Agreement whereby a six (6) cent increase in the per contract license fee charged to BOX by NASDAQ OMX has been agreed to.

The Exchange is submitting this proposed rule change to increase the surcharge fee for transactions in NDX and MNX options by six (6) cents, to $0.22. This increase will correspondingly offset the increased costs incurred by BOX. As with certain other licensed options, the Exchange adopted and maintains a surcharge fee for trading in these options to defray the licensing costs. The Exchange believes that charging BOX Options Participants that trade these instruments is the most equitable means of recovering the costs of the license.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[10] and Rule 19b–4(f)(2) thereunder,[11] because it establishes or changes a due, fee, or other charge applicable only to a member.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2009–083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–083. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2009–083 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30926 Filed 12–29–09; 8:45 am]

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[6] *Id.*

[7] On November 14, 2006 the Exchange established a $0.15 surcharge fee for transactions in options on NDX and MNX. *See* Securities Exchange Act Release No. 55000 (December 21, 2006), 71 FR 78479 (December 29, 2006) (SR–BSE–2006–47). The Exchange subsequently increased the surcharge fee to $0.16 in response to a corresponding increase in the license fees charged by NASDAQ OMX to BOX. *See* Securities Exchange Act Release No. 57114 (January 8, 2008), 73 FR 2961 (January 16, 2008) (SR–BSE–2008–01).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61231; File No. SR–FINRA–2009–092]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Date by Which Eligible Registrants Must Complete a Firm-Element Continuing Education Program To Qualify To Engage in a Security Futures Business

December 23, 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 18, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is a proposing to amend NASD Rule 1022 (Categories of Principal Registration) and NASD Rule 1032 (Categories of Representative Registration) to extend to December 31, 2012 the date by which eligible registrants must complete a firm-element continuing education program to qualify to engage in a security futures business.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2003 [sic], FINRA modified the following registration categories to include the activities of engaging in and supervising securities futures: (1) Registered Options Principal (Series 4); (2) Limited Principal—General Securities Sales Supervisor (Series 9/10); (3) General Securities Representative (Series 7); and (4) Registered Options Representative (Series 42).[3] FINRA also required that persons currently registered or becoming registered in these categories complete a firm-element continuing education requirement addressing security futures before they conducted any security futures business. FINRA instituted this continuing education requirement to ensure that registered personnel, who may not be familiar with risks, trading characteristics, terms and nomenclature of these products, or the fact that they are subject to the joint jurisdiction of the SEC and CFTC, receive the necessary training.

FINRA initially considered replacing the firm-element continuing education requirement with revised qualification examinations for these categories that addressed security futures, however, such qualification examinations have not been implemented. In 2006, FINRA amended NASD Rule 1022 (Categories of Principal Registration) and Rule 1032 (Categories of Representative Registration) to extend the date by which eligible registrants must complete the firm-element continuing education requirement to engage in a security futures business from December 31, 2006 to December 31, 2009.[4] In view of the fact that there are no revised qualification examinations addressing security futures, FINRA intends to continue to require eligible registrants to complete the mandated firm-element continuing education requirement before engaging in any security futures business. The proposed rule change amends NASD Rule 1022 (Categories of Principal Registration) and NASD Rule 1032 (Categories of Representative Registration) to extend the date by which eligible registrants must complete the firm-element continuing education requirement to engage in a security futures business from December 31, 2009 to December 31, 2012.[5]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be December 31, 2009.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is necessary to continue to allow eligible registrants to complete a firm-element continuing education program that will qualify them to engage in a security futures business.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay to permit the proposed rule change to become operative on December 31, 2009. The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest because the waiver will keep in place the ability of registered persons to qualify to sell security futures by completing a firm-element continuing education program in lieu of an exam. Therefore, the Commission designates the proposal operative on December 31, 2009.[9]

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

[3] *See* Securities Exchange Act Release No. 46663 (October 15, 2002), 67 FR 64944 (October 22, 2002) (Order Approving File No. SR–NASD–2002–40).

[4] *See* Securities Exchange Act Release No. 54617 (October 17, 2006), 71 FR 62498 (October 25, 2006) (Notice of Filing and Immediate Effectiveness of File No. SR–NASD–2006–118).

[5] The Commission notes that FINRA has proposed to amend its rule text to provide that, as of December 31, 2009, for eligible registrants, the deadline for completing a firm-element continuing education program in order to qualify to engage in security futures activities is the earlier of December 31, 2012, or one business day prior to the date a new examination that includes security futures products is offered.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–092. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–092 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30925 Filed 12–29–09; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61227; File No. SR–NYSEArca–2009–114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing of Grail McDonnell Fixed Income ETFs

December 22, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 16, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Exchange Act, NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), proposes to list and trade the shares of the following funds under NYSE Arca Equities Rule 8.600: Grail McDonnell Intermediate Municipal Bond ETF and the Grail McDonnell Core Taxable Bond ETF (each an ''ETF'' and, collectively, the ''ETFs''). The shares of the ETFs are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–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, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Exchange proposes to list and trade the Shares of the ETFs under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[4] Each of the ETFs will be an actively managed exchange traded fund each of which is a series of Grail Advisors ETF Trust (''Trust''). The Trust is registered with the Commission as an investment company.[5]

[4] The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also previously approved listing and trading on the Exchange, or trading on the Exchange pursuant to unlisted trading privileges (''UTP'') of the following actively managed funds under Rule 8.600: Securities Exchange Act Release Nos. 57626 (April 4, 2008), 73 FR 19923 (April 11, 2008) (SR–NYSEArca–2008–28) (order approving trading on the Exchange pursuant to UTP of Bear Stearns Active ETF); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR–NYSEArca–2009–22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF; 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving Exchange listing and trading of Dent Tactical ETF); 60717 (September 24, 2009), 74 FR 50853 (October 1, 2009) (SR–NYSEArca–2009–74 (order approving listing of four Grail Advisors RP ETFs); 60975 (November 10, 2009), 74 FR 59590 (November 18, 2009) (SR–NYSEArca–2009–83) (order approving listing of Grail American Beacon International Equity ETF); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing of five fixed income funds of the PIMCO ETF Trust).

[5] *See* Registration Statement on Form N–1A for the Trust filed with the Securities and Exchange Commission on October 5, 2009 (File Nos. 333–148082 and 811–22154) (the ''Registration Statement''). The descriptions of the ETFs and the

Continued

Description of the Shares and the Funds

Grail Advisors, LLC is each Fund's investment manager (''Manager''). McDonnell Investment Management, LLC (''McDonnell'' or ''Sub-Adviser'') serves as each ETF's sub-adviser. The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the ETFs. ALPS Distributors, Inc. serves as the distributor of Creation Units for each ETF on an agency basis.

Grail McDonnell Intermediate Municipal Bond ETF

According to the Registration Statement, the investment objective of the ETF is a high level of current tax-exempt income and higher risk-adjusted returns relative to its benchmark.[6] The ETF invests, under normal circumstances, at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in debt securities with interest payments exempt from federal income taxes. The ETF will typically invest in municipal securities and will invest, under normal market conditions, primarily in tax exempt general obligation, revenue and private activity bonds and notes, which are issued by or on behalf of states, territories or possessions of the U.S. and the District of Columbia and their political subdivisions, agencies and instrumentalities (including Puerto Rico, the Virgin Islands and Guam). The ETFs investments generally include municipal securities with a full range of maturities and broad issuer and geographic diversification. While the Fund may invest in securities of any maturity, under normal circumstances, the dollar-weighted average maturity of the portfolio is expected to range from three to ten years.

The ETF invests primarily in investment grade securities, which are securities rated in one of the top four credit quality categories by at least one nationally recognized statistical rating organization rating that security (''rating agency''). The ETF considers pre-refunded bonds or escrowed to maturity municipal securities, regardless of rating, to be investment grade securities. The ETF may invest up to 20% of its net assets in high yield securities or below investment-grade securities rated BB+ (or comparable) or below by a rating agency or, if unrated, determined by McDonnell to be of comparable quality.

The ETF may invest up to 20% of its assets in taxable debt securities. These may include securities issued by the U.S. Government, its agencies and instrumentalities, corporate debt securities, mortgage-backed and other asset-backed securities, and securities of other investment companies, including other exchange-traded funds. The ETF may only invest in U.S. dollar-denominated securities.

Grail McDonnell Core Taxable Bond ETF

According to the Registration Statement, the investment objective of the ETF is a high level of current income and higher risk-adjusted returns relative to its benchmark.[7] The ETF invests, under normal circumstances, at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in debt securities. The ETF will invest primarily in investment-grade securities, including securities issued by the U.S. Government, its agencies and instrumentalities, municipal securities, mortgage-backed and other asset-backed securities, and corporate and bank obligations, including commercial paper, corporate notes and bonds. While the ETF may invest in securities of any maturity, under normal circumstances, the average duration of the portfolio is typically expected to range from three to six years. Duration is a measure of the underlying portfolio's price sensitivity to changes in interest rates.

The ETF invests primarily in investment grade securities, which are securities rated in one of the top four credit quality categories by at least one rating agency. The ETF may invest up to 20% of its net assets in high yield securities or below investment-grade securities rated BB+ (or comparable) or below by a rating agency or, if unrated, determined by McDonnell to be of comparable quality.

The ETF may invest without limit in securities issued by the U.S. Government, its agencies and instrumentalities, up to 90% of its assets in mortgage-backed and other asset-backed securities, (subject to the 20% of Fund assets limitation for high yield securities or below investment-grade securities referenced above), and up to 80% of its assets in corporate bonds. In addition, the ETFs may invest up to 30% of its assets in municipal securities. The Fund may only invest in U.S. dollar-denominated securities. It may also invest in securities of other investment companies, including other Funds and money market funds.

According to the Registration Statement, the Sub-Adviser, with respect to each of the ETFs, adheres to a total return investment philosophy in which the investment team seeks to reduce the ETFs' exposure to interest rate risk by limiting dependence on the timing of purchases and sales for the portfolio by controlling its interest rate sensitivity (*i.e.* duration) relative to the benchmark. McDonnell looks for opportunities to outperform the ETFs' stated risk tolerance/benchmark by identifying relative value opportunities among sectors and securities, and exploiting the changing shape of the yield curve. The investment process employed by McDonnell utilizes fundamental credit analysis within a quantitative risk management framework in order to identify relative return opportunities across sectors, among securities and along the maturity/yield curve spectrum. Credit analysts and portfolio managers participate in regular periodic discussions of trends and opportunities in making sector and security selections.

As discussed below, the ETFs may invest in derivative instruments, such as futures and interest rate, total return and credit default swaps. Investments in derivatives must be consistent with the ETFs' investment objective and may only be used to manage risk and not to enhance leverage.

Under adverse market conditions, the ETFs may, for temporary defensive purposes, invest up to 100% of its assets in cash or cash equivalents, including investment grade short-term obligations. To the extent the Fund invokes this strategy, its ability to achieve its investment objective may be affected adversely.

The Funds will not invest in non-U.S. equity securities.

Investment Policies of the ETFs

The Registration Statement enumerates investment policies which may be changed with respect to an ETF only by a vote of the holders of a majority of the ETF's outstanding voting securities. Among these policies are the following: (1) Regarding diversification, the ETFs may not invest more than 5% of their total assets (taken at market value) in securities of any one issuer,

Shares contained herein are based on information in the Registration Statement.

[6] The benchmark for the Grail McDonnell Intermediate Municipal Bond ETF is the Barclays 3 to 15 Year National Municipal Bond Index, which is a rules-based, market-value-weighted index engineered for the long-term tax-exempt bond market. To be included in the index, bonds must be rated investment-grade (Baa3/BBB- or higher) by at least two of the following ratings agencies: Moody's, S&P, and Fitch.

[7] The benchmark for the Grail McDonnell Core Taxable Bond ETF is Barclays Aggregate Index, which represents securities that are SEC-registered, taxable, and dollar denominated. The index covers the U.S. investment grade fixed rate bond market, with index components for government and corporate securities, mortgage pass-through securities, and asset-backed securities.

other than obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities, or purchase more than 10% of the voting securities of any one issuer, with respect to 75% of the ETF's total assets; and (2) regarding concentration, the ETFs may not invest more than 25% of their total assets in the securities of companies primarily engaged in any one industry or group of industries provided that: (i) This limitation does not apply to obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities; and (ii) municipalities and their agencies and authorities are not deemed to be industries.

The ETFs may not invest more than 15% of their net assets in illiquid securities, including time deposits and repurchase agreements that mature in more than seven days.[8] For this purpose, ''illiquid securities'' are securities that the ETF may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the ETF has valued the securities.

According to the Registration Statement, in addition to the investment strategies described in the prospectus for the ETFs, the ETFs may invest in mortgage- or other asset-backed securities. Mortgage-related securities include mortgage pass-through securities, collateralized mortgage obligations (''CMOs''), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities (''SMBSs'') and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. In pursuing their individual objectives, the ETFs may, to the extent permitted by their investment objective and policies, purchase and sell (write) both put options and call options on securities, swap agreements, securities indexes, and enter into interest rate and index futures contracts and purchase and sell options on such futures contracts (''futures options'') for hedging purposes or to seek to replicate the composition and performance of a particular index, except that the ETFs do not intend to enter into transactions involving currency futures or options.

An ETF also may enter into swap agreements with respect to interest rates and indexes of securities. An ETF may invest in structured notes. If other types of financial instruments, including other types of options, futures contracts, or futures options are traded in the future, an ETF also may use those instruments, provided that their use is consistent with the ETF's investment objective. An ETF may, to the extent specified in the Registration Statement, purchase and sell both put and call options on fixed income or other securities or indexes in standardized contracts traded on foreign or domestic securities exchanges, boards of trade, or similar entities, or quoted on Nasdaq or on an over-the-counter market, and agreements, sometimes called cash puts, which may accompany the purchase of a new issue of bonds from a dealer. An ETF will write call options and put options only if they are ''covered.''

An ETF may invest in futures contracts and options thereon with respect to, but not limited to, interest rates and security indexes. An ETF will only enter into futures contracts and futures options which are standardized and traded on a U.S. exchange, board of trade, or similar entity, or quoted on an automated quotation system. According to the Registration Statement, neither the Trust nor the Funds are deemed to be ''commodity pools'' or ''commodity pool operators'' under the Commodity Exchange Act, and are not subject to registration or regulation as such under the Commodity Exchange Act.

An ETF may engage in swap transactions, including, but not limited to, swap agreements on interest rates or security indexes and specific securities. An ETF also may enter into options on swap agreements (''swap options''). The ETFs may purchase or otherwise receive warrants or rights. The ETFs may enter into repurchase agreements with banks and broker-dealers. An ETF may invest a portion of its assets in cash or cash items pending other investments or to maintain liquid assets required in connection with some of the ETF's investments. These cash items may include money market instruments, such as securities issued by the U.S. Government and its agencies, bankers' acceptances, commercial paper, and bank certificates of deposit.

Each ETF may invest in municipal securities. The ETFs may invest in pooled real estate investment vehicles and other real estate-related investments such as securities of companies principally engaged in the real estate industry. Each ETF may invest in the securities of other investment companies to the extent permitted by law. Subject to applicable regulatory requirements, an ETF may invest in shares of both open- and closed-end investment companies (including money market funds and ETFs).

Commentary .07 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[9] In addition, Commentary .07 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .07 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .07 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Grail Advisors, LLC is affiliated with a broker-dealer, Grail Securities, LLC, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio. The Sub-Adviser is not affiliated with a broker-dealer.[10] Any

[8] This is a non-fundamental investment restriction applicable to each Fund and may be changed with respect to a Fund by a vote of a majority of the Board.

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Manager and Sub-adviser are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act.

[10] The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Funds, and McDonnell, the sub-adviser, and their related personnel, are subject to Investment Advisers Act Rule 204A–1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A–1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer (''CCO'') or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)–7 under the

Continued

additional Fund sub-advisers that are affiliated with a broker-dealer will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

Availability of Information

The ETFs' Web site (*http://www.grailadvisors.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each ETF that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the ETFs: (1) the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[11] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session[12] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') held by the ETFs that will form the basis for the ETFs' calculation of NAV at the end of the business day.[13] The Web site and information will be publicly available at no charge.

In addition, for each ETF, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the ''Portfolio Indicative Value,'' that reflects an estimated intraday value of the ETF's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of an ETF on a daily basis and to provide a close estimate of that value throughout the trading day.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line.

On a daily basis, the ETFs will disclose on the ETFs' Web site for each portfolio security or other financial instrument of the ETF the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the ETF's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Additional information regarding the Shares and the ETFs, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the ETFs that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A–3[14] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value per Share will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the ETFs. Shares of the ETFs will be halted if the ''circuit breaker'' parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the ETFs; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the ETFs may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate

Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[11] The Bid/Ask Price of each ETF is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by each ETF and its service providers.

[12] The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

[13] Under accounting procedures followed by the ETF, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, each ETF will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[14] *See* 17 CFR 240.10A–3.

transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of ISG.[15]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the ETFs are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[16] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–114 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–114. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[15] For a list of the current members of ISG, see *http://www.isgportal.org.* The Exchange notes that not all of the components of the Disclosed Portfolio for the ETFs may trade on exchanges that are members of ISG.

[16] 15 U.S.C. 78f(b)(5).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–114 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. E9–30919 Filed 12–29–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61228; File No. SR–ISE–2009–106]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To List and Trade Options on the ETFS Gold Trust and the ETFS Silver Trust

December 22, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to enable the listing and trading on the Exchange of options on the ETFS Gold Trust and the ETFS Silver Trust. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the U.S. Securities and Exchange Commission (''SEC'' or ''Commission'') authorized ISE to list and trade options on the SPDR Gold Trust[3] and on the iShares COMEX Gold Trust and the iShares Silver Trust.[4] Now, the Exchange proposes to list and trade options on the ETFS Gold Trust and the ETFS Silver Trust.

Under current Rule 502(h), only Exchange-Traded Fund Shares, or ETFs, that are traded on a national securities exchange and are defined as an ''NMS'' stock under Rule 600 of Regulation NMS, and that (i) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments) or (ii) represent interests in a trust that holds a specified non-U.S. currency or currencies deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust (''Funds'') or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool ETFs'') or (iv) are issued by the SPDR® Gold Trust are eligible as underlying securities for options traded on the Exchange or (v) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share'').[5] This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include the ETFS Gold Trust and the ETFS Silver Trust.

Apart from allowing the ETFS Gold Trust and the ETFS Silver Trust to be underlyings for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in ISE Rule 502(h).

Specifically, in addition to satisfying the aforementioned listing requirements, ETFs must meet (1) the criteria and guidelines under ISE Rules 502(a) and (b) or (2) be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Exchange-Traded Fund Shares in a

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR–ISE–2008–12).

[4] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (SR–ISE–2008–58).

[5] *See* ISE Rule 502(h).

specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on the ETFS Gold Trust and the ETFS Silver Trust. Specifically, under ISE Rule 503(h), options on Exchange-Traded Fund Shares may be subject to the suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive trading days; (2) the value of the underlying silver or underlying gold is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, the ETFS Gold Trust and the ETFS Silver Trust shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering the ETFS Gold Trust or the ETFS Silver Trust, respectively, if the ETFS Gold Trust or the ETFS Silver Trust ceases to be an ''NMS stock'' as provided for in ISE Rule 503(b)(5) or the ETFS Gold Trust or the ETFS Silver Trust is halted from trading on its primary market.

The addition of the ETFS Gold Trust and the ETFS Silver Trust to ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits [6] or margin.[7]

The Exchange represents that its surveillance procedures applicable to trading in options the ETFS Gold Trust and the ETFS Silver Trust will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. (''NYMEX'') (a member of the Intermarket Surveillance Group) related to any financial instrument that is based, in whole or in part, upon an interest in or performance of gold or silver.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [8] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) [9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system in a manner consistent with the protection of investors and the public interest. In particular, the Exchange believes that amending its rules to accommodate the listing and trading of options on the ETFS Gold Trust and the ETFS Silver Trust will benefit investors by providing them with valuable risk management tools.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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–ISE–2009–106 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–ISE–2009–106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2009–106 and should be submitted on or before January 20, 2010.

[6] *See* ISE Rules 412 and 414.

[7] *See* ISE Rule 1202.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30917 Filed 12–29–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61222; File No. SR–NYSEArca–2009–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 5.3

December 22, 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 4, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain rules in order to enable the listing and trading on the Exchange of options on the ETFS Silver Trust and the ETFS Gold Trust. The text of the proposed rule change is available on NYSE Arca's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at NYSE Arca, and at the Commission's Public Reference Room. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the U.S. Securities and Exchange Commission (''SEC'' or ''Commission'') authorized the Exchange to list and trade options on the SPDR Gold Trust (''GLD'')[4] and on the iShares COMEX Gold Trust (''IAU'') and the iShares Silver Trust (''SLV'').[5] Now, the Exchange proposes to list and trade options on the ETFS Silver Trust (''SIVR'') and the ETFS Gold Trust (''SGOL'').

Currently, Rule 5.3 deems appropriate for options trading Exchange-Traded Fund Shares (''ETFs'' or ''Fund Shares'' or ''Units'') that are traded on a national securities exchange and are defined as an ''NMS stock'' in Rule 600(b)(47) of Regulation NMS and that represent (i) interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments including, but not limited to, options on securities and indexes, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse purchase agreements (the ''Financial Instruments''), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the ''Money Market Instruments'') comprising or otherwise based on or representing investments in indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Marker Instruments); or (ii) interests in a trust or similar entity that holds a specified non-U.S. currency deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency, and pays the beneficial owner interest and other distributions on deposited non-U.S. currency, if any, declared and paid by the trust; or (iii) commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (''Commodity Pool Units''), or (iv) represent interests in the SPDR Gold Trust, are eligible as underlying securities for options traded on the Exchange or (iv) represent interests in the SPDR Gold Trust, or (v) represent interests in the iShares COMEX Gold Trust, or (vi) represent interests in the iShares Silver Trust, (vii) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV (''Managed Fund Share'').[6] This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include the ETFS Silver Trust and the ETFS Gold Trust.

Apart from allowing the ETFS Silver Trust and ETFS Gold Trust to be underlyings for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in Rule 5.3(g).

Specifically, in addition to satisfying the aforementioned listing requirements, Units must meet either (1) the criteria and guidelines under Rule 5.3(a) and (b) or (2) they must be available for creation or redemption each business day from or through the issuer in cash or in kind at a price

[10] 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 No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (order approving SR–NYSEArca–2008–52).

[5] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 238 (December 10, 2008) (order approving SR–NYSEArca–2008–66).

[6] *See* Rule 5.3(g).

related to net asset value, and the issuer must be obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investments has undertaken to deliver the investment assets as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on the ETFS Silver Trust and the ETFS Gold Trust. Specifically, under Rule 5.4(k), options on Units may be subject to the suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Units, there are fewer than 50 record and/or beneficial holders of the Units for 30 or more consecutive trading days; (2) the value of the underlying silver or underlying gold is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, the ETFS Silver Trust and the ETFS Gold Trust shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering the ETFS Silver Trust or the ETFS Gold Trust, respectively, if the ETFS Silver Trust or the ETFS Gold Trust ceases to be an ''NMS stock'' as provided for in Rule 5.4(b)(5) or the ETFS Silver Trust or the ETFS Gold Trust is halted from trading on its primary market.

The addition of the ETFS Silver Trust and the ETFS Gold Trust to Rule 5.3(g) will not have any effect on the rules pertaining to position and exercise limits [7] or margin.[8]

The Exchange represents that its surveillance procedures applicable to trading in options on the ETFS Silver Trust and the ETFS Gold Trust will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. (''NYMEX'') (a member of the Intermarket Surveillance Group) related to any financial instrument traded there that is based, in whole or part, upon an interest in or performance of silver or gold.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [9] of the Securities Exchange Act of 1934 (the ''Act'') in general, and furthers the objectives of Section 6(b)(5) [10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–110 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30915 Filed 12–29–09; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Rule 6.8 regarding positions limits, and Rule 6.9 regarding exercise limits.

[8] *See* Rules 4.15 and 4.16 regarding margins.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61217; File No. SR–FINRA–2009–073]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the Hearing Location Rules of the Codes of Arbitration Procedure for Customer and Industry Disputes December 22, 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 Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') on October 28, 2009, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA Dispute Resolution is proposing to amend Rules 12213(a) and 13313(a) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and the Code of Arbitration Procedure for Industry Disputes (''Industry Code''), respectively, to expand the criteria for selecting a hearing location for an arbitration proceeding.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Hearing Location Selection under the Customer Code:

Currently, Rule 12213(a) of the Customer Code states that generally, the Director of FINRA Dispute Resolution (''Director'') will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute. FINRA has determined that its policy concerning selection of a hearing location under the Customer Code may be broader than the rule describes.

Under the current rule in the Customer Code, for example, if a customer in an arbitration proceeding lives in Hoboken, New Jersey, the Director will select the New York City hearing location, because this hearing location is closer to the customer's residence, Hoboken,[3] than FINRA's Newark, New Jersey hearing location.

There have been instances, however, in which the Director has granted customers' requests to select a hearing location in their state of residence at the time of the events giving rise to the dispute, even though the in-state hearing location may not be the closest hearing location. Thus, in the example above, if the customer requests the Newark, New Jersey hearing location, the Director generally will grant the request, even though the closest hearing location is the New York City location. The Director typically attempts to honor such requests as a convenience to public customers.

FINRA is proposing, therefore, to amend Rule 12213(a) of the Customer Code to add this criterion for selecting a hearing location. The proposed amendment to the rule would state that the Director will select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute, unless the hearing location closest to the customer's residence is in a different state. In that case, the customer may request a hearing location in the customer's state of residence at the time of the events giving rise to the dispute.

Under the proposal, the Director would continue to select the hearing location closest to the customer's residence at the time of the events giving rise to the dispute. However, the Director would honor a customer's request for a different hearing location in the customer's state of residence.[4] FINRA believes the proposal is customer-friendly because it gives customers more control over the arbitration process, by providing them with a choice of hearing locations.

Hearing Location Selection under the Industry Code:

Rule 13213(a) of the Industry Code states, in relevant part, that in cases involving an associated person, the Director will generally select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute. FINRA has not received requests from associated persons for different hearing locations, other than the closest hearing location under the current rule. However, FINRA believes that associated persons also should have the option to select a hearing location in their state of employment at the time of the events giving rise to the dispute, if the closest hearing location to their employment is in a different state.

Thus, FINRA is proposing to amend Rule 13213(a) of the Industry Code in two ways. First, FINRA would broaden the criteria for selecting the appropriate hearing location by referring to the time of the events giving rise to the dispute. FINRA notes that this amendment clarifies current practice and makes the rule language under the Industry Code consistent with the comparable rule under the Customer Code. The second change to Rule 13213(a) would allow an associated person to request a different hearing location, other than the closest hearing location. Specifically, the proposal would state that the Director will select the hearing location closest to where the associated person was employed at the time of the events giving rise to the dispute, unless the hearing location closest to the associated person's employment is in a different state. In that case, the associated person may request a hearing location in his or her state of employment at the time of the events giving rise to the dispute.

Under the proposal, the Director would continue to select the hearing location closest to where the associated person was employed at the time of the

[3] Hoboken, New Jersey is less than a mile by ferry across the Hudson River from FINRA's New York City hearing location.

[4] If the customer requests a different hearing location other than the location closest to the customer's residence at the time of the events giving rise to the dispute and makes the request before the arbitrator or arbitrators are selected, the Director will grant the request. If the customer requests a different hearing location other than the location closest to the customer's residence at the time of the events giving rise to the dispute and makes the request after the arbitrator or arbitrators are selected, the customer must submit the request to the arbitrator or panel.

events giving rise to the dispute. However, the Director would honor an associated person's request for a different hearing location in the associated person's state of employment.[5] FINRA believes the proposal would benefit associated persons by providing them with a choice of hearing locations.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with FINRA's statutory obligations under the Act to protect investors and the public interest because the proposal would assist in the efficient administration of the arbitration process by giving customers and associated persons more control over where the arbitration would be held.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by FINRA.

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. The Commission in particular requests comment on the effect of allowing customers or associated persons to request a different hearing location after the arbitrator or arbitrators have been selected. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–073. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington DC 20549–1090. 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 the File Number SR–FINRA–2009–073 and should be submitted on or before January 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30913 Filed 12–29–09; 8:45 am]

BILLING CODE 8011–01–P

[5] If the associated person requests a different hearing location other than the location closest to where the associated person was employed at the time of the of the events giving rise to dispute and makes the request before the arbitrator or arbitrators are selected, the Director will grant the request. If the associated person requests a different hearing location other than the location closest to where the associated person was employed at the time of the of the events giving rise to dispute and makes the request after the arbitrator or arbitrators are selected, the associated person must submit the request to the arbitrator or panel.

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61207; File No. SR–Phlx–2009–84]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Rules Relating to Conduct of Business on the Exchange

December 18, 2009.

On October 29, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would: (i) Create an expedited hearing process for members posing an immediate threat to the safety of persons or property, seriously disrupting Exchange operations, or who are in possession of a firearm on the Exchange trading floor; (ii) increase the time period a member may be physically excluded from the trading floor; (iii) increase the maximum amount a member may be fined pursuant to Rule 60; (iv) amend language applicable to contesting citations and create a forum fee of $100 for contesting citations; (v) add language to explicitly prohibit alcohol and illegal controlled substances on the trading floor; (vi) increase fines for various regulations; (vii) require non-member visitors who are performing contract work at the Exchange on behalf of members to provide a certificate of insurance and add fines for failure to provide proof of insurance; (viii) add a rule to limit exchange liability and require reimbursement of certain expenses; (ix) amend the disciplinary rules to allow Enforcement Staff to request a hearing; and (x) increase the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

limit on fines from $5,000 to $10,000 and add clarifying language to Rule 970.

On November 6, 2009, Phlx filed Amendment No. 1. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 17, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Commission believes the proposed rule change may facilitate prompt, appropriate, and effective discipline for violations of Rule 60 and the regulations thereunder designed to maintain order on the Exchange.

With regard to the proposed rule change's amendments to the Phlx's Minor Rule Plan (''MRP''), the Commission also believes that the proposed rule change is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[6] which require that the rules of an exchange enable the exchange to enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Furthermore, the Commission believes that the proposed changes to the MRP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. Therefore, the Commission finds that the proposed rule change amending the MRP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[7] which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with Phlx rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that Phlx will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRP or whether a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[8] and Rule 19d–1(c)(2) under the Act,[9] that the proposed rule change (SR–Phlx–2009–84), as amended, be, and hereby is, approved and the minor rule plan amendment is declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30912 Filed 12–29–09; 8:45 am]

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[3] Securities Exchange Act Release No. 60961 (November 6, 2009), 74 FR 59279.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5) and 78f(b)(6).

[7] 17 CFR 240.19d–1(c)(2).

[8] 15 U.S.C. 78s(b)(2)

[9] 17 CFR 240.19d–1(c)(2).

[10] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

DEPARTMENT OF STATE

[Public Notice 6858]

In the Matter of the Review of the Designation of al-Jihad AKA Egyptian Islamic Jihad AKA Egyptian al-Jihad AKA Jihad Group AKA New Jihad as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that al-Jihad, also known as Egyptian Islamic Jihad, also known as Egyptian al-Jihad, also known as Jihad Group, also known as New Jihad, has merged with al-Qa'ida, and that the relevant circumstances described in Section 219(a)(1) of the INA still exist with respect to that organization.

Therefore, I hereby determine that the amendment of the designation of al-Jihad, and its aliases, as a foreign terrorist organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained as a designated alias of al-Qa'ida, as provided for in 74 FR 4069 (January 22, 2009).

This determination shall be published in the **Federal Register**.

Dated: December 18, 2009.

James B. Steinberg,

Deputy Secretary of State.

[FR Doc. E9–30835 Filed 12–29–09; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the California High-Speed Train Project from Merced to Sacramento, CA

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

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

SUMMARY: This notice is to advise the public that FRA and the California High-Speed Rail Authority (Authority) will jointly prepare a project Environmental Impact Statement (EIS) and a project Environmental Impact Report (EIR) for the Merced to Sacramento Section of the Authority's proposed California High-Speed Train (HST) System in compliance with relevant State and Federal laws, in particular the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The San Joaquin Regional Rail Commission (SJRRC) is interested in providing intercity and commuter regional rail passenger services within this section of the HST System connecting to the Altamont Corridor Rail Project. FRA is issuing this Notice to alert interested parties and solicit public and agency input into the development of the scope of the EIS and to advise the public that outreach activities conducted by the Authority and their representatives will be considered in the preparation of the combined EIR/EIS. The U.S. Army Corps of Engineers may serve as a cooperating agency for the preparation of the EIR/EIS.

In 2001, the Authority and FRA started a tiered environmental review process for the HST System and in 2005, completed the first tier California High-Speed Train Program EIR/EIS (Statewide Program EIR/EIS) and approved the statewide HST System for intercity travel in California between the major metropolitan centers of Sacramento and the San Francisco Bay Area in the north, through the Central Valley, to Los Angeles and San Diego in the south. The approved HST System would be about 800-miles long, with electric propulsion and steel-wheel-on-steel-rail trains capable of maximum operating speeds of 220 miles per hour (mph) on a mostly dedicated system of fully grade-separated, access-controlled steel track with state-of-the-art safety, signaling, communication, and automated train control systems. In approving the HST System, the Authority and FRA also selected corridors/general alignments and station location options throughout most of the system. The Statewide Program EIR/EIS selected the Union Pacific Railroad Company (UPRR) corridor for the high-speed train route from Sacramento south to Stockton and the Burlington Northern Santa Fe (BNSF) railroad corridor from Stockton south to Merced. Consistent with the Clean Water Act implementing regulations and because the UPRR alignment option may have more potential impacts to waters and biological resources, the Central California Traction (CCT) alignment between Sacramento and Stockton will also be evaluated as part of the Project EIR/EIS.

In 2008, the Authority and FRA completed a second program EIR/EIS to evaluate and select general alignments and station locations within the broad corridor between and including the Altamont Pass and the Pacheco Pass to connect the Bay Area and Central Valley portions of the HST System. The Authority and FRA selected the Pacheco Pass with the San Francisco and San Jose termini network alternative, as well as preferred corridor alignments and station location options. The UPRR corridor was selected as the preferred alignment through the portion of the Central Valley from south of Stockton to Merced and the BNSF corridor was recommended for further study in this area for the Project EIR/EIS.

The preparation of the Merced to Sacramento HST Project EIR/EIS will involve the development of preliminary engineering designs and the assessment of potential environmental effects associated with the construction, operation, and maintenance of the HST System, including track, ancillary facilities, and stations along the preferred alternative corridors from Merced to Sacramento.

DATES: Written comments on the scope of the Merced to Sacramento HST Project EIR/EIS should be provided to the Authority by 5 p.m., Friday, February 26, 2010. Public scoping meetings are scheduled from January 20, 2010 to January 28, 2010, at the times, dates, and locations listed below.

ADDRESSES: Written comments on the scope of this EIR/EIS should be sent to Mr. Dan Leavitt, Deputy Director, ATTN: Merced to Sacramento HST Project EIR/EIS, California High-Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814, or via e-mail with subject line ''Merced to Sacramento Section'' to: *comments@hsr.ca.gov.* Comments may also be provided orally or in writing at the scoping meetings scheduled at the following locations:

- Stockton, CA, January 20, 2010, from 3 p.m. to 7 p.m., San Joaquin Council of Governments, 555 E. Weber Avenue, Stockton, CA.
- Merced, CA, January 21, 2010, from 3 p.m. to 7 p.m., Merced Senior Center, 755 W. 15th Street, Merced, CA.
- Sacramento, CA, January 27, 2010, from 3 p.m. to 7 p.m., Amtrak Depot, Model Room, 301 I Street, Sacramento, CA.
- Modesto, CA, January 28, 2010, from 3 p.m. to 7 p.m., Modesto Center Plaza, 1000 L Street, Modesto, CA.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein, Environmental Program Manager, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE (Mail Stop 20), Washington, DC 20590 (telephone (202) 493–6368); or Mr. Dan Leavitt, Deputy Director, ATTN: Merced to Sacramento HST Project EIR/EIS, California High-Speed Rail Authority, 925 L Street, Suite 1425, Sacramento, CA 95814 (telephone (916) 324–1541).

SUPPLEMENTARY INFORMATION:

Scoping

The FRA, the Authority, and SJRRC invite all interested individuals, organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should focus on: Alternatives that may be less costly or have fewer environmental or community impacts while achieving similar transportation objectives and the identification of any significant social, economic, or environmental issues related to potential alternatives.

Agency Responsibilities

The Authority was established in 1996 and is authorized and directed by statute to undertake the planning and development of a proposed statewide HST network that is fully coordinated with other public transportation services. The Authority adopted a Final Business Plan in June 2000, which reviewed the economic feasibility of an 800-mile-long HST capable of operating speeds in excess of 200 mph on a mostly dedicated, fully grade-separated state-of-the-art track. The Authority released updated business plans in November 2008, and on December 14, 2009.

The FRA has responsibility for overseeing the safety of railroad operations, including the safety of any proposed high-speed ground transportation system. For the proposed project, FRA may need to take certain regulatory actions prior to operation. The FRA is also authorized to provide Federal funding for intercity passenger rail capital investments through high-speed and intercity passenger rail grant programs created in the Passenger Rail Investment and Improvement Act of 2008.

The SJRRC manages and operates the current Altamont Commuter Express (ACE) service between Stockton and San Jose. The SJRRC and the Authority have signed a Memorandum of Understanding (MOU), which recognizes their mutual interest in the development of this section of the HST System and that establishes SJRRC as a local partner for the development of the Merced to Sacramento HST Project.

Background

In 2005, the Authority and FRA completed the Statewide Program EIR/EIS for the Proposed California High-Speed Train System High-Speed as the first phase of a tiered environmental review process. The Authority certified the Statewide Program EIR under CEQA and approved the proposed HST System. FRA issued a Record of Decision on the Statewide Program EIR/EIS as required under NEPA. The Statewide Program EIR/EIS established the purpose and need for the HST System and compared the proposed HST System with both a No Project/No Action Alternative and a Modal Alternative. In approving the Statewide Program EIR/EIS, the Authority and FRA selected the HST Alternative, selected certain corridors/general alignments and general station locations for further study, incorporated mitigation strategies and design

practices, and specified further measures to guide the development of the HST System during the site-specific project environmental review to avoid and minimize potential adverse environmental impacts. Additional consideration will be given to the potential operation of a regional passenger rail service in this section of the Authority's HST System infrastructure by SJRRC, who may potentially develop additional regional stations for such a service.

The Merced to Sacramento HST Project EIR/EIS will tier from the Statewide Program EIR/EIS and the Bay Area to Central Valley HST Program EIR/EIS in accordance with Council on Environmental Quality (CEQ) regulations, (40 CFR 1508.28), the State CEQA Guidelines (14 California Code of Regulations 15168(b)) and FRA's Procedures for Considering Environmental Impacts (64 FR 28545 (May 26, 1999)). Tiering ensures that the Merced to Sacramento HST Project EIR/EIS builds upon program analysis and decisions made with the Statewide Program EIR/EIS and the Bay Area to Central Valley HST Program EIR/EIS.

The Merced to Sacramento HST Project EIS

The Project EIR/EIS will describe site-specific environmental impacts, identify specific mitigation measures to address those impacts, and will incorporate design features to avoid and minimize potential adverse environmental impacts. The FRA and the Authority will assess the site characteristics, size, nature, and timing of the proposed project to determine whether the impacts are potentially significant and whether impacts can be avoided or mitigated. This Project EIR/EIS will identify and evaluate reasonable and feasible site-specific alignment alternatives, and evaluate the impacts of construction, operation, and maintenance of the HST System. Information and documents regarding this HST environmental review process will be made available through the Authority's Internet site: *http://www.cahighspeedrail.ca.gov/.*

Purpose and Need of the Proposed Project: The purpose of Merced to Sacramento HST Project is to implement the statewide HST System along the corridors selected in program-level documents that will: (1) Link Southern California cities, the Central Valley, Sacramento, and Bay Area; (2) provide a new transportation option that increases mobility throughout California; (3) provide reliable HST service that delivers predictable and consistent travel times using electric powered steel wheel trains; and (4) provide a transportation system that is commercially viable. The need for an HST System is directly related to the expected growth in population, and increases in intercity travel demand in California over the next twenty years and beyond. With the growth in travel demand, there will be an increase in travel delays arising from the growing congestion on California's highways and at its airports. In addition, there will be negative effects on the economy, quality of life, and air quality in and around California's metropolitan areas from an increasingly congested transportation system that will become less reliable as travel demand increases. The intercity highway system, commercial airports, and conventional passenger rail serving the intercity travel market are currently operating at or near capacity, and will require large public investments for maintenance and expansion to meet existing demand and future growth. The proposed HST System is designed to address some of the social, economic and environmental problems associated with transportation congestion in California. In addition to serving a statewide need, the project will consider the viability of sharing track with regionally operated services which may serve additional regional stations (that would not be used by HST trains) located between the HST stations identified on the statewide HST System.

Alternatives: The Merced to Sacramento HST Project EIR/EIS will consider a No Action or No Project Alternative and an HST Alternative for the Merced to Sacramento section.

No Action Alternative: The No Action Alternative (No Project or No Build) represents the conditions in the corridor as it existed in 2009, and as it would exist based on programmed and funded improvements to the intercity transportation system and other reasonably foreseeable projects through 2035, taking into account the following sources of information: the State Transportation Improvement Program (STIP) and Regional Transportation Plans (RTPs) for all modes of travel, airport plans, intercity passenger rail plans, as well as city and county plans.

HST Alternative: The Authority proposes to construct, operate and maintain an electric-powered steel-wheel-on-steel-rail HST System, about 800 miles long, capable of operating speeds of 220 mph on mostly dedicated, fully grade-separated, access controlled tracks, with state-of-the-art safety, signaling, and automated train control systems. As part of the Bay Area to Central Valley HST Program EIR/EIS, the Authority and FRA selected the UPRR railroad alignment through the portion of the Central Valley from Merced to south of Stockton as the preferred alternative. This Project EIR/EIS will also evaluate the BNSF railroad alignment in this part of the Central Valley because of the uncertainty of negotiating with the UPRR for some of their right-of-way. In the Statewide Program EIR/EIS, the Authority and FRA selected the UPRR alignment as the preferred alternative from Stockton to Sacramento. However, because the Statewide Program EIR/EIS concluded that the UPRR alignment has more potential impacts to waters and biological resources than the CCT alignment option, the CCT alignment will also be evaluated in this Project EIR/EIS between Stockton and Sacramento. In the Central Valley, the HST System would operate at speeds up to 220 mph on tracks separate from the existing BNSF and UPRR tracks. Further engineering studies to be undertaken as part of this EIR/EIS process will examine and refine alignments in the BNSF and UPRR corridors. The entire alignment would be grade-separated. In addition, alternative sites for right-of-way maintenance, train storage facilities, and a fleet storage/service and inspection/light maintenance facility in Sacramento will be evaluated. Finally, features necessary to accommodate connections to the Altamont Rail Corridor Project between Stockton and Modesto will be identified and evaluated.

Preferred station locations selected by the Authority and FRA through the Statewide Program EIR/EIS will be evaluated for Sacramento and Stockton. These stations are downtown Sacramento, and downtown Stockton. In addition, the preferred downtown Modesto station location selected by the Authority and FRA through the Bay Area to Central Valley HST Program EIR/EIS on the UPRR alignment and the ''Amtrak Briggsmore'' site on the BNSF alignment will also be evaluated in the Merced to Sacramento HST Project EIR/EIS to serve the Modesto area. The station in Merced will be analyzed in the separate EIR/EIS for the Merced to Fresno section of the HST System. Alternative station sites at or near the selected station locations may be identified and evaluated. Additional regional stations which potentially could be served by regional trains (but not HST services) may also be identified and evaluated.

The EIS Process

The purpose of the EIR/EIS process is to explore in a public setting the potentially significant effects of

implementing the proposed action on the physical, human, and natural environment. The FRA and the Authority will continue the tiered evaluation of all significant environmental, social, and economic impacts of the construction and operation of the Merced to Sacramento Section of the HST System. Areas of investigation will be developed during the scoping process and may include, but not be limited to, transportation impacts; safety and security; land use and zoning; indirect and cumulative impacts; land acquisition, displacements, and relocations; cultural resource impacts, including impacts on historical and archaeological resources and parklands/recreation areas; neighborhood compatibility and environmental justice; natural resource impacts including air quality, wetlands, water resources, noise, vibration, energy, wildlife; and ecosystems, including endangered species and temporary construction impacts. Measures to avoid, minimize, and mitigate adverse impacts will be identified and evaluated.

FRA and the Authority will comply with all environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the CEQ implementing NEPA (40 CFR parts 1500–1508), State CEQA Guidelines (14 California Code of Regulations 15168(b)) and FRA's Procedures for Considering Environmental Impacts (64 FR 28545, May 26, 1999), project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93(b)), Section 404(b)(1) EPA guidelines (40 CFR part 230), Executive Orders 11988, 11990, and 12898 regarding floodplains, wetlands, and environmental justice, respectively, Section 106 of the National Historic Preservation Act (36 CFR part 800), Section 7 of the Endangered Species Act (50 CFR part 402), and Section 4(f) of the Department of Transportation Act (49 USC 303). Measures to avoid, minimize, and mitigate all adverse impacts will be identified and evaluated.

This EIR/EIS process will also continue the NEPA/Clean Water Act Section 404 integration process established through the Statewide Program EIR/EIS process. The EIR/EIS will evaluate project alignment alternatives and station and maintenance facility locations to support a determination of the Least Environmentally Damaging Practicable Alternative (LEDPA) by the U.S. Army Corps of Engineers.

In concert with the spirit of the CEQ's NEPA regulations, FRA will encourage incorporation by reference (40 CFR 1502.21) of preceding planning and environmental documents. Also, it is one of the mandates of the CEQ regulations that Federal agency's reduce paperwork (§ 1500.4), produce a reasonable number of pages without being overwhelming (§ 1502.7) and create environmental documents that are written in plain language and are highly accessible to the reader (§ 1502.8). The NEPA document will emphasize graphics, virtual simulation, and an accessible narrative format. Technical documentation will be established in appendices.

Scoping and Comments: FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. Comments are invited from all interested agencies and the public to ensure the full range of issues related to the proposed action and reasonable alternatives are addressed and all significant issues are identified. In particular, FRA is interested in learning whether there are areas of environmental concern where there might be a potential for significant site-specific impacts from the Merced-Sacramento Section of the HST System. Public agencies with jurisdiction are requested to advise FRA and the Authority of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information germane to the agency's statutory responsibilities relevant to the proposed project. Public agencies are requested to advise FRA if they anticipate taking a major action in connection with the proposed project and if they wish to cooperate in the preparation of the Project EIR/EIS. Public scoping meetings have been scheduled as an important component of the scoping process for both the State and Federal environmental review. The scoping meetings described in this Notice will also be the subject of additional public notification.

FRA is seeking participation and input of all interested Federal, State, and local agencies, Native American groups, and other concerned private organizations or individuals on the scope of the EIR/EIS. Implementation of the Merced to Sacramento Section of the HST System is a Federal undertaking with the potential to affect historic properties. As such, it is subject to the requirements of Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f). In accordance with regulations issued by the Advisory Council on Historic Preservation, 36 CFR part 800, FRA intends to coordinate compliance with Section 106 of this Act with the preparation of the EIR/EIS, beginning with the identification of consulting parties through the scoping process, in a manner consistent with the standards set out in 36 CFR 800.8.

Issued in Washington, DC on December 23, 2009.

Paul Nissenbaum,

Director, Office of Passenger and Freight Programs, Federal Railroad Administration.

[FR Doc. E9–30963 Filed 12–29–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 23, 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 29, 2010 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0140.

Type of Review: Revision of a currently approved collection.

Title: Form 2210, Underpayment of Estimated Tax by Individuals, Estate, and Trusts; Form 2210–F, Underpayment of Estimated Tax by Farmers and Fishermen.

Form: 2210.

Description: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. These forms are used by taxpayers to determine whether they are subject to the penalty and to compute the penalty if it applies. The Service uses this information to determine whether the taxpayer is subject to the penalty, and to verify the penalty amount.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 2,405,663 hours.

OMB Number: 1545–1276.

Type of Review: Extension of a currently approved collection.

Title: FI–88–86 (Final) Real Estate Mortgage Investment Conduits (TD 8458).

Description: Section 860E(e) imposes an excise tax on the transfer of a residual interest in a REMIC to a disqualified party. The tax must be paid by the transferor of a pass-thru entity of which the disqualified party is an interest holder.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 525 hours.

OMB Number: 1545–1680.

Type of Review: Extension of a currently approved collection.

Title: United States Additional Estate Tax Return Under Code Section 2057.

Form: 706–D.

Description: Form 706–D is used by individuals to compute and pay the additional taxes due under Code section 2057. IRS uses the information to determine that the taxes have been properly computed.

Respondents: Individuals or households.

Estimated Total Burden Hours: 530 hours.

OMB Number: 1545–1693.

Type of Review: Extension of a currently approved collection.

Title: Form 8871, Political Organization Notice of Section 527 Status; Form 8453–X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.

Form: 8871, 8453–X.

Description: Internal Revenue Code section 527, as amended by Public Law 106–230 and Public Law 107–276, requires certain political organizations to provide information to the IRS regarding their name and address, their purpose, and the names and addresses of their officers, highly compensated employees, board of directors, and any related entities (within the meaning of section 168(h)94). Forms 8871 and 8453–X are used for this purpose.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 35,195 hours.

OMB Number: 1545–1846.

Type of Review: Extension of a currently approved collection.

Title: Revenue Procedure 2003–48, Update of Checklist Questionnaire Regarding Requests for Spin-Off Rulings.

Description: This revenue procedure updates Rev. Proc. 96–30, which sets forth in a checklist questionnaire the information that must be included in a request for ruling under section 355. This revenue procedure updates information that taxpayers must provide in order to receive letter rulings under section 355. This information is required to determine whether a taxpayer would qualify for non-recognition treatment.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 36,000 hours.

OMB Number: 1545–2004.

Type of Review: Extension of a currently approved collection.

Title: Deduction for Energy Efficient Commercial Buildings.

Description: This notice sets forth a process that allows the owner of energy efficient commercial building property to certify that the property satisfies the requirements of Section 179D(c)(1) and (d). This notice also provides a procedure whereby the developer of computer software may certify to the Internal Revenue Service that the software is acceptable for use in calculating energy and power consumption for purposes of Section 179D of the Code.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 3,761 hours.

OMB Number: 1545–2017.

Type of Review: Extension of a currently approved collection.

Title: Notice 2006–46 Announcement of Rules to be included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.

Description: This notice announces that the IRS and Treasury Department will leave final regulations under section 897(d) and (e) of the Internal Revenue Code that will revise the rules under Temp. Treas. Reg. Sec. 1.897–5T, Notice 89–85, and Temp. Treas. Reg. Sec. 1.897–6T to take into account statutory mergers and consolidations under foreign or possessions law which may now qualify for non-recognition treatment under section 368(a)(1)(A). The specific collections of information are contained in Temp. Treas. Reg. Subsection 1.897–5T(c)(4)(II)(C) and 1.897–6T(b)(1). These reporting requirements notify the IRS of the transfer and enable it to verify that the transferor qualified for non-recognition and that the transferee will be subject to U.S. tax on a subsequent disposition of the U.S. real property.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1545–2018.

Type of Review: Extension of a currently approved collection.

Title: Revenue Procedure 2006–31, Revocation of Election filed under I.R.C. 83(b).

Description: This revenue procedure sets forth the procedures to be followed by individuals who wish to request permission to revoke the election they made under section 83(b).

Respondents: Individuals or Households.

Estimated Total Burden Hours: 400 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.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–30896 Filed 12–29–09; 8:45 am]

BILLING CODE 4810–01–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Alteration of a Privacy Act System of Records Notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Bureau of Engraving and Printing (BEP) is publishing an alteration of its Privacy Act systems of records entitled ''Treasury/BEP .006—Debt Files (Employees).''

DATES: Comments must be received no later than January 29, 2010. The new systems of records will be effective February 8, 2010 unless BEP receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Clifford Daly, Attorney-Advisor, Office of the Chief Counsel, Bureau of Engraving and Printing, Washington, DC 20228. Comments will be made available for inspection upon written request. The Department will make such comments available for public inspection and copying at BEP, Room 419–A, Bureau of Engraving and Printing, Washington, DC 20228, on

official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning 202–874–2500. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Clifford Daly, Attorney-Advisor, Office of the Chief Counsel, Bureau of Engraving and Printing, Washington, DC 20228 at 202–874–2630.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, the Bureau of Engraving and Printing (BEP) completed a review of its Privacy Act system of records notice. As a result of the review BEP is proposing to add two new routine uses to BEP .006 to assist BEP to perform necessary functions such as (1) to maintain records about individuals who owe debt(s) to the United States, through one or more of its departments and agencies, and/or to individuals, including past due support enforced by states and (2) for the purpose of taking action to facilitate the collection and resolution of the debt(s) using various collection methods, including, but not limited to, offset, levy, administrative wage garnishment.

The proposed routine uses are as follows:

(1) These records may be used to disclose information to a court of competent jurisdiction, an authorized official or authorized state agency as defined in 5 CFR parts 581 and 582, or a party to a garnishment action, in response to legal process, including interrogatories, served on the Bureau of Engraving and Printing in connection with garnishment proceedings against a current or former employee, and

(2) These records may be used to provide information to private creditors for the purpose of garnishment of wages of an employee if a debt has been reduced to a judgment.

The report of the altered systems of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The system of records notice was last published in its entirety on June 29, 2009, at 74 FR 31092. The proposed alterations to ''Treasury/BEP .006—Debt Files (Employees)'' are set forth below.

Treasury/BEP .006

SYSTEM NAME:

Debt Files (Employees)—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * *

Description of change: The period ''.'' at the end of routine use (9) is replaced with a semicolon '';'', and the following routines uses are added in numerical order at the end thereof:

''(10) Disclose information to a court of competent jurisdiction, an authorized official or authorized state agency as defined in 5 C.F.R. parts 581 and 582, or a party to a garnishment action, in response to legal process, including interrogatories, served on the Bureau of Engraving and Printing in connection with garnishment proceedings against a current or former employee;

''(11) These records may be used to provide information to private creditors for the purpose of garnishment of wages of an employee if a debt has been reduced to a judgment.''

* * * * *

Dated: December 17, 2009.

Melissa Hartman,

Acting Deputy Assistant Secretary for Privacy and Treasury Records.

[FR Doc. E9–30894 Filed 12–29–09; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0737]

Agency Information Collection (eBenefits Portal) Activity Under OMB Review

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Office of Information and Technology, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before January 29, 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. 2900–0737'' 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. 2900–0737.''

SUPPLEMENTAL INFORMATION:

Title: eBenefits Portal.

OMB Control Number: 2900–0737.

Type of Review: Extension of a currently approved collection.

Abstract: The eBenefits portal, a joint project between the VA and DoD, is intended to serve as a single point of entry for benefits information. Users include members of the armed forces, veterans, wounded warriors, family members, delegates, and caregivers. Users wishing to access the full functionality of the eBenefits portal will register for a single sign-on credential that will ultimately be shared by other VA and DoD portals. The eBenefits portal allows authenticated users to create profiles for themselves so they can see a customized view of their homepage, receive personalized alerts, view a calendar of appointments, view content related to their benefits, and opt into other individualized features. Profiles will initially be populated with data from the existing Defense Enrollment Eligibility Reporting database, but will also offer users the option to indicate preferences and individual details that will enable the portal to deliver personalized information.

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 23, 2009, at page 54882.

Affected Public: Individuals or Households.

Estimated Annual Burden: 225,000 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 270,000.

Dated: December 23, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–30834 Filed 12–29–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
December 30, 2009

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2009–0028; FRL–9095–1]

RIN 2060–AN46

National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating national emissions standards for control of hazardous air pollutants (HAP) from the chemical preparations area source category. These final emissions standards for new and existing sources reflect EPA's final determination regarding the generally available control technology or management practices (GACT) for the source category.

DATES: This final rule is effective on December 30, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0028. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in http://www.regulations.gov or in hard copy at the Area Source NESHAP for Chemical Preparations Manufacturing Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Johnson, Outreach and Information Division, Office of Air Quality Planning and Standards (C404–05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5124; fax number: (919) 541–0242; e-mail address: *johnson.warren@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

I. General Information
A. Does This Action Apply to Me?
B. Where Can I Get a Copy of This Document?
C. Judicial Review
II. Background Information for This Final Rule
III. Summary of Changes Since Proposal
IV. Summary of Final Standards
A. Do the Final Standards Apply to My Source?
B. When Must I Comply With the Final Standards?
C. What Are My Final Standards?
D. What Are My Initial and Continuous Monitoring Requirements?
E. What Are My Notification, Recordkeeping, and Reporting Requirements?
F. What Are the Title V Permit Requirements?
V. Summary of Comments and Responses
A. Source Category Listing and Applicability
B. Alternative Standards
C. GACT Limits
D. Initial Compliance
E. Continuous Monitoring, Inspections and Reporting
F. Title V Permitting
G. Cost Impacts
H. Miscellaneous
VI. Impacts of the Final Standards
A. What Are the Air Impacts?
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VII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
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D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

A. Does this Action Apply to Me?

The regulated category and entities potentially affected by the final standards include:

Category	NAICS code [1]	Examples of regulated entities
All other miscellaneous chemical product and preparation manufacturing.	325998	Area source facilities that manufacture chemical preparations containing metal compounds of chromium, lead, manganese, or nickel, except for manufacturers of indelible ink, India ink, writing ink, and stamp pad ink. Chemical preparations include, but are not limited to, fluxes, water treatment chemicals, rust preventatives and plating chemicals, concrete additives, gelatin, and drilling fluids.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Chemical preparation operations described by the NAICS code 325998 that manufacture indelible ink, India ink, writing ink, and stamp pad ink are subject to area source regulations for paints and allied products (40 CFR Subpart CCCCCCC). *See* 40 CFR 63.11599. Therefore, chemical preparation operations that manufacture indelible ink, India ink, writing ink or stamp pad ink, or any combination thereof, are subject to the paints and allied products area source rule and those operations must comply all applicable requirements specified in Subpart CCCCCCC. Such operations are not subject to the final chemical preparations area source rule. To determine whether operations at your facility are regulated by this action, you should examine the applicability criteria in 40 CFR 63.11579 of subpart BBBBBBB (NESHAP for Area Sources: Chemical Preparations Industry). If you have any questions regarding the applicability of this action to a particular entity or operations at your

facility, consult either the delegated authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where Can I Get a Copy of This Document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly final or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by March 1, 2010. Under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

II. Background Information for This Final Rule

Section 112(d) of the CAA requires EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of hazardous air pollutants (HAP) that are listed for regulation under CAA section 112(c). A major source emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

Section 112(k)(3)(B) of the CAA calls for EPA to identify at least 30 HAP that, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy (64 FR 38715, July 19, 1999). Specifically, in the Integrated Urban Air Toxics Strategy, EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) requires EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. We also implemented these requirements through the Integrated Urban Air Toxics Strategy. A primary goal of the Integrated Urban Air Toxics Strategy is to achieve a 75 percent reduction in cancer incidence attributable to HAP emitted from stationary sources.

Under CAA section 112(d)(5), we may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technology or management practices (GACT) by such sources to reduce emissions of hazardous air pollutants.'' Additional information on GACT is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories, like this one, that have almost 40 percent of firms classified as small businesses according to the Small Business Administration (SBA) standards in 13 CFR 121.201. For this source category, small businesses are defined as those with fewer than 500 employees.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices employed by those sources are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category being considered. Finally, as noted above, in determining GACT for a particular category of area sources, we consider the costs and economic impacts of using available control technologies and management practices on sources in that category.

We are promulgating these national emission standards in response to a court-ordered deadline that requires EPA to sign final rules establishing emission standards for two source categories listed pursuant to section 112(c)(3) and (k) by December 16, 2009 (*Sierra Club* v. *Johnson,* no. 01–1537, D.D.C., March 2006). We intend to publish a separate rulemaking in the **Federal Register** for the other source category due in December 2009.

III. Summary of Changes Since Proposal

The final rule contains several revisions and clarifications to the proposed rule in response to public comments. We explain the reasons for the following changes in detail in the summary of comments and responses (section V of this preamble):

- Revised the definition of chemical preparation to mean a target HAP-containing product, or intermediate used in the manufacture of other products, manufactured in a process operation described by the NAICS code 325998 if the operation manufactures target HAP-containing products or intermediates other than indelible ink, India ink, writing ink, and stamp pad ink. Indelible ink, India ink, writing ink, and stamp pad ink manufacturing operations are subject to regulation under the paints and allied products area source rule (40 CFR part 63, subpart CCCCCCC), not this rule.
- Revised the emission standard for existing sources to include an

alternative standard of 0.03 grains per dry standard cubic foot (gr/dscf) particulate matter (PM) concentration at the outlet of the control device as an alternative to routing process vent streams to a control device with a 95 percent PM reduction efficiency.

• Added standards for new sources that require either routing process vent streams to a control device with a 98 percent PM efficiency or meeting the 0.03 gr/dscf alternative standard mentioned above.

• Revised the standards to include a mechanism that allows sources (which in these standards means the collection of emission points from chemical preparations operations) to demonstrate and certify that the process vent streams in the chemical preparation operations at the facility will not exceed PM concentrations of 0.03 gr/dscf. This revision is intended to significantly reduce monitoring, recordkeeping and reporting requirements for sources that have, or can establish, very small process emissions.

• Revised the monitoring requirements to provide options for the use of bag leak detection systems, audible parameter monitor alarm systems, or a continuous parameter monitoring system (CPMS). We also removed the use of a continuous emissions monitoring systems (CEMS) as an alternative to a CPMS, since we are unaware of any existing chemical preparations area sources currently using CEMS to monitor PM emissions, and do not expect any sources to operate a CEMS system to monitor compliance with the final standards (*see* discussion in section V.E.).

• Clarified the averaging requirements for sources using a CPMS so that the average is calculated on the basis of either a 24-hour rolling period or a batch period (*i.e.,* the period that equipment is processing a batch of target HAP-containing materials), whichever is less.

• Revised the reporting requirements to require only annual reporting if no deviations occur, but semiannual reporting if a deviation occurred within the reporting period.

• Modified the inspection requirements for vent collection system ductwork that is difficult or dangerous to access.

• Revised the definition of ''responsible official'' to make it easier for sources to identify the appropriate person at a chemical preparations facility.

• Corrected a typographical error in Table 2 to specify that the PM test method is Method 5, not 5A.

• Corrected a typographical error in § 63.11585 where there were two paragraphs identified as paragraph (b).

• Clarified the definition of ''chemical preparation'' to specify that it applies to target HAP-containing products or intermediates.

• Revised the definition of ''target HAP-containing'' to clarify separate minimum concentration levels for trivalent and hexavalent chromium compounds.

IV. Summary of Final Standards

A. Do the Final Standards Apply to My Source?

The final subpart BBBBBBB standards apply to each existing and new area source chemical preparations facility, as defined in the final rule. The standards do not apply to research or laboratory facilities, as defined in section 112(c)(7) of the CAA. They also do not apply to chemical preparation operations described by the NAICS code 325998 that manufacture indelible ink, India ink, writing ink, and stamp pad ink, which are subject to area source regulations for paints and allied products (40 CFR part 63, Subpart CCCCCCC).

B. When Must I Comply With the Final Standards?

All existing area source facilities subject to this final rule are required to comply with the rule requirements no later than December 30, 2010. New sources are required to comply with the rule requirements by December 30, 2009 or upon startup of the facility, whichever is later.

Because the majority of existing sources in this category are already well-controlled, we believe that one year is a reasonable amount of time to allow existing sources to conduct compliance demonstrations and prepare the initial reports required for compliance with the final rule.

C. What Are My Final Standards?

As we explained in the proposed rule, PM is a surrogate for the target HAP (*i.e.,* metal compounds of chromium, lead, manganese, and nickel). The final standards for existing sources require process vent streams from chemical manufacturing processes with equipment that uses, contains or contacts target HAP to either be routed to a control device with a 95 percent PM reduction efficiency or to meet an outlet concentration of 0.03 gr/dscf, with or without control. For new sources the final standards require these process vent streams to either be routed to a control device with a 98 percent PM reduction efficiency or the process vent stream must meet an outlet concentration of 0.03 gr/dscf, with or without control. On a process by process basis, if an existing source can demonstrate and certify that the PM concentration of each of the process vent streams from equipment that uses, contains or contacts target HAP within a chemical preparation operation will not exceed 0.03 gr/dscf, then the source is not required to route the process vent streams to a control device with a 95 percent PM reduction efficiency. The final rule includes appropriately reduced recordkeeping and reporting requirements for sources that can comply with the 0.03 gr/dscf alternative standard without the use of a control device.

D. What Are My Initial and Continuous Monitoring Requirements?

The final standards require an initial compliance assessment that process vent streams are either being routed to a control device with a 95 percent (98 percent for new sources) PM reduction efficiency or with an outlet PM concentration of 0.03 gr/dscf, or a certification that process vent streams from equipment that either contains, contacts, or is processing target HAP-containing materials will not exceed a PM concentration of 0.03 gr/dscf. The owner and operator must also establish parameter values (*e.g.,* liquid flow or pressure drop) for the control device that will be monitored to demonstrate continuous compliance or must install a bag system leak detection system or audible parameter monitoring alarm which indicates failure of the particulate control system.

The rule provides alternatives for demonstrating initial compliance. Specifically, initial compliance assessments to determine whether the PM percent reduction standard or outlet concentration standard are being met may consist of performance testing, control device manufacturer performance guarantees, or engineering calculations. Sources that opt to demonstrate and certify that the PM concentration of each of the process vent streams from equipment that either contains, contacts, or is processing target HAP-containing materials within a chemical preparation operation will not exceed 0.03 gr/dscf must provide either emission test data or engineering calculations to support their certification.

For existing sources, the final standards require owners or operators to conduct the initial compliance assessment by June 28, 2011. Owners or operators of new sources are required to

conduct compliance assessments by June 28, 2010 or 180 days after startup, whichever is later.

The rule provides alternative for demonstrating continuous compliance. Continuous compliance with the final emission limits is demonstrated by monitoring control device operating parameters established during the initial compliance assessment or with a bag leak detector system. For an existing source that opts to use a CPMS, the final standards for demonstrating continuous compliance are based upon an overall average per batch or over 24 hours, whichever is less, when the equipment either contains, contacts, or is processing target HAP-containing materials. As alternatives to a CPMS, sources must install either a bag leak detection system, such as a triboelectric monitor and alarm, or a parameter monitor alarm that will alert operators of periods when the device parameters (such as pressure drop or scrubber liquid flow rate) are outside the operating upper or lower threshold or range specified by the control device manufacturer.

In the final rule, sources certifying that the particulate matter concentration of each of the process vent streams from equipment that uses, contains or contacts target HAP within a chemical preparation operation will not exceed 0.03 gr/dscf have appropriately reduced duct collection system inspection requirements to ensure that the basis for the grain loading does not change. In addition, they must record material loss information that supports their certification for each subsequent quarter and must continue to operate in accordance with their certifications.

E. What Are My Notification, Recordkeeping, and Reporting Requirements?

Affected new and existing sources are required to comply with certain reporting requirements set forth in this final rule as well as certain requirements set forth in the General Provisions (40 CFR part 63, subpart A), as identified in Tables 5 and 6 of this final rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting. Among other requirements, each facility is required to submit an initial notification that complies with the requirements in 40 CFR 63.9(b) of the General Provisions within 120 days of the effective date of the final rule and a notification of compliance status that complies with the requirements in 40 CFR 63.9(h) within 60 days after completion of the initial compliance assessment. Sources must keep records to identify periods when equipment contains, contacts, or is processing target HAP-containing materials, as well as records of control device performance guarantees, inspections and monitoring system calibrations for CPMS, if applicable. Facilities are also required to submit semi-annual compliance summary reports if a deviation occurs within the reporting period. If no deviation occurs, then annual compliance summary reports must be submitted.

Sources certifying that the particulate matter concentration of each of the process vent streams from equipment that either contains, contacts, or is processing target HAP-containing materials within a chemical preparation operation will not exceed 0.03 gr/dscf have appropriately reduced recordkeeping and reporting requirements.

F. What Are the Title V Permit Requirements?

This final rule exempts the chemical preparations manufacturing area source category from title V permitting requirements unless the affected source is otherwise required by law to obtain a title V permit. For example, sources that have title V permits because they are major sources under the criteria pollutant program would maintain those permits.

V. Summary of Comments and Responses

During the comment period on the proposed rule, we received eleven comment letters, which were submitted by industry, small business environmental assistance programs and environmental advocacy groups. Sections V.A. through V.H. summarize some of the more significant comments and explain our response. For comment summaries and responses not addressed in this preamble, *see* the response to comment document in the docket for this rule, Docket ID No. EPA–HQ–OAR–2009–0028.

A. Source Category Listing and Applicability

Comment. Several commenters contended that EPA did not provide the opportunity to comment on the addition of the chemical preparations source category to the area source category list and that chemical preparations should not be regulated as a source category per sections 112(c)(3) and 112(k)(3)(B)(ii) of the CAA.

Response. We listed the chemical preparations source category on November 22, 2002, under CAA section 112(c)(3) in one of a series of amendments (67 FR 70427) to the original source category list included in the 1999 Integrated Urban Air Toxics Strategy, for which there was opportunity to comment. We included this source category on the section 112(c)(3) area source category list, based upon emissions data for the 1990 baseline year, for its contribution toward meeting the CAA section 112(c)(3)'s requirement that we list sufficient categories and subcategories of sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under CAA section 112. The chemical preparations area source category was listed for its contributions toward meeting the 90 percent requirement for compounds of chromium, manganese, lead and nickel. The commenters in this case were concerned that this source category would overlap with other source categories for which they are subject. The overlap concerns are addressed in the following comment response.

Comment. Several commenters contended that the chemical preparations area source category as defined in the proposed rule overlaps with the chemical manufacturing and paint and allied products source categories and advocated that the applicability of the rule be further clarified to avoid confusion regarding which area source regulation applies to a particular operation.

Response. When the chemical preparations area source category was initially listed, it was identified as consisting of facilities covered by standard industrial classification (SIC) code 2899. We subsequently moved to the use of North American Industrial Classification System (NAICS) codes, rather than SIC codes, to identify the types of facilities included in a particular area source category. SIC codes are translated to NAICS codes using the U.S. Census Bureau's ''bridge''. The ''bridge'' correlates the four-digit SIC code to the corresponding six-digit NAICS code or codes. As discussed in the background information document for the proposal (*See* Docket EPA–HQ–OAR–2009–0028), under the ''bridge'' the 2899 SIC code translates to four separate NAICS codes (311942—Spice and extract manufacturing, 325199—All other basic organic chemical manufacturing, 325510—Paint and coating manufacturing, 325998—All other miscellaneous chemical product and preparation manufacturing). As a result,

at the time of proposal, we believed that it was possible for the chemical preparations source category to consist of operations that could be classified under one of these four possible North American Industrial Classification System (NAICS) codes, depending on the product or intermediate the operation was producing. In the proposed rule, we, therefore, identified all four categories as potentially containing sources subject to the chemical preparations area source rule. Based on comments we received on the proposal, however, we now recognize that the chemical preparations area source category as listed consists exclusively of sources classified by NAICS code 325998. (For a more detailed discussion of the circumstances, *see* the final technical support document included in the docket for this final rule.) We also realized that the NAICS code 311942, spice and extract manufacturing, is not a source of target HAP emissions, since operations conducted at facilities included in that NAICS code produce table salt and other food products. In addition, we have determined that sources in NAICS code 325999 are subject to the chemical manufacturing area source rule (40 CFR part 63, subpart VVVVVV) and that sources in NAICS code 325510 are subject to the paint and allied products area source rule (40 CFR part 63, subpart CCCCCCC). For these reasons, this final rule only applies to facilities classified by NAICS code 325998. (40 CFR 63.11579 and 63.11588.) Based on these comments, we also recognized that even within the 325998 NAICS code there was some overlap with the paint and allied products area source rule (40 CFR part 63, subpart CCCCCCC). Specifically, we recognized that sources in the 325998 NAICS code that manufacture indelible ink, India ink, writing ink, and stamp pad ink are subject to regulation under the paint and allied products area source rule. (40 CFR 63.11599) Operations at sources in the 325998 NAICS code that manufacture indelible ink, India ink, writing ink, or stamp pad ink, or any combination thereof, are, therefore, not subject to this final rule. (40 CFR 63.11579 and 63.11588.)

To facilitate these changes, the definition of ''chemical preparation'' in the final rule has been revised to read as follows:

Chemical preparation means a target HAP-containing product, or intermediate used in the manufacture of other products, manufactured in a process operation described by the NAICS code 325998 if the operation manufactures target HAP-containing products or intermediates other than indelible ink, India ink, writing ink, and stamp pad ink. Indelible ink, India ink, writing ink, and stamp pad ink manufacturing operations are subject to regulation by the paints and allied products area source rule (40 CFR part 63, subpart CCCCCCC).

B. Alternative Standards

Comment. Several commenters asked questions regarding whether their operations were subject to the rule and, presuming their operations were subject, expressed support for including an alternative compliance option based on a PM concentration. One commenter described an operation where liquids containing target HAP compounds were mixed in a closed tank. According to the commenter, PM matter is not emitted from this mixing operation. The commenter further stated that demonstrating 95 percent control would be difficult, since there were no discernable PM emissions from this operation.

Response. We agree with the commenter, and have added an alternative standard of 0.03 gr/dscf PM concentration to the final rule. Sources may either meet the requirement to route the process vent stream to a control device with a 95 percent PM reduction efficiency or the 0.03 gr/dscf PM concentration standard. Furthermore, sources demonstrating and providing a certification statement that each of the process vent streams from equipment that either contains, contacts, or is processing target HAP-containing materials within a chemical preparation operation will not exceed 0.03 gr/dscf have appropriately reduced reporting, recordkeeping and inspection requirements (to ensure that the basis for the PM concentration certification does not change).

C. GACT Limits

Comment. One commenter contends that, ''EPA failed to calculate any potential HAP reductions from the proposed rule, because the proposed rule will not actually lead to any reductions.'' The commenter believes that the proposed rule is '' * * * to preserve the status quo * * *'' and that the level of control currently in place is the accepted level of control.

Response. The commenter does not challenge any aspect of EPA's proposed GACT determination for this area source category. Instead, the commenter makes a blanket assertion that EPA is not acting consistently with the purposes of the area source provisions in the CAA (*i.e.,* sections 112(c)(3) and 112(k)(3)(B)), because it is not requiring emission reductions beyond the level that is currently being achieved from this well-controlled source category. In support of this assertion, the commenter compares the requirements in the proposed rule to the area source category's current emission and control status. Such a comparison is flawed.

Congress promulgated the relevant CAA area source provisions in 1990 in light of the level of area source HAP emissions at that time. Congress directed EPA to identify not less than 30 HAP which, as a result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories to ensure that area sources representing 90 percent of the 30 HAP listed are subject to regulation. As explained in the Integrated Urban Air Toxics Strategy, EPA based its listing decisions on the baseline National Toxics Inventory (NTI) that the Agency compiled for purposes of implementing its air toxics program after the 1990 CAA Amendments (64 FR 38706, 38711, n.10). The baseline NTI reflected HAP emissions from chemical preparations manufacturing area sources in 1990. Thus, contrary to the commenter's suggestion, the relevant emission level for comparison is the emission level reflected in our baseline NTI, not the current emission level.

Furthermore, in promulgating the area source provisions in the CAA, Congress did not require EPA to issue area source standards that must achieve a specific level of emission reduction. Rather, Congress authorized EPA to issue standards under section 112(d)(5) for area sources that reflect GACT for the source category. To qualify as being generally available, a GACT standard would most likely be an existing control technology or management practice: ''[A]n equipment standard would require neighborhood dry cleaning establishments to employ the commercially available systems associated with the lowest *measured* emissions * * *. S. Rep. 101–128, at 171–172 (emphasis added). Thus, it is both reasonable and consistent with Congressional intent that the GACT-based standards being finalized today codify the use of the existing effective PM control approach being used by sources in the category. For all of these reasons, this final rule is consistent with sections 112(c)(3), 112(k)(3)(B), and 112(d)(5).

Comment. One commenter asserted that, although section 112(d)(5) does authorize EPA to issue GACT standards in lieu of maximum achievable control

technology (MACT) standards, the Agency's decision to do so is subject to familiar administrative law requirements. The commenter maintained that to be non-arbitrary, the decision must—at a minimum—be supported by a rational explanation. The commenter stated that EPA has provided no explanation whatsoever for its apparent decision to issue GACT standards instead of MACT standards and, for this reason alone, its decision is arbitrary and capricious.

The commenter stated that EPA's decision to issue GACT standards pursuant to CAA section 112(d)(5), instead of MACT standards pursuant to section 112(d)(2) and (3), is arbitrary and capricious because EPA provided no rationale for its decision to issue GACT standards. The commenter also claimed that the proposed standards are based solely on cost and are thus unlawful and arbitrary. The commenter claims that CAA section 112(d)(5) does not direct EPA to set standards based on what is cost effective; rather, according to the commenter EPA must establish GACT based on the ''methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts.'' The commenter stated that, because cost effectiveness is not relevant under CAA section 112(d)(5), the reliance on cost effectiveness as the sole determining factor in establishing GACT renders the proposed standards unlawful.

Response. As the commenter recognizes, in section 112(d)(5), Congress gave EPA explicit authority to issue alternative emission standards for area sources. Specifically, section 112(d)(5), which is titled, ''Alternative standard for area sources,'' provides:

> With respect only to categories and subcategories of area sources listed pursuant to subsection (c) of this section, the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f) of this section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants. *See* CAA section 112(d)(5).

There are two critical aspects to section 112(d)(5). First, section 112(d)(5) applies only to those categories and subcategories of area sources listed pursuant to section 112(c). The commenter does not dispute that EPA listed the chemical preparations area source category pursuant to section 112(c). Second, section 112(d)(5) provides that, for area sources listed pursuant to section 112(c)(3), EPA ''may, in lieu of'' the authorities provided in section 112(d)(2) and 112(f), elect to promulgate standards pursuant to section 112(d)(5).

Section 112(d)(2) provides that emission standards established under that provision ''require the maximum degree of reduction in emissions'' of HAP (also known as MACT). Section 112(d)(3), in turn, defines what constitutes the ''maximum degree of reduction in emissions'' for new and existing sources. *See* section 112(d)(3). Webster's dictionary defines the phrase ''in lieu of'' to mean ''in the place of'' or ''instead of.'' *See* Webster's II New Riverside University (1994). Thus, section 112(d)(5) authorizes EPA to promulgate standards under section 112(d)(5) that provide for the use of GACT, instead of issuing MACT standards pursuant to section 112(d)(2) and (d)(3). The statute does not set any condition precedent for issuing standards under section 112(d)(5) other than that the area source category or subcategory at issue must be one that EPA listed pursuant to section 112(c)(3), which is the case here.

The commenter argues that EPA must provide a rationale for issuing GACT standards under section 112(d)(5), instead of MACT standards. The commenter is incorrect. Had Congress intended that EPA first conduct a MACT analysis for each area source category, Congress would have stated so expressly in section 112(d)(5). Congress did not require EPA to conduct any MACT analysis, floor analysis or beyond-the-floor analysis before the Agency could issue a section 112(d)(5) standard. Rather, Congress authorized EPA to issue GACT standards for area source categories listed under section 112(c)(3), and that is precisely what EPA has done in this rulemaking.

Although EPA need not justify its exercise of discretion in choosing to issue a GACT standard for an area source listed pursuant to section 112(c)(3), EPA still must have a reasoned basis for the GACT determination for the particular area source category. The legislative history supporting section 112(d)(5) provides that GACT is to encompass:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems. *See* Senate Report on the 1990 Amendments to the Act (S. Rep. No. 101–228, 101st Cong. 1st session. 171–172). The discussion in the Senate report clearly provides that EPA may consider costs in determining what constitutes GACT for the area source category.

Congress plainly recognized that area sources differ from major sources, which is why Congress allowed EPA to consider costs in setting GACT standards for area sources under section 112(d)(5), but did not allow that consideration in setting MACT floors for major sources pursuant to section 112(d)(3). This important dichotomy between section 112(d)(3) and section 112(d)(5) provides further evidence that Congress sought to do precisely what the title of section 112(d)(5) states—provide EPA the authority to issue ''[a]lternative standards for area sources.''

Notwithstanding the commenter's claim, EPA properly issued standards for the area source category at issue here under section 112(d)(5) and in doing so provided a reasoned basis for its selection of GACT for the chemical preparations area source category. As explained in the proposed rule and below, EPA evaluated the control technologies and management practices that reduce PM emissions at chemical preparations manufacturing facilities. In its evaluation, EPA used information from industry contacts and reviewed operating permits to identify the emission controls and management practices that are currently used to control PM emissions.

In our evaluation, we determined that all of the chemical preparations operations are currently controlled with either a fabric filter or wet scrubber.

The commenter further argues that EPA inappropriately chose GACT based solely on costs, and, according to the commenter, cost is not relevant to GACT determinations and as such the standards are unlawful. We disagree. Contrary to the commenter's assertions, the Agency's consideration of cost effectiveness in establishing GACT and the Agency's views on what is a cost effective requirement under section 112(d)(5) are relevant. The U.S. Court of Appeals for the DC Circuit has stated that cost effectiveness is a reasonable measure of cost as long as the statute does not mandate a specific method of determining cost. *See Husqvarna AB* v. *EPA,* 254 F.3d 195, 201 (DC Cir. 2001) (finding that EPA's decision to consider costs on a per ton of emissions removed basis is reasonable because CAA section 213 did not mandate a specific method of cost analysis).

The commenter also failed to provide any information indicating that our cost-effectiveness determinations were unreasonable and, likewise, failed to provide any information concerning the

economic impacts associated with requiring the standards that the commenter suggests represent GACT. The commenter appears to take issue with the manner in which the Agency establishes GACT but provides no alternative approach, instead only attacking the Agency's consideration of cost (*i.e.,* cost-effectiveness) as a consideration in the establishment of GACT. The Agency proposed GACT standards for the chemical preparations area source category that were established consistent with the requirements of CAA section 112(d)(5).

Finally, even though not required, EPA did provide a rationale for why it set a GACT standard in the proposed rule. In the proposal, we explained that the facilities in the chemical preparations area source category at issue here are already well controlled for the urban HAP for which the source category was listed pursuant to section 112(c)(3). *See* 74 FR 39018 through and 39019. Consideration of costs and economic impacts is especially important for the well-controlled area sources at issue in this final action. Given the current, well-controlled emission levels, a MACT floor determination, where costs cannot be considered, could result in only marginal reductions in emissions at very high costs for the area source category.

D. Initial Compliance

Comment. Several commenters contended that EPA proposed a very short compliance deadline for existing sources—only one year from issuance of the final rule. The commenters argue that the proposed one-year compliance deadline is premised upon EPA's assumption, which they do not agree with, that sources will not have to install or modify air pollution control or monitoring equipment to meet the standards.

Response. We generally disagree, particularly when additional flexibilities included in the final rule are considered. The comment appears to be premised on an incorrect assumption that new control devices will need to be installed to comply with the PM emission limits. We continue to believe that additional add-on controls will not be needed to comply with the final GACT standards, particularly since we revised the proposed GACT limits by providing an alternative PM concentration limit. Likewise, we have revised the proposed monitoring requirements by providing compliance alternatives for existing and new facilities. Sources may use a CPMS, a bag leak detection system or a parameter monitor alarm system that notifies the operator when the device is operating outside the manufacturer's recommended range. A bag leak detection system or parameter monitor alarm systems are significantly less complicated to install and operate than a CPMS and provide a comparable level of assurance that the source is operating in compliance with applicable requirements. Sources that already operate CPMS have the option of continuing to use their existing system to demonstrate compliance. Consequently, we believe that the proposed compliance deadline of 1 year is adequate.

E. Continuous Monitoring, Inspections and Reporting

Comment. One commenter stated that CEMS are not applicable to small chemical preparations operations.

Response. We agree with the commenter that current permit data do not support requiring CEMS for existing sources. The final rule does not contain any CEMS requirements.

Comment. Several commenters contended that the use of CPMS was uncommon at existing chemical preparations facilities, and that the costs of installing these systems were not accounted for in the proposed rule.

Response. We agree that requiring CPMS installation and operation for existing sources that do not already utilize such a system to monitor their control device's performance may not be economically feasible based upon data from the commenters. As a result, we have revised the rule so that existing and new sources can demonstrate continuous compliance through the use of any of the following: (1) A CPMS; (2) a bag leak detection system that notifies operators when a leak is detected; or (3) a parameter monitor with an audible alarm that notifies operators when a monitored control device parameter, such as pressure drop or scrubber liquid flow rate, is outside of the control device manufacturer's recommendations. Note that neither the bag leak detection system nor the parameter monitor alarm systems require a data acquisition and handling system to function properly, which, according to commenters, is the predominant portion of the cost of a CPMS.

Comment. Several commenters contended that the inspection requirements were too burdensome, arguing that the vent collection system may be difficult to access or inspect and that inspections are unnecessary because the vent collection systems are induced draft systems.

Response. We disagree that the proposed requirements are too burdensome. The required inspections are simple external visual assessments of the integrity of the collection system. This should be easily accomplished by sources. While these may be induced draft systems, we believe that they still warrant inspection. For example, an inspection can identify points along the ductwork where PM may be building up inside the duct and consequently falling out of leaks in the ductwork, indicating not only the existence of a possible leak, but that the amount of vacuum that the system was designed to induce is not being achieved. We do, however, recognize the need for inspection safety and have added provisions to the final rule that reduce inspection requirements for sections of ductwork that are deemed to be unsafe or difficult to inspect.

Comment. Several commenters contended that semiannual reporting is too burdensome for area sources and is more appropriate for major source requirements.

Response. We have revised the final rule reporting requirements so that sources must submit an annual report instead of semi-annual reports if no deviations occur. If a deviation occurs, then a semi-annual report must be submitted that summarizes the deviation and describes the corrective actions taken by the facility.

F. Title V Permitting

Comment. One commenter argued that the agency's proposal to exempt the chemical preparations area source category from title V requirements is unlawful and arbitrary. The commenter states that section 502(a) of the CAA authorizes EPA to exempt area source categories from title V permitting requirements if the Administrator finds that compliance with such requirements is ''impracticable, infeasible or unnecessarily burdensome.'' 42 U.S.C. section 7661a(a). The commenter notes that EPA did not claim that title V requirements are impracticable or infeasible for the chemical preparations area source category it proposes to exempt, but that EPA instead relied entirely on its claim that title V would be ''unnecessarily burdensome.''

Response. Section 502(a) of the CAA states, in relevant part, that:

* * * [t]he Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is

impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such regulations. *See* 42 U.S.C. section 7661a(a).

The statute plainly vests the Administrator with discretion to determine when it is appropriate to exempt non-major (*i.e.,* area) sources of air pollution from the requirements of title V. The commenter correctly notes that EPA based the proposed exemptions solely on a determination that title V is ''unnecessarily burdensome,'' and did not rely on whether the requirements of title V are ''impracticable'' or ''infeasible,'' which are alternative bases for exempting area sources from title V.

To the extent the commenter is asserting that EPA must determine that all three criteria in CAA section 502 are met before an area source category can be exempted from title V, the commenter misreads the statute. The statute expressly provides that EPA may exempt an area source category from title V requirements if EPA determines that the requirements are ''impracticable, infeasible or unnecessarily burdensome.'' *See* CAA section 502. If Congress had wanted to require that all three criteria be met before a category could be exempted from title V, it would have stated so by using the word ''and,'' in place of ''or.'' For the reasons explained in the preamble to the proposed rule, we believe that it is appropriate to exempt sources in the chemical preparation area source category, which are not otherwise required to have a title V permit, from title V permitting and, on that basis, have retained the exemption in the final rule.

Comment. One commenter stated that in order to demonstrate that compliance with title V would be ''unnecessarily burdensome,'' EPA must show, among other things, that the ''burden'' of compliance is unnecessary. According to the commenter, by promulgating title V, Congress indicated that it viewed the burden imposed by its requirements as necessary as a general rule. The commenter maintained that the title V requirements provide many benefits that Congress viewed as necessary. Thus, in the commenter's view, EPA must show why, for any given category, special circumstances make compliance unnecessary. The commenter believed that EPA has not made that showing for the chemical preparations area source category it proposes to exempt.

Response. EPA does not agree with the commenter's characterization of the demonstration required for determining that title V is unnecessarily burdensome for an area source category. As stated above, the CAA provides the Administrator discretion to exempt an area source category from title V if he/she determines that compliance with title V requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on an area source category. *See* CAA section 502(a). In December 2005, in a national rulemaking, EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502 and developed a four factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. *See* 70 FR 75320, December 19, 2005 (''Exemption Rule''). In addition to interpreting the term ''unnecessarily burdensome'' and developing the four factor balancing test in the Exemption Rule, EPA applied the test to certain area source categories.

The four factors that EPA identified in the Exemption Rule for determining whether title V is unnecessarily burdensome on a particular area source category include: (1) Whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category (70 FR 75323); (2) whether title V permitting would impose significant burdens on the area source category and whether the burdens would be aggravated by any difficulty the sources may have in obtaining assistance from permitting agencies (70 FR 75324); (3) whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources (70 FR 75325); and (4) whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP for the area source category, without relying on title V permits (70 FR 75326).

In discussing the above factors in the Exemption Rule, we explained that we considered on ''a case-by-case basis the extent to which one or more of the four factors supported title V exemptions for a given source category, and then we assessed whether considered together those factors demonstrated that compliance with title V requirements would be 'unnecessarily burdensome' on the category, consistent with section 502(a) of the Act.'' *See* 70 FR 75323. Thus, we concluded that not all of the four factors must weigh in favor of exemption for EPA to determine that title V is unnecessarily burdensome for a particular area source category. Instead, the factors are to be considered in combination and EPA determines whether the factors, taken together, support an exemption from title V for a particular source category.

The commenter asserts that ''EPA must show that the ''burden'' of compliance is unnecessary.'' This is not, however, one of the four factors that we developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502, but rather a new test that the commenter maintains EPA ''must'' meet in determining what is ''unnecessarily burdensome'' under CAA section 502. EPA did not re-open its interpretation of the term ''unnecessarily burdensome'' in CAA section 502 in the August 5, 2009 proposed rule for the chemical preparation area source category. Rather, we applied the four factor balancing test articulated in the Exemption Rule to this source category. Had we sought to re-open our interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and modify it from what was articulated in the Exemption Rule, we would have stated so in the August 5, 2009 proposed rule and solicited comments on a revised interpretation, which we did not do. Accordingly, we reject the commenter's attempt to create a new test for determining what constitutes ''unnecessarily burdensome'' under CAA section 502, as that issue falls outside the purview of this rulemaking.

Moreover, had the comment been framed as a request to reopen our interpretation of the term ''unnecessarily burdensome'' in CAA section 502, which it was not, we would deny such request because we have a court-ordered deadline to complete this rulemaking by December 16, 2009. In any event, although the commenter espouses a new interpretation of the term ''unnecessarily burdensome'' in CAA section 502 and attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' for an area source category, the commenter does not explain why EPA's interpretation of the term ''unnecessarily burdensome'' is arbitrary, capricious or otherwise not in accordance with law. We maintain that our interpretation of the term ''unnecessarily burdensome'' in section 502, as set forth in the Exemption Rule, is reasonable.

Comment. One commenter stated that exempting a source category from title V permitting requirements deprives both the public generally and individual members of the public who would obtain and use permitting information

from the benefit of citizen oversight and enforcement that Congress plainly viewed as necessary. According to the commenter, the text and legislative history of the CAA provide that Congress intended ordinary citizens to be able to get emissions and compliance information about air toxics sources and to be able to use that information in enforcement actions and in public policy decisions on a State and local level.

The commenter stated that Congress did not think that enforcement by States or other government entities was enough; if it had, Congress would not have enacted the citizen suit provisions, and the legislative history of the CAA would not show that Congress viewed citizens' access to information and ability to enforce CAA requirements as highly important both as an individual right and as a crucial means to ensuring compliance. According to the commenter, if a source does not have a title V permit, it is difficult or impossible—depending on the laws, regulations and practices of the State in which the source operates—for a member of the public to obtain relevant information about its emissions and compliance status. The commenter stated that likewise, it is difficult or impossible for citizens to bring enforcement actions.

The commenter continued that EPA does not claim—far less demonstrate with substantial evidence, as would be required—that citizens would have the same ability to obtain compliance and emissions information about sources in the categories it proposes to exempt without title V permits. The commenter also said that likewise, EPA does not claim—far less demonstrate with substantial evidence—that citizens would have the same enforcement ability. Thus, according to the commenter, the exemptions EPA proposes plainly eliminate benefits that Congress thought necessary. The commenter claimed that to justify its exemptions, EPA would have to show that the informational and enforcement benefits that Congress intended title V to confer—benefits which the commenter argues are eliminated by the exemptions—are for some reason unnecessary with respect to the categories it proposes to exempt.

The commenter concluded that EPA does not even acknowledge these benefits of title V, far less explain why they are unnecessary, and that, for this reason alone, EPA's proposed exemptions are unlawful and arbitrary.

Response. Once again, the commenter attempts to create a new test for determining whether the requirements of title V are ''unnecessarily burdensome'' on an area source category. Specifically, the commenter argues that EPA does not claim or demonstrate with substantial evidence that citizens would have the same access to information and the same ability to enforce under these NESHAP, absent title V. The commenter's position represents a significant revision of the fourth factor that EPA developed in the Exemption Rule in interpreting the term ''unnecessarily burdensome'' in CAA section 502. For all of the reasons explained above, the commenter's attempt to create a new test for EPA to meet in determining whether title V is ''unnecessarily burdensome'' on an area source category cannot be sustained. This rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. EPA reasonably applied the four factors to the facts of the chemical preparation area source category, and the commenter has not identified any flaw in EPA's application of the four factor test.

Moreover, as explained in the proposal, we considered implementation and enforcement issues in the fourth factor of the four factor balancing test. Specifically, the fourth factor of EPA's unnecessarily burdensome analysis provides that EPA will consider whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the NESHAP without relying on title V permits. *See* 74 FR 39021.

In applying the fourth factor here, EPA determined that there are adequate enforcement programs in place to assure compliance with the CAA. As stated in the proposal, we believe that State-delegated programs are sufficient to assure compliance with the NESHAP and that EPA retains authority to enforce this NESHAP under the CAA. *See* 74 FR 39021. We also indicated that States and EPA often conduct voluntary compliance assistance, outreach, and education programs to assist sources and that these additional programs will supplement and enhance the success of compliance with this NESHAP. *See* 74 FR 39021. The commenter does not challenge the conclusion that there are adequate State and Federal programs in place to ensure compliance with and enforcement of the NESHAP. Instead, the commenter provides an unsubstantiated assertion that information about compliance by the area sources with these NESHAP will not be as accessible to the public as information provided to a State pursuant to title V. In fact, the commenter does not provide any information indicating that States will treat information submitted under these NESHAP differently than information submitted pursuant to a title V permit.

Even accepting the commenter's assertions that it is more difficult for citizens to enforce the NESHAP absent a title V permit, which we dispute, in evaluating the fourth factor in EPA's balancing test, EPA concluded that there are adequate implementation and enforcement programs in place to enforce the NESHAP. The commenter has provided no information to the contrary or explained how the absence of title V actually impairs the ability of citizens to enforce the provisions of this NESHAP. Furthermore, the fourth factor is just one of the factors that we evaluated in determining if the title V requirements were unnecessarily burdensome. As explained above, we considered that factor together with the other factors and determined that it was appropriate to finalize the proposed exemption for the chemical preparation area source category.

Comment. One commenter explained that title V provides important monitoring benefits, and, according to the commenter, EPA assumes that title V monitoring would not add any monitoring requirements beyond those required by the regulations for the source category. The commenter said that in its proposal EPA proposed ''using parametric monitoring'' of either process changes or add-on controls. 74 FR at 39020. The commenter further states that ''EPA argues that its proposed standard, by including these requirements, provides monitoring 'sufficient to assure compliance' with the proposed rule. *Id.* At 39021. The commenter maintains that EPA made conclusory assertions and that the Agency failed to provide any evidence to demonstrate that the proposed monitoring requirements will assure compliance with the NESHAP for the exempt sources. The commenter stated that, for this reason as well, EPA's claim that title V requirements are ''unnecessarily burdensome'' is arbitrary and capricious, and the exemption is unlawful and arbitrary and capricious.

Response. The EPA used the four factor test to determine if title V requirements were unnecessarily burdensome for the chemical preparation area source category. In the first factor, EPA considers whether imposition of title V requirements would result in significant improvements to the compliance requirements that are proposed for the area source category. *See* 70 FR 75323. It is in the context of this first factor that

EPA evaluates the monitoring, recordkeeping and reporting requirements of the proposed NESHAP to determine the extent to which those requirements are consistent with the requirements of title V.

The commenter asserts that ''EPA argues that its proposed standard, by including these requirements, provides monitoring 'sufficient to assure compliance' with the proposed rule.'' EPA does in fact believe that the requirements in the proposed standard, which are carried forward in this final rule, provide monitoring ''sufficient to assure compliance.'' The commenter does not provide any evidence that contradicts this conclusion.

Based on the foregoing, we considered whether title V monitoring requirements would lead to significant improvements in the monitoring requirements in the proposed NESHAP and determined that they would not. We believe that the monitoring, recordkeeping and reporting requirements in this area source rule are sufficient to assure compliance. For the reasons described above and in the proposed rule, the first factor supports exempting this area source category from title V requirements. Further, as explained above, we determined that the factors, weighed together, support exemption of the chemical preparations area source category from title V.

Comment. According to one commenter, EPA argued that compliance with title V would not yield any gains in compliance with underlying requirements in the relevant NESHAP (74 FR 39021). The commenter stated that EPA's conclusory claim could be made equally with respect to any major or area source category. According to the commenter, the Agency provides no specific reasons to believe—with respect to any of the categories it proposes to exempt—that the additional informational, monitoring, reporting, certification, and enforcement requirements that exist in title V, but not in these NESHAP, would not provide additional compliance benefits. The commenter also stated that the only basis for EPA's claim is, apparently, its beliefs that those additional requirements never confer additional compliance benefits. According to the commenter, by advancing such an argument, EPA merely seeks to elevate its own policy judgment over Congress' decisions reflected in the CAA's text and legislative history.

Response. The commenter takes out of context certain statements in the proposed rule concerning the factors used in the balancing test to determine if imposition of title V permitting requirements is unnecessarily burdensome for the chemical preparations area source category. The commenter also mischaracterizes the first factor of the four factor balancing test with regard to determining whether imposition of title V would result in significant improvements in compliance. In addition, the commenter mischaracterizes the analysis in the third factor of the balancing test which instructs EPA to take into account any gains in compliance that would result from the imposition of the title V requirements.

First, EPA nowhere states, nor does it believe, that title V never confers additional compliance benefits as the commenter asserts. Rather, EPA considered potential additional compliance benefits resulting from requiring a title V permit for sources in the chemical preparations area source category and, nevertheless, concluded that requiring title V permits would be unnecessarily burdensome.

Second, the commenter mischaracterizes the first factor by asserting that EPA must demonstrate that title V will provide no additional compliance benefits. The first factor calls for a consideration of ''whether title V would result in significant improvements to the compliance requirements, including monitoring, recordkeeping, and reporting, that are proposed for an area source category.'' Thus, contrary to the commenter's assertion, the inquiry under the first factor is not whether title V will provide any compliance benefit, but rather whether it will provide significant improvements in compliance requirements.

EPA believes that the monitoring, recordkeeping, and reporting requirements in the final rule are sufficient both to assure compliance with the requirements of the rule and to allow the public the opportunity to obtain knowledge about the source, consistent with two of the goals of title V permitting. For example, in the Initial Notification, the source must identify its size, whether it must meet any of the GACT requirements in the rule, and how it plans to comply with applicable rule requirements. The source must certify how it is complying with the rule and that it has complied with the requirements to: (1) Establish recordkeeping to demonstrate compliance with the emission limits; (2) establish monitoring of the controls as required; and, (3) establish recordkeeping regarding the parametric monitoring requirements. The source must keep records to document ongoing compliance with the emission limits finalized in this rule. The source must also submit semi-annual or annual compliance reports to the permitting agency. This information is available to the public once the source has filed the required compliance reports with the permitting agency.

The EPA believes that these requirements in the rule itself, including the requirement to provide information about the source's compliance that is available to the public, are sufficient to ensure compliance with the requirements of the rule, and does not feel that title V requirements, if applicable to these sources, would offer significant improvements in compliance.

Third, the commenter incorrectly characterizes our statements in the proposed rule concerning our application of the third factor. Under the third factor, EPA evaluates ''whether the costs of title V permitting for the area source category would be justified, taking into consideration any potential gains in compliance likely to occur for such sources.'' Contrary to what the commenter alleges, EPA did not state in the proposed rule that compliance with title V would not yield any gains in compliance with the underlying requirements in the relevant NESHAP, nor does factor three require such a determination.

Instead, consistent with the third factor, we considered whether the costs of title V are justified in light of any potential gains in compliance. In other words, EPA must consider the costs of title V permitting requirements in conjunction with any improvement in compliance above what the rule requires and, on that basis, determine whether those costs would be justified. EPA determined that approximately 40 percent (10 of the 26) of the sources that EPA believes would be subject to the chemical preparations area source rule are small businesses with limited resources. As stated in the proposal (74 FR 39021), EPA estimated that the average cost of obtaining and complying with a title V permit was $65,700 per source for a 5-year permit period, including fees. *See* Information Collection Request for Part 70 Operating Permit Regulations, 72 FR 32290, June 12, 2007, EPA ICR Number 1587.07. Based on this information, EPA determined that there is a significant cost burden to the industry to require title V permitting for all the sources subject to the rule. In addition, in analyzing factor one, EPA found that imposition of the title V requirements offers no significant improvements in compliance. In considering the third

factor, we stated in part that, ''Because the costs, both economic and non-economic, of compliance with title V are high for any small entity, and the potential for gains in compliance is low, title V permitting is not justified for this source category. Accordingly, the third factor supports title V exemptions for this area source category.'' *See* 74 FR 39021.

Most importantly, EPA considered all four factors in the balancing test in determining whether title V was unnecessarily burdensome on the chemical preparations area source category. EPA found it reasonable after considering all four factors to exempt this source category from the permitting requirements in title V. This rulemaking did not re-open EPA's interpretation of the term ''unnecessarily burdensome'' in CAA section 502. Because the commenter's statements do not demonstrate a flaw in EPA's application of the four factor balancing test to the specific facts of the chemical preparations source category, the comments provide no basis for the Agency to reconsider its proposal to exempt the area source category from title V.

Comment. According to one commenter, ''[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—unlike all the other major and area source NESHAP it has issued without title V exemptions—title V compliance is unnecessary.'' Instead, according to the commenter, EPA merely pointed to existing State requirements and the potential for actions by States and EPA that are generally applicable to all categories (along with some small business and voluntary programs). The commenter said that, absent a showing by EPA that distinguishes the sources it proposes to exempt from other sources, the Agency's argument boils down to the generic and conclusory claim that it generally views title V requirements as unnecessary. The commenter stated that, while this may be EPA's view, it was not Congress' view when Congress enacted title V, and a general view that title V is unnecessary does not suffice to show that title V compliance is unnecessarily burdensome.

Response. The commenter again takes issue with the Agency's test for determining whether title V is unnecessarily burdensome, as developed in the Exemption Rule. Our interpretation of the term ''unnecessarily burdensome'' is not the subject of this rulemaking. In any event, as explained above, we believe the Agency's interpretation of the term ''unnecessarily burdensome'' is a reasonable one. In addition, our determination to exempt the chemical preparations area source category from title V is specific to this rule, and is not, as the commenter suggests, reflective of a general view that title V requirements are unnecessary. We review the facts of each area source category individually in determining whether to exempt the category, or a portion of the category, from the requirements of title V pursuant to section 502. To the extent the commenter asserts that our application of the fourth factor is flawed, we disagree. The fourth factor involves a determination as to whether there are implementation and enforcement programs in place that are sufficient to assure compliance with the rule without relying on the title V permits. In discussing the fourth factor in the proposal, EPA states that, prior to delegating implementation and enforcement to a State, EPA must ensure that the State has programs in place to enforce the rule. EPA believes that these programs will be sufficient to assure compliance with the rule. EPA also retains authority to enforce this NESHAP anytime under CAA sections 112, 113 and 114. EPA also noted other factors in the proposal that together are sufficient to assure compliance with this area source standard.

The commenter argues that EPA cannot exempt this area source from title V permitting requirements because ''[t]he agency does not identify any aspect of any of the underlying NESHAP showing that with respect to these specific NESHAP—unlike all the other major and area source NESHAP it has issued without title V exemptions—title V compliance is unnecessary.'' As an initial matter, EPA cannot exempt major sources from title V permitting 42 U.S.C. 502(a). As for area sources, the standard that the commenter proposes—that EPA must show that ''title V compliance is unnecessary''—is not consistent with the standard the Agency established in the Exemption Rule and applied in the proposed rule in determining if title V requirements are unnecessarily burdensome for the chemical preparations area source category.

Furthermore, we disagree that the basis for excluding the chemical preparations area source category from title V requirements is generally applicable to any source category. As explained in the proposal preamble and above, we balanced the four factors considering the facts and circumstances of the chemical preparations area source category. For example, in assessing whether the costs of requiring the sources to obtain a title V permit was burdensome, we concluded that, because approximately 40 percent (10 of the 26) of the sources were small businesses with limited resource, the costs imposed on the source category were significant compared to the additional compliance benefits offered by the title V permitting process.

Comment. One commenter stated that the legislative history of the CAA shows that Congress did not intend EPA to exempt source categories from compliance with title V unless doing so would not adversely affect public health, welfare, or the environment. Nonetheless, according to the commenter, EPA does not make any showing that its exemptions would not have adverse impacts on health, welfare and the environment. The commenter stated that, instead, EPA offered only the conclusory assertion that ''the level of control would remain the same'' whether title V permits are required or not.

The commenter continued by stating that EPA relied entirely on the conclusory arguments advanced elsewhere in its proposal that compliance with title V would not yield additional compliance with the underlying NESHAP. The commenter stated that those arguments are wrong for the reasons given above, and therefore EPA's claims about public health, welfare and the environment are wrong too. The commenter also stated that Congress enacted title V for a reason: To assure compliance with all applicable requirements and to empower citizens to get information and enforce the CAA. The commenter said that those benefits—of which EPA's proposed rule deprives the public—would improve compliance with the underlying standards and thus have benefits for public health, welfare and the environment. According to the commenter, EPA has not demonstrated that these benefits are unnecessary with respect to any specific source category, but again simply rests on its own apparent belief that they are never necessary.

The commenter concluded that, for the reasons given above, the attempt to substitute EPA's judgment for Congress' is unlawful and arbitrary.

Response. Congress gave the Administrator the authority to exempt area sources from compliance with title V if, in his or her discretion, the Administrator ''finds that compliance with [title V] is impracticable, infeasible, or unnecessarily burdensome.'' *See* CAA section 502(a). EPA has interpreted one of the three justifications for exempting area sources, ''unnecessarily burdensome,''

as requiring consideration of the four factors discussed above. EPA applied these four factors to the chemical preparations area source category and concluded that requiring title V for this area source category would be unnecessarily burdensome.

In addition to determining that title V would be unnecessarily burdensome on sources in the chemical preparations area source category, consistent with the Exemption Rule, EPA also considered whether exempting the chemical preparations area source category from title V would adversely affect public health, welfare or the environment. As explained in the proposal preamble, we concluded that exempting the chemical preparations area source category from title V would not adversely affect public health, welfare or the environment because the level of control would be the same even if title V applied. We further explained that the title V permit program does not generally impose new substantive air quality control requirements on sources, but instead requires that certain procedural measures be followed, particularly with respect to determining compliance with applicable requirements. The commenter has not provided any information that demonstrates that exemption of the chemical preparations area source category from title V will adversely affect public health, welfare or the environment.

G. Cost Impacts

Comment. Several commenters stated that compliance costs are underestimated for sources that currently do not have monitoring systems and/or controls.

Response. We generally disagree, particularly considering additional flexibilities that are included in the final rule. The commenter's assertion appears to be premised on the commenters' assumption that sources will need to install new control devices. As we indicated in the proposed rule, we do not believe that this will be the case. Further, with the inclusion of the alternative 0.03 gr/dscf PM standard, along with the options for demonstrating ongoing compliance other than CPMS available in the final rule, we believe that no new capital costs should be factored into the analysis. As such, we believe that the compliance costs previously estimated for the proposed rule are a reasonable estimate of the cost of complying with this rule.

H. Miscellaneous

Comment. One commenter requested that EPA be more specific as to the chemical by giving a chemical abstracts service (CAS) number. According to the commenter, this will make it more specific and direct (*i.e.*, is trivalent chromium applicable as chromium or not). The commenter proceeds to say that giving the CAS numbers and stating the fact that only these specific CAS numbers are applicable to the rule would clarify applicability. The commenter, along with another commenter, also questioned whether there are distinctions between trivalent and hexavalent chromium compounds in the rule. One commenter noted that the *de minimis* thresholds are different in OSHA requirements and the Toxics Release Inventory's (TRI's) reporting requirements. Several commenters asked, in general, whether there were going to be *de minimis* exemptions provided in the applicability requirements of the rule.

Response. The CAA specifically lists ''chromium compounds'' as a hazardous air pollutant. In our original listing for the Urban Air Toxics Strategy (64 FR 38706, July 19, 1999), we listed ''chromium compounds'' as one of the Urban HAP targeted for the Integrated Urban Air Toxics Strategy. CAA section 112(c)(3) requires us to list source categories accounting for 90 percent of the emissions of each of the listed urban HAP, including chromium compounds. As explained above, we need the chemical preparations area source category at issue here to reach the 90 percent requirement in CAA section 112(c)(3) for chromium compounds. Many of our control strategies for chromium and other metal HAP involve the use of PM as a surrogate for chromium and other metal HAP. These PM control strategies control all chromium compounds along with PM and other metal HAP, therefore the form of chromium would not change the type of PM control strategy we choose. In summary, although we recognize the differences in the health effects of hexavalent and trivalent chromium, we are required to regulate chromium compounds from the chemical preparations area source category at issue in this rule.

As we have pointed out in several other area source rulemakings, the CAA section 112(k) inventory was primarily based on the 1990 TRI, and that is the case for the chemical manufacturing area source categories as well. The reporting requirements for the TRI do not include *de minimis* concentrations of toxic chemicals in mixtures, as reflected in the above concentration levels; therefore, the CAA section 112(k) inventory would not have included emissions from operations involving chemicals below these concentration levels. *See* 40 CFR 372.38, Toxic Chemical Release Reporting: Community Right-To-Know (Reporting Requirements). Accordingly, the percentages noted in the definition of ''target HAP-containing'' define the scope of the listed source category; they are not exemptions.

To address the potential for inconsistency with reporting requirements, we have revised the definition of ''target HAP-containing'' to reflect the different thresholds for trivalent and hexavalent chromium compounds as follows:

Target HAP-containing means raw materials, intermediates, or products that contain one or more target HAP. Any material that contains compounds of chromium (VI), lead, or nickel in amounts greater than or equal to 0.1 percent by weight (as the metal), or manganese or chromium (III) compounds in amounts greater than or equal to 1.0 percent by weight (as the metal) is considered to be target HAP-containing. Target HAP content is shown in the formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material.

Comment. One commenter suggested that the term ''responsible official'' be defined in the rule, believing that plant manager at some smaller plants may not qualify as a ''responsible official'' according to the General Provisions. According to the commenter, this would result in facilities having the additional burden of requesting delegation of this through an implementing agency. The commenter suggests following the approach and definition used in the National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities Regulation (''Dry Cleaning NESHAP,'' 40 CFR part 63, subpart M).

Response. We agree with the commenter that there may be unnecessary burdens associated with the requirements for delegation of ''responsible official,'' as set forth in the General Provisions, for small facilities affected by the rule. The approach utilized by 40 CFR part 63, subpart M seems to be appropriate for the chemical preparations area source category also. Therefore, we have revised the definition of ''responsible official'' in the final regulation to be more consistent with the definition used in the Dry Cleaning NESHAP.

VI. Impacts of the Final Standards

A. What Are the Air Impacts?

Since 1990, the performance of the PM control technology utilized by the

chemical preparations industry has not advanced significantly. We believe, however, that market forces, such as the economic benefits inherent in minimizing raw material or product losses from dust emissions, have encouraged widespread use of these controls. Further, improvements in formulations of products produced by the chemical preparations industry, such as reduction or elimination of lead chromate in certain products, have enabled the industry to further reduce their air impacts. Therefore, while this final rule does not require air emission reductions from existing sources beyond those currently being achieved by such sources, we believe that this final rule reflects significant reductions in emissions since 1990 based on the use of effective PM control technology and ensures that affected sources maintain and operate the control equipment such that the performance level is maintained.

B. What Are the Cost Impacts?

All existing chemical preparations industry facilities are expected to currently be achieving the level of control required by the final standards. That is, we believe that all existing sources currently either route vent streams from specified equipment that use target HAP to a control device with a 95 percent PM reduction efficiency, or have an outlet PM concentration at or below 0.03 gr/dscf. Although this final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and, consequently, we did not estimate any cost impacts for new sources. Therefore, no additional air pollution control devices would be required. No other capital costs are associated with this final rule and no operational and maintenance costs are expected because we believe that facilities are already following the manufacturer's instructions for proper operation and maintenance of pollution control devices and vent collection systems.

The annual cost of monitoring (including inspections), reporting, and recordkeeping for this final rule is estimated to be approximately $6,800 per facility per year after the first year. The costs are, therefore, expected to be less than 1 percent of revenues. The annual estimate includes 20 hours per facility per year for preparing semiannual compliance reports, which are required only if a deviation occurs. Sources with no deviations to report must submit annual compliance reports, which would result in less burden than estimated.

The additional cost of one-time activities during the first year of compliance is estimated to be approximately $2,400 per facility. This includes labor hours for reading and understanding the rule, preparation of the Initial Notification of Applicability, preparation of the Notification of Compliance Status, development of a record system, and personnel training, for an industry-wide average estimate of approximately 32 hours per facility in the first year for one-time activities. The resulting total hours for one-time activities, ongoing inspections, recordkeeping and semiannual compliance reporting (assumes worst-case scenario where a deviation occurs) activities for the first year of compliance are 113 hours per facility.

Information on our cost impact estimates on the sources in the chemical preparations area source category is available in the docket for this final rule. (*See* Docket ID No. EPA–HQ–OAR–2009–0028).

C. What Are the Economic Impacts?

The only measurable costs attributable to these final standards are associated with the monitoring, recordkeeping, and reporting requirements. These final standards are estimated to impact a total of 26 area source facilities. We estimate that approximately 40 percent (10 of 26) of these facilities are small entities as defined by the SBA. Our analysis indicates that compliance with this final rule would not have a significant adverse impact on any facilities, large or small, since these costs are less than 1 percent of revenues for each facility.

D. What Are the Non-Air Health, Environmental, and Energy Impacts?

No detrimental secondary impacts are expected to occur from compliance with the final rule by chemical preparations industry sources because all facilities are currently achieving the GACT level of control. No additional solid waste would be generated as a result of the PM emissions collected and there are no additional energy impacts associated with the operation of control devices at chemical preparations industry sources. We expect no increase in the generation of wastewater or other water quality impacts.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the OMB for review under Executive Order 12866 and any changes made in response to the OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The recordkeeping and reporting requirements in this final rule are based on the requirements in EPA's NESHAP General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to with CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

This final NESHAP requires chemical preparations area sources to submit an Initial Notification of Applicability and a Notification of Compliance Status according to the requirements in 40 CFR 63.9 of the General Provisions (subpart A) and to conduct continuous parametric monitoring (*e.g.,* device parameter alarm), conduct vent collection system and control device inspections and submit semi-annual or annual compliance reports (as applicable).

The total annual burden for this information collection averaged over the first three years of this ICR is estimated to be 2,372 labor hours per year at a labor cost of approximately $176,000 or approximately $6,800 per facility. The total average burden is approximately 91 hours per facility per year. Burden is defined at 5 CFR 1320.3(b).

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. EPA displays OMB control numbers in various ways. For example, EPA lists OMB control numbers for EPA's regulations in 40 CFR part 9, which we amend periodically. Additionally, we may display the OMB control number in another part of the CFR, or in a valid **Federal Register** notice, or by other

appropriate means. The OMB control number display will become effective the earliest of any of the methods authorized in 40 CFR part 9.

When this ICR is approved by OMB, the Agency will publish a **Federal Register** notice announcing this approval and displaying the OMB control number for the approved information collection requirements contained in this final rule. We will also publish a technical amendment to 40 CFR part 9 in the **Federal Register** to consolidate the display of the OMB control number with other approved information collection requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business that is engaged in the manufacturing of chemical preparations as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule is estimated to impact all new and 26 existing chemical preparations area source facilities. We estimate that 10 of these facilities may be small entities. We have determined that small entity compliance costs, as assessed by the facilities' cost-to-sales ratio, are expected to be less than 1 percent. The costs are so small that the impact is not expected to be significant. Although this final rule contains requirements for new area sources, we are not aware of any new area sources being constructed now or planned in the next 3 years, and, consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to minimize the impact of this final rule on small entities. The standards represent practices and controls that are common throughout the chemical preparations industry. The standards also require only the essential recordkeeping and reporting needed to demonstrate and verify compliance. These standards were developed based on information obtained from consultation with small business representatives at the State and national level and industry representatives that are affiliated with small businesses.

D. Unfunded Mandates Reform Act

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The total annual cost of the rule is estimated at $183,000/yr. This final rule is not expected to impact State, local, or Tribal governments. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule contains no requirements that apply to such governments, imposes no obligations upon them, and would not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule does not impose any requirements on State and local governments and therefore creates no substantial direct effects on the States. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did solicit comment from State program officials and consulted with representatives of State governments in developing this action. A summary of these comments and EPA's response to these comments is provided in section V of this preamble.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final action imposes no requirements on Tribal governments; thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance. It is also not ''economically significant''.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have concluded that this final rule will not likely have any significant adverse energy effects because no additional pollution controls or other equipment that consume energy will be needed to comply with the final rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This final rulemaking involves technical standards. EPA has decided to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, and 5. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus

standards in addition to these EPA methods. The search identified 16 voluntary consensus standards that were potentially applicable for this rule in lieu of EPA reference methods. EPA has decided to use ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' as an acceptable alternative to EPA Method 3B. EPA determined the 15 other candidate VCS (ASTM D3154–00 (2006), ASTM D3464–96 (2007), ASTM D3796–90 (2004), ISO 10780:1994, ASME B133.9–1994 (2001), ANSI/ASME PTC 19–10–1981 Part 10, ISO 10396:1993 (2007), ISO 12039:2001, ASTM D5835–95 (2007), ASTM D6522–00 (2005), CAN/CSA Z223.2–M86 (1999), ISO 9096:1992 (2003), ANSI/ASME PTC–38–1980 (1985), ASTM D3685/D3685M–98 (2005), CAN/CSA Z223.1–M1977) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the final rule would not be practical due to lack of equivalency, documentation, validation data and other important technical and policy considerations. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, and 5.

Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective December 30, 2009.

List of Subjects in 40 CFR Part 63

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

Dated: December 16, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Part 63 is amended by adding subpart BBBBBBB to read as follows:

Subpart BBBBBBB—National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry

Sec.

Applicability and Compliance Dates

63.11579 Am I subject to this subpart?
63.11580 What are my compliance dates?

Standards and Compliance Requirements

63.11581 What are my standards?
63.11582 What are my compliance requirements?
63.11583 What are my monitoring requirements?
63.11584 What are my initial and continuous compliance management practice requirements?
63.11585 What are my notification, recordkeeping, and reporting requirements?

Other Requirements and Information

63.11586 Who implements and enforces this subpart?
63.11587 What General Provisions sections apply to this subpart?
63.11588 What definitions apply to this subpart?

Tables of Subpart BBBBBBB of Part 63

Table 1 of Subpart BBBBBBB of Part 63—Emission Reduction and PM Concentration Requirements
Table 2 of Subpart BBBBBBB of Part 63—Initial Compliance Demonstration Methods With the Emission Reduction and PM Concentration Requirements in Table 1
Table 3 of Subpart BBBBBBB of Part 63—Test Methods
Table 4 of Subpart BBBBBBB of Part 63—Continuous Compliance Demonstration Methods With the Emission Reduction and PM Concentration Requirements in Table 1
Table 5 of Subpart BBBBBBB of Part 63—Reporting Requirements
Table 6 of Subpart BBBBBBB of Part 63—General Provisions

Subpart BBBBBBB—National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry

Applicability and Compliance Dates

§ 63.11579 Am I subject to this subpart?

(a) You are subject to this subpart if you meet all of the following conditions:

(1) You own or operate a chemical preparations facility (as defined in § 63.11588, ''What definitions apply to this subpart?''),

(2) The chemical preparations facility is a stationary area source of hazardous air pollutants (HAP) (as defined in § 63.2), and

(3) The chemical preparations facility has at least one chemical preparations operation in target HAP service (as defined in § 63.11588, ''What definitions apply to this subpart?'').

(b) The affected source is all chemical preparations operations (as defined in § 63.11588, ''What definitions apply to this subpart?'') located at a facility that meets the criteria specified in paragraph (a) of this section.

(1) An affected source is existing if you commenced construction, as defined in § 63.2, of the affected source before August 5, 2009.

(2) An affected source is new if you commenced construction or reconstruction, as defined in § 63.2, of the affected source on or after August 5, 2009.

(c) On and after December 30, 2009, if your chemical preparations operation becomes a major source, as defined in § 63.2, you must continue to meet the requirements of this subpart in addition to any maximum achievable control technology standards which may apply at that time.

(d) This subpart does not apply to research and development facilities, as

defined in section 112(c)(7) of the Clean Air Act.

(e) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continuously comply with the provisions of this subpart.

(f) You are exempt from the requirements specified in this subpart if the chemical preparations operations at your facility are subject to the requirements specified in subpart VVVVVV or subpart CCCCCCC of this part.

§ 63.11580 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart no later than December 30, 2010.

(b) If you start up a new affected source on or before December 30, 2009, you must achieve compliance with this subpart no later than December 30, 2009.

(c) If you start up a new affected source after December 30, 2009, you must achieve compliance with this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11581 What are my standards?

You must meet one of the requirements in paragraph (a) or (b) of this section that apply to you. These standards apply at all times.

(a) You must meet one of the emission standards in Table 1 of this subpart and the management practices in § 63.11584(a) through (c) of this subpart, or

(b) You must demonstrate that the particulate matter concentration of each of the process vent streams from equipment in target HAP service within a chemical preparation operation will not exceed 0.03 gr/dscf and meet the management practices in § 63.11584(d).

§ 63.11582 What are my compliance requirements?

(a) You must demonstrate initial compliance with the emission reduction or 0.03 gr/dscf particulate matter (PM) concentration requirements specified in Table 1 of this subpart as follows:

(1) Using the methods specified in Table 2 of this subpart, or

(2) For existing sources only, using the results of an emissions test conducted in the past 5 years, provided the test meets the following requirements.

(i) The test was conducted under conditions that represent normal operation.

(ii) The test was performed using the methods specified in Table 3 of this subpart.

(iii) The test was conducted with a minimum of three separate test runs, as specified in § 63.7(e)(3).

(b) If you choose to demonstrate compliance with the emission reduction or 0.03 gr/dscf PM concentration requirements in Table 1 of this subpart by conducting an emissions test, you must follow the requirements specified in paragraphs (b)(1) through (b)(4) of this section and include the results in your Notification of Compliance Status Report (NOCSR) in accordance with § 63.11585(b)(3).

(1) You must conduct the tests under conditions that represent normal operation.

(2) You must perform the test using the methods specified in Table 3 of this subpart.

(3) You must conduct a minimum of three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3).

(4) You must use the following equation to demonstrate compliance with the emission reduction requirements specified in Table 1 of this subpart:

$$RE = [1 - (Ci - Co)/Ci]*100$$

Where:

RE = PM removal efficiency, percent.

Ci = Concentration of PM at inlet of control device, gr/dscf.

Co = Concentration of PM at outlet of control device, gr/dscf.

(c) If you choose to demonstrate compliance with the emission reduction or 0.03 gr/dscf PM concentration requirements specified in Table 1 of this subpart by providing control device manufacturer's performance guarantee information, then you must include the following information in your NOCSR (in accordance with § 63.11585(b)(3)).

(1) Control device make, model, and installation date.

(2) Performance guarantee certificate provided by the control device manufacturer.

(3) If a filter is used to control PM, performance guarantee information for the fabric or fiber filters used in the control device.

(d) If you choose to demonstrate compliance with the emission reduction or 0.03 gr/dscf PM concentration requirements specified in Table 1 of this subpart by providing engineering calculations, then the calculations and supporting documentation must contain the items specified in paragraphs (d)(1) through (d)(5) of this section. These calculations and supporting documentation must be included in your NOCSR (in accordance with § 63.11585(b)(3)).

(1) Calculations and supporting documentation, such as delivery receipts, production logs and raw material safety data sheets that quantify the amount of raw materials used in the manufacture of chemical preparations (as defined in § 63.11588) in the prior calendar year.

(2) Calculations and supporting documentation, such as sales receipts, production logs and product material safety data sheets (MSDS) for chemical preparations (as defined in § 63.11588) products that quantify the amount of products produced by the chemical preparations operations in the prior calendar year.

(3) Calculations and supporting documentation of raw material losses to the atmosphere from the chemical preparations operations. This quantity (Qi in the equations in paragraph (5) of this section) is the amount of target HAP-containing PM in the uncontrolled air emissions from the chemical preparations operation, and does not include quantified and documented losses to solid or liquid waste streams, or material that is recycled back into the chemical preparations operation.

(4) Calculation and supporting documentation of quantities of target HAP-containing PM captured by the vent collection system and PM control device for the calendar year prior to the compliance date (Qo in the equations in paragraph (5) of this section).

(5) Use one of the following calculation methods to demonstrate compliance with the requirements specified in Table 1 of this subpart:

(i) For emission reduction, use the results of the calculations from paragraphs (d)(3) and (d)(4) of this section in the following equation:

$$RE = [1 - (Qi - Qo)/Qi]*100$$

Where:

RE = Annual average PM removal efficiency, percent.

Qi = Annual amount of PM in uncontrolled emissions, pounds per year.

Qo = Annual amount of PM captured by control device, pounds per year.

(ii) For the 0.03 gr/dscf PM concentration, use the results of calculations from paragraphs (d)(3) and (d)(4) of this section in the following equation:

$$PC = [Qi - Qo]*7000/DCFM*MPY$$

Where:

PC = Annual average PM concentration, grains per dry standard cubic foot (gr/dscf).
Qi = Annual amount of PM in uncontrolled emissions, pounds per year.
Qo = Annual amount of PM captured by control device, pounds per year. (Qo is equal to zero if the process vent stream is not routed to a control device.)
DCFM = Process vent stream flowrate, dscf per minute (dscfm).
MPY = Minutes per year equipment are in target HAP service.

(e) If you are certifying that the particulate matter concentration of each of the process vent streams from equipment in target HAP service within a chemical preparation operation will not exceed 0.03 gr/dscf, then you must:

(1) Include the following information in your NOCSR (in accordance with § 63.11585(b)(6)).

(i) A certification statement by the responsible official that certifies that the particulate matter concentration of each of the process vent streams from equipment in target HAP service within a chemical preparation operation will not exceed 0.03 gr/dscf. The statement shall contain that official's name, title, and signature, certifying the truth, accuracy, and completeness of the certification statement.

(ii) Engineering calculations and supporting documentation containing:

(A) The annual raw material losses to the atmosphere from paragraph (d)(3) of this section; and

(B) The calculation of the PM concentration of process vent streams from equipment in target HAP service from paragraph (d)(5)(ii) of this section, using zero for the parameter Qo since there is no control device, given in gr/dscf.

(2) For each subsequent calendar quarter (*i.e.*, three months), maintain the following records to ensure that your certification statement is valid on a continual basis:

(A) The quarterly raw material losses to the atmosphere from paragraph (d)(3) of this section; and

(B) The calculation of the PM concentration of process vent streams from equipment in target HAP service from paragraph (d)(5)(ii) of this section, but on a quarterly basis instead of an annual basis, given in gr/dscf. Use zero for the parameter Qo since there is no control device.

§ 63.11583 What are my monitoring requirements?

To demonstrate continuous compliance with the emissions standard in Table 1, you must use one of the monitoring methods described in paragraphs (a), (b) or (c) of this section while equipment within a chemical preparation operation are in target HAP service:

(a) Operate a bag leak detection system with alarm that will alert operators of a leak in the control device filter material. If a bag leak detection system with alarm is used to demonstrate compliance, then the following steps must be performed:

(1) You must install, calibrate, operate, and maintain each bag leak detection system and alarm according to manufacturer's specifications, and as specified in paragraph (a)(2) of this section.

(2) The bag leak detection system and alarm must be maintained and operated in a manner consistent with good air pollution control practices at all times.

(b) Operate a control device parameter (such as pressure drop or water flow, as appropriate) monitor and alarm system that will alert operators that the control device is operating outside the upper or lower threshold or range established by the control device manufacturer that indicate proper operation of the control device to meet the emissions reduction or PM concentration requirements.

(1) You must install, calibrate, operate, and maintain each control device parameter monitor and alarm system according to manufacturer's specifications, and as specified in paragraph (b)(2) of this section.

(2) The control device parameter monitor and alarm system must be maintained and operated in a manner consistent with good air pollution control practices at all times.

(c) Operate a continuous parameter monitoring system (CPMS) to monitor control device operation. If a CPMS is used to demonstrate compliance, then the following steps must be performed:

(1) Establish and maintain site-specific control device parameter values that indicate proper operation of the control device to meet the emissions reduction or PM concentration requirements.

(2) You must operate the continuous parameter monitoring system (CPMS) during all periods when the process equipment is in target HAP service and use all the data collected during these periods in assessing the operation of the process vent collection system and control device.

(d) You must install, calibrate, operate, and maintain each control device CPMS according to manufacturer's specifications, and as specified in paragraphs (d)(1) through (d)(5) of this section.

(1) The CPMS must be maintained and operated in a manner consistent with good air pollution control practices at all times.

(2) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period.

(3) To determine the 24-hour rolling average for the monitored parameter(s), you must:

(i) Have data from at least three of four equally spaced data values for that hour from a CPMS, except as stated in paragraph (c)(2) of this section.

(ii) Determine each successive 24-hour rolling average from all recorded readings for each 24-hour period, except as stated in paragraph (c)(2) of this section.

(4) For averaging periods of monitoring data from production in target HAP service less than 24 hours, you must:

(i) Have valid data from at least three of four equally spaced data values for each hour from a CPMS that is not out-of-control according to your manufacturer's recommendations.

(ii) Determine the average from all recorded readings for the production period, except as stated in § 63.11583(c)(2).

(5) You must record the results of each calibration and validation check of the CPMS.

(e) For each pressure measurement device, you must meet the requirements of paragraph (b) or (c) of this section, as applicable, and the following:

(1) Locate the pressure sensor(s) in, or as close as possible to, a position that provides a representative measurement of the pressure.

(2) Use a gauge with a minimum measurement sensitivity of 0.12 kiloPascals or a transducer with a minimum measurement sensitivity of 5 percent of the pressure range.

(3) Check pressure tap for plugging daily. Perform an accuracy check at least quarterly or following an operating parameter deviation:

(i) According to the manufacturer's procedures; or

(ii) By comparing the sensor output to redundant sensor output.

(4) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(5) At least monthly or following an operating parameter deviation, perform a leak check of all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage, if redundant sensors are not used.

(6) You must record the results of the plugging, accuracy and calibration checks specified in paragraphs (e)(3) through (e)(5) of this section in accordance with § 63.11585.

(f) For each monitoring system required in this section, you must develop and make available for inspection by the delegated authority, upon request, a site-specific monitoring plan that addresses the following:

(1) Selection and justification of the monitored parameter that indicates proper operation of the control device to meet the emissions limitation, if the parameter measured is something other than pressure drop.

(2) Installation of the bag leak detector, parameter monitoring device, or CPMS at a measurement location relative to each affected process unit such that the measurement is representative of control of PM emissions (*e.g.,* on the last control device);

(3) Performance and equipment specifications for the parametric signal analyzer, alarm, and the data collection and reduction system, as appropriate; and

(4) Performance evaluation procedures and acceptance criteria according to the manufacturer (*e.g.,* calibrations).

(5) Ongoing operation and maintenance procedures in accordance with the manufacturer's recommendations or the general requirements of § 63.8(c)(1) and (c)(3);

(6) Ongoing data quality assurance procedures in accordance with the manufacturer's recommendations; and

(7) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i) and the requirements of § 63.11585.

(g) You must conduct a performance evaluation of each bag leak detection system, control device parameter monitor and alarm system, or CPMS in accordance with your site-specific monitoring plan.

(h) You must operate and maintain each bag leak detection system, control device parameter monitor and alarm system, or CPMS in continuous operation, and collect parametric data at all times that emissions are routed to the monitored control device.

§ 63.11584 What are my initial and continuous compliance management practice requirements?

(a) For each new and existing affected source, you must demonstrate initial compliance by conducting the inspection activities in paragraph (a)(1) of this section and demonstrate ongoing compliance by conducting the inspection activities in paragraph (a)(2) of this section.

(1) Initial vent collection system and particulate control device inspections. You must conduct an initial inspection of each vent collection system and particulate control device according to the requirements in paragraphs (a)(1)(i) through (iv) of this section. You must record the results of each inspection according to paragraph (b) of this section and perform corrective action where necessary. You must conduct each inspection no later than 180 days after your applicable compliance date for each control device which has been operated within 180 days following the compliance date. For a control device which has not been installed or operated within 180 days following the compliance date, you must conduct an initial inspection prior to startup of the control device.

(i) For each wet particulate control system, you must verify the presence of water flow to the control equipment. You must also visually inspect the vent collection system ductwork and control equipment for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?'') and inspect the interior of the control equipment (if applicable) for structural integrity and the condition of the control system.

(ii) For each dry particulate control system, you must visually inspect the vent collection system ductwork and dry particulate control unit for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?''). You must also inspect the inside of each dry particulate control unit for structural integrity and condition.

(iii) An initial inspection of the internal components of a wet or dry particulate control system is not required if there is a record that an inspection has been performed within the past 12 months and any maintenance actions have been resolved.

(iv) An initial inspection of ductwork that is unsafe or difficult to inspect is not required.

(2) Ongoing vent collection system and particulate control device inspections. Following the initial inspections, you must perform periodic inspections of each vent collection system and PM control device according to the requirements in paragraphs (a)(2)(i) or (ii) of this section. You must record the results of each inspection according to paragraph (b) of this section and perform corrective action where necessary.

(i) You must inspect and maintain each wet control system according to the requirements in paragraphs (a)(2)(i)(A) through (D) of this section.

(A) You must conduct a daily inspection to verify the presence of water flow to the wet particulate control system.

(B) You must conduct monthly visual inspections of the vent collection system ductwork and wet particulate control equipment for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?'').

(C) You must conduct inspections of the interior of the wet control system (if applicable) to determine the structural integrity and condition of the control equipment every 12 months.

(D) You are required to inspect ductwork that is unsafe or difficult to inspect only during periods when it is safe or physically possible to do so.

(ii) You must inspect and maintain each dry particulate control unit according to the requirements in paragraphs (a)(2)(ii)(A) through (C) of this section.

(A) You must conduct monthly visual inspections of the vent collection system ductwork for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?'').

(B) You must conduct inspections of the interior of the dry particulate control unit for structural integrity and to determine the condition of the fabric filter (if applicable) every 12 months.

(C) You are required to inspect ductwork that is unsafe or difficult to inspect only during periods when it is safe or physically possible to do so.

(b) You must record the information specified in paragraphs (b)(1) through (6) of this section for each inspection activity.

(1) The date, place, and time;

(2) Person conducting the activity;

(3) Method of inspection;

(4) Operating conditions during the activity;

(5) Results; and

(6) Description of any correction actions taken.

(c) At all times the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by this standard have been achieved. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of

operation and maintenance records, and inspection of the source.

(d) If you have provided certification that each process vent stream from equipment in target HAP service will not contain a PM concentration greater than 0.03 gr/dscf, the management practice requirements are as follows:

(1) You must conduct an initial visual inspection of the vent collection system ductwork for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?'').

(2) You must conduct monthly visual inspections of the vent collection system ductwork for leaks (as defined in § 63.11588, ''What definitions apply to this subpart?'').

(3) You are required to inspect ductwork that is unsafe or difficult to inspect only during periods when it is safe or physically possible to do so.

(4) You must record the information specified in paragraphs (d)(4)(i) through (iv) of this section for each inspection.

(i) The date, place, and time;

(ii) Person conducting the activity;

(iii) Results; and

(iv) Description of any correction actions taken.

§ 63.11585 What are my notification, recordkeeping, and reporting requirements?

(a) What General Provision notification, recordkeeping and reporting requirements must I meet? You must meet the requirements of 40 CFR part 63 subpart A according to Table 6.

(b) What notifications must I submit and when?

(1) Initial Notification of Applicability. If you own or operate an existing affected source, you must submit an initial notification of applicability as required by § 63.9(b)(2) no later than April 29, 2010. If you own or operate a new affected source, you must submit an initial notification of applicability required by § 63.9(b)(2) no later than 120 days after initial start-up of operation or April 29, 2010, whichever is later. The initial notification of applicability must include the information specified in § 63.9(b)(2)(i) through (iii).

(2) Notification of Intent to conduct a Performance Test. If you elect to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(3) Notification of Compliance Status Report (NOCSR). You must submit a NOCSR according to § 63.9(h)(2)(ii). You must submit the NOCSR, including the performance test results, if applicable, before the close of business on the 60th calendar day following the applicable compliance date specified in § 63.11580 or completion of the performance test, whichever is sooner. The NOCSR must include the information in § 63.9(h)(2)(i)(A) through (G) necessary to demonstrate compliance with the emission standard as of the applicable compliance date.

(4) If you have an existing source and are using data from a previously conducted performance test to serve as documentation of compliance with the emission reduction or 0.03 gr/dscf PM concentration requirements of this subpart, you must submit the test data in lieu of the initial performance test results with the NOCSR required under paragraph (b)(3) of this section.

(5) You must provide the results of the initial management practices required by § 63.11584(a)(1) and (d)(1).

(6) If you are providing certification that the particulate matter concentration of each of the process vent streams from equipment in target HAP service within a chemical preparation operation will not exceed 0.03 gr/dscf, you must submit this certification in the NOCSR required in paragraph (b)(3) of this section. You must submit the certification statement, including the supporting calculations or performance test results, if applicable. The certification statement and supporting documentation must include the information in § 63.11582(e)(1) necessary to demonstrate compliance with the emission standard as of the compliance date.

(c) What reports must I submit and when?

(1) You must submit compliance reports as specified in Table 5 of this subpart that applies to you.

(2) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each compliance report specified in Table 5 of this subpart according to the following dates:

(i) If deviations occur, then:

(A) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.11580 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.11580 (*i.e.,* December 31 for a source that is existing with a compliance date of December 30, 2010).

(B) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.11580 (*i.e.,* January 31 for a source that is existing with a compliance date of December 30, 2010).

(C) Each subsequent compliance report for a period in which deviations occur must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(D) Each subsequent compliance report for a period in which deviations occur must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(ii) If no deviations occur, then:

(A) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.11580 and ending on December 31 following the end of the first calendar year after the compliance date that is specified for your source in § 63.11580.

(B) The first compliance report must be postmarked or delivered no later than January 31 following the end of the first calendar year after the compliance date that is specified for your affected source in § 63.11580.

(C) Each subsequent compliance report for a period in which deviations occur must cover the annual reporting period from January 1 through December 31.

(D) Each subsequent compliance report for a period in which no deviations occur must be postmarked or delivered no later than January 31 immediately following the previous calendar year.

(3) The compliance report must contain the following information:

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) If there are no deviations from the emission reduction or 0.03 gr/dscf PM concentration requirements as specified in Table 1, a statement that there were no deviations from the emission reduction or 0.03 gr/dscf PM concentration requirements during the reporting period.

(v) If there were no periods during which the CPMS (if a CPMS is used to demonstrate compliance) was out-of-control as defined by the manufacturer's

recommendations, a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(vi) A description of any changes in monitoring systems or CPMS, processes (including changes that establish the basis for certification that the PM concentration from process vents will not exceed 0.03 gr/dscf or the addition of new processes), or controls since the last reporting period or for the first compliance report, since the notification of compliance status report.

(4) For each deviation, as applicable and as defined in § 63.11588, you must include the information in paragraphs (c)(3)(i) through (c)(3)(iii) of this section, and the information in paragraphs (c)(4)(i) through (4)(ix) of this section that apply to you.

(i) The date and time that each deviation started and stopped.

(ii) The date and time that each bag leak detector, parameter monitor, or CPMS was inoperative, except for zero (low-level) and high-level checks.

(iii) If a CPMS is used, the date, time and duration that each CPMS was out-of-control.

(iv) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(v) A list of reasons for the deviations during the reporting period.

(vi) If a CPMS is used, a summary of the total duration of CPMS downtime during the reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that reporting period.

(vii) A brief description of the process units.

(viii) A brief description of the bag leak detector, parameter monitor, or CPMS.

(ix) If a CPMS is used, the date of the latest CPMS certification or audit.

(5) If acceptable to both the Administrator and you, you may submit reports and notifications electronically.

(d) What records must I maintain?

(1) You must maintain the following records:

(i) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification of Applicability or NOCSR that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(ii) Records identifying periods when the chemical preparations operation is in target HAP service using:

(A) Production records showing the dates and times the chemical preparations operation is processing target HAP-containing materials; and

(B) Material safety data sheets (MSDS) of target HAP-containing materials being processed.

(iii) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(iv) Records of CPMS (if a CPMS is used to demonstrate compliance) calibration checks and adjustments and maintenance performed on CPMS as required by § 63.10(b)(2)(x) and (xi).

(v) Records of CPMS as required by § 63.10(c) and § 63.11583(d)(5).

(vi) Records of all inspections as required by § 63.11584(b) and pressure measurement device checks (if applicable) as required by § 63.11583(e)(6).

(vii) Records of the site-specific monitoring plan developed according to § 63.11583(f).

(viii) Records of particulate control device manufacturing specifications and recommendations.

(2) You must maintain the records specified in paragraph (d)(1) of this section in accordance with paragraphs (d)(2)(i) through (d)(2)(iii) of this section.

(i) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(ii) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each recorded action.

(iii) You must keep each record onsite for at least 2 years after the date of each recorded action according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

(3) If you are providing certification that the particulate matter concentration of each of the process vent streams from equipment in target HAP service within a chemical preparation operation will not exceed 0.03 gr/dscf, you must maintain the following records according to paragraphs (d)(2)(i) through (d)(2)(iii) of this section:

(i) Records of the initial certification statement and supporting documentation specified in paragraph (b)(6) of this section.

(ii) Records of ductwork inspections specified in § 63.11584(d)(4).

(iii) Records of the quarterly raw material losses to the atmosphere and process vent stream PM concentration calculations specified in § 63.11582(e)(2).

Other Requirements and Information

§ 63.11586 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (U.S. EPA) or a delegated authority such as your State, local, or Tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or Tribal agency, then that agency (the delegated authority), in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart has been delegated.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or Tribal agency under 40 CFR part 63, subpart E, the following authorities are retained by the Administrator of U.S. EPA:

(1) Approval of alternatives to the requirements in §§ 63.11579, 63.11580, 63.11581, 63.11582, 63.11583, and 63.11584.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.11587 What General Provisions sections apply to this subpart?

You must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) according to Table 6 of this subpart.

§ 63.11588 What definitions apply to this subpart?

Chemical preparation means a target HAP-containing product, or intermediate used in the manufacture of other products, manufactured in a process operation described by the NAICS code 325998 if the operation manufactures target HAP-containing products or intermediates other than indelible ink, India ink, writing ink, and stamp pad ink. Indelible ink, India ink, writing ink, and stamp pad ink manufacturing operations are subject to regulation by the paints and allied products area source rule (40 CFR part 63, subpart CCCCCCC).

Chemical preparations facility means any facility-wide collection of chemical preparation operations.

Chemical preparations operation means the collection of mixing, blending, milling, and extruding equipment used to manufacture chemical preparations. A chemical preparation operation may include all, or only some, of the equipment listed above, depending on the chemical preparation being manufactured. Mixing and blending equipment may be used to

process either wet or dry materials, or a combination of wet and dry materials. Milling equipment includes, but is not limited to, various types of rolling mills, rotary mills, and grinders. Extruding equipment, for the purposes of this subpart, includes direct and indirect extruders, spray driers, and prilling towers.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or management practice established by this subpart;

(2) Fails to meet any term or condition that is adopted to implement a requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limit.

In target HAP service means that equipment in the chemical preparation operation either contains, contacts, or is processing target HAP-containing materials.

Leak means a break in the integrity of the vent collection or control device system (*i.e.,* in the duct work, piping, *etc.*) such that visual particulate emissions, liquids or residue form outside the vent collection system or control device.

Process vent stream means a gas stream from any equipment in target HAP service at the point where that gas stream is discharged from a vent collection system to the atmosphere, or inlet of a control device, if any.

Research and development equipment means any equipment whose primary purpose is to conduct research and development to develop new processes and products, where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a *de minimis* manner.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more chemical preparations facilities;

(2) For a partnership: A general partner;

(3) For a sole proprietorship: The owner; or

(4) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking official.

Target HAP means metal compounds for chromium, lead, manganese, and nickel.

Target HAP-containing means raw materials, intermediates, or products that contain one or more target HAP. Any material that contains compounds of chromium (VI), lead, or nickel in amounts greater than or equal to 0.1 percent by weight (as the metal), or manganese or chromium (III) compounds in amounts greater than or equal to 1.0 percent by weight (as the metal) is considered to be target HAP-containing. Target HAP content is shown in the formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material.

Unsafe or difficult to inspect means the equipment cannot be inspected without elevating the inspection personnel more than two meters above a support surface or it is not accessible at anytime in a safe manner.

Vent collection system means hoods, enclosures, ductwork and fans utilized to remove particulate emissions from chemical preparations operations work areas.

Tables of Subpart BBBBBBB of Part 63

TABLE 1 OF SUBPART BBBBBBB OF PART 63—EMISSION REDUCTION AND PM CONCENTRATION REQUIREMENTS

For each * * *	You must * * *	Using * * *
1. Process Vent Stream from equipment in target HAP service.	Route the process vent stream to a PM control device with: a. A PM percent reduction efficiency of 95 percent (98 percent for new sources), or. b. An outlet concentration of 0.03 gr/dscf or less.	Vent collection system and PM control device, such as a wet scrubber or fabric filter, that are maintained and operated per manufacturer's recommendations.

TABLE 2 OF SUBPART BBBBBBB OF PART 63—INITIAL COMPLIANCE DEMONSTRATION METHODS WITH THE EMISSION REDUCTION AND PM CONCENTRATION REQUIREMENTS

If you are demonstrating compliance with the * * *	You must demonstrate initial compliance by one of the following methods * * *
1. Requirement to route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95 percent (98 percent for new sources) or an outlet concentration of 0.03 gr/dscf or less..	a. Perform a PM emissions test using the methods listed in Table 3 to this subpart; or b. Provide performance guarantee information from the control device manufacturer that certifies the device is capable of reducing PM concentrations by 95 percent (98 percent for new sources) or achieves an outlet concentration of 0.03 gr/dscf or less; or c. Provide engineering calculations, such as mass balance and flow rate calculations, that demonstrate that the control device is capable of reducing PM concentration from the chemical preparations operation process vent streams by 95 percent (98 percent for new sources) or achieving an outlet concentration of 0.03 gr/dscf or less.
2. Certification that all process vent streams from equipment in target HAP service will not contain a PM concentration greater than 0.03 gr/dscf.	a. Perform a PM emissions test using the methods listed in Table 3 to this subpart; or b. Provide engineering calculations, such as mass balance and flow rate calculations, that demonstrate that the PM concentration from the chemical preparations operation process vent streams will not be greater than 0.03 gr/dscf.

TABLE 3 OF SUBPART BBBBBBB OF PART 63—TEST METHODS

For * * *	You must use * * *
1. Selecting the sampling locations [a] and the number of traverse points.	EPA test method 1 or 1A in appendix A to part 60.
2. Determining the velocity and volumetric flow rate	EPA test method 2, 2A, 2C, 2D, 2F, or 2G, as appropriate, in appendix A to part 60.
3. Determining the gas molecular weight used for flow rate determination.	EPA test method 3, 3A, 3B, as appropriate, in appendix A to part 60.
4. Measuring the moisture content of the stack gas	EPA test method 4 in appendix A to part 60.
5. Measuring the PM emissions	EPA test method 5 in appendix A to part 60.

[a] The sampling locations must be located at the outlet of the process equipment (or control device, if applicable), prior to any releases to the atmosphere.

TABLE 4 OF SUBPART BBBBBBB OF PART 63—CONTINUOUS COMPLIANCE DEMONSTRATION METHODS WITH THE EMISSION REDUCTION AND PM CONCENTRATION REQUIREMENTS

If you are demonstrating compliance with the * * *	You must demonstrate continuous compliance by * * *
1. Requirement to route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95 percent (98 percent for new sources) or an outlet concentration of 0.03 gr/dscf or less.	Using one of the following monitoring methods: a. A bag leak detector and alarm system, that notifies operators when a leak in the filter media is detected. b. A control device parameter monitor and alarm system, that notifies operators when the control device is operating outside of the upper or lower thresholds established by the control device manufacturer. Monitored parameters may include electricity supply to vent collection system fans, pressure drop across the control device, or scrubber liquor flow to the control device, as appropriate to the particulate matter control device being used. c. A CPMS, and maintaining records of data verifying that the vent collection system and control device were operated within the range of parameters established to comply with the emission reduction or 0.03 gr/dscf PM concentration requirements (*i.e.,* according to manufacturer's recommendations or at the conditions used during the most recent performance test) while the chemical preparations operation was in target HAP service. The control device monitoring data are averaged over a 24-hour period or an overall average per batch, whichever is less, while the chemical preparations operation is in target HAP service. Monitored parameters may include electricity supply to vent collection system fans, pressure drop across the control device, or scrubber liquor flow to the control device, as appropriate to the particulate matter control device being used.
2. Certification that all process vent streams from equipment in target HAP service will not contain a PM concentration greater than 0.03 gr/dscf.	a. Conducting monthly visual inspections of the vent collection system ductwork for leaks.

TABLE 5 OF SUBPART BBBBBBB OF PART 63—REPORTING REQUIREMENTS

If you are demonstrating compliance with the * * *	You must submit a compliance report as follows * * *
1. Requirement to route all process vent streams from equipment in target HAP service to a PM control device with a PM percent reduction efficiency of 95 percent (98 percent for new sources) or an outlet concentration of 0.03 gr/dscf or less.	a. An initial notice of compliance status report (NOCSR) as specified in § 63.11585(b)(3), and then as follows in (b) or (c) as applicable to you: b. If there were no deviations during the reporting period, you must submit an annual report containing: 1. A statement that there were no deviations from the requirement to route all process vent streams from equipment in target HAP service to a PM control device that achieves a PM percent reduction efficiency of 95 percent (98 percent for new sources) or an outlet concentration of 0.03 gr/dscf or less during the reporting period. 2. If there were no periods during which the process vent collection system and control device was not operating normally (*i.e.,* according to manufacturer's recommendations or at the conditions used during the most recent performance test), a statement that the vent collection system and control device were operated normally at all times during the reporting period. c. If you have a deviation from the requirement to route all process vent streams from equipment in target HAP service to a PM control device that achieves a PM percent reduction efficiency of 95 percent (98 percent for new sources) or to an outlet concentration of 0.03 gr/dscf or less, or periods where the vent collection system or control device were not operated normally, then you must submit a semi-annual report for that reporting period. The report must contain the information specified in § 63.11585(c).

TABLE 5 OF SUBPART BBBBBBB OF PART 63—REPORTING REQUIREMENTS—Continued

If you are demonstrating compliance with the * * *	You must submit a compliance report as follows * * *
2. Certification that all process vent streams from equipment in target HAP service will not contain a PM concentration greater than 0.03 gr/dscf.	a. An initial NOCSR as specified in § 63.11585(b)(3) that contains the following items: 1. A statement certifying that all process vent streams from equipment in target HAP service will not contain a PM concentration greater than 0.03 gr/dscf. The statement shall contain that official's name, title, and signature, certifying the truth, accuracy, and completeness of the certification statement. 2. Test results or engineering calculations that demonstrate process vent streams covered by the certification will not contain a PM concentration greater than 0.03 gr/dscf.

TABLE 6 OF SUBPART BBBBBBB OF PART 63—GENERAL PROVISIONS

Citation	Subject	Applies to subpart BBBBBBB
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities	Yes.
§ 63.5	Construction/Reconstruction	Yes.
§ 63.6(a)–(d)	Compliance with Standards and Maintenance Requirements.	Yes.
§ 63.6(e)(1)(i)–(ii)	Operation and Maintenance Requirements	No.
§ 63.6(e)(1)(iii)	Operation and Maintenance Requirements	Yes.
§ 63.6(e)(2)	[Reserved]	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	No. Subpart BBBBBBB does not require startup, shutdown, and malfunction plans.
§ 63.6(f)(1)	Compliance with Non-Opacity Emissions Standards—Applicability.	No. The emission limits apply at all times.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance and Finding of Compliance.	Yes.
§ 63.6(g)	Use of an Alternative Non-Opacity Emission Standard	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards	No. Subpart BBBBBBB does not contain opacity or VE standards.
§ 63.6(i)	Compliance Extension	Yes.
§ 63.6(j)	Presidential Compliance Exemption	Yes.
§ 63.7(a)–(d)	Performance Testing Requirements	Yes.
§ 63.7(e)(1)	Performance Testing Requirements	No. Subpart BBBBBBB specifies the conditions under which performance tests must be conducted.
§ 63.7(e)(2)–(4)	Conduct of Performance Tests and Data Reduction	Yes.
§ 63.7(f)–(h)	Use of Alternative Test Method; Data Analysis, Recordkeeping, and Reporting; and Waiver of Performance Tests.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements	Yes.
§ 63.8(a)(2)	Performance Specifications	No. Subpart BBBBBBB does not require CEMS to demonstrate compliance.
§ 63.8(a)(3)	[Reserved]	
§ 63.8(a)(4)	Monitoring with Flares	No.
§ 63.8(b)(1)	Monitoring	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Yes.
§ 63.8(c)(1)(i)	CMS maintenance	Yes.
§ 63.8(c)(1)(ii)	Spare Parts for CMS Malfunction	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements	No. Subpart BBBBBBB does not require startup, shutdown, and malfunction plans.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Yes.
§ 63.8(c)(4)	CMS Requirements	No. Subpart BBBBBBB does not require CEMS to demonstrate compliance.
§ 63.8(c)(5)	COMS Minimum Procedures	No. Subpart BBBBBBB does not contain opacity or VE standards.
§ 63.8(c)(6)	CMS Requirements	Yes, for CPMS provisions only. Subpart BBBBBBB does not require CEMS to demonstrate compliance.
§ 63.8(c)(7)–(8)	CMS Requirements	No. Subpart BBBBBBB does not require CEMS to demonstrate compliance.
§ 63.8(d)	CMS Quality Control	No. Subpart BBBBBBB does not require CEMS to demonstrate compliance.
§ 63.8(e)–(g)	CMS Performance Evaluation	No. Subpart BBBBBBB does not require CEMS to demonstrate compliance.

TABLE 6 OF SUBPART BBBBBBB OF PART 63—GENERAL PROVISIONS—Continued

Citation	Subject	Applies to subpart BBBBBBB
§ 63.9	Notification Requirements	Yes. Except Initial Notification shall be submitted in accordance with the schedule in § 63.11585.
§ 63.10(a),(b)(1), (b)(2)(viii)–(xi),(c), (e)(1), (e)(2)(i), (f).	Recordkeeping and Reporting Requirements	Yes.
§ 63.11	Control Device and Work Practice Requirements	Yes.
§ 63.12	State Authority and Delegations	Yes.
§ 63.13	Addresses of State Air Pollution Control Agencies and EPA Regional Offices.	Yes.
§ 63.14	Incorporations by Reference	Yes.
§ 63.15	Availability of Information and Confidentiality	Yes.
§ 63.16	Performance Track Provisions	No.

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Federal Register

Wednesday,
December 30, 2009

Part III

The President

Proclamation 8467—To Modify Duty-Free Treatment Under the Generalized System of Preferences, and for Other Purposes

Proclamation 8468—To Take Certain Actions Under the African Growth and Opportunity Act

Executive Order 13525—Adjustments of Certain Rates of Pay

Federal Register
Vol. 74, No. 249
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Presidential Documents

Title 3—

The President

Proclamation 8467 of December 23, 2009

To Modify Duty-Free Treatment Under the Generalized System of Preferences, and for Other Purposes

By the President of the United States of America

A Proclamation

1. Sections 501(1) and (4) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2461(1) and (4)), provide that, in affording duty-free treatment under the Generalized System of Preferences (GSP), the President shall have due regard for, among other factors, the effect such action will have on furthering the economic development of a beneficiary developing country and the extent of the beneficiary developing country's competitiveness with respect to eligible articles. Section 502(c)(2) of the 1974 Act (19 U.S.C. 2462(c)(2)) provides that, in determining whether to designate any country as a beneficiary developing country for purposes of the GSP, the President shall take into account various factors, including the country's level of economic development, the country's per capita gross national product, the living standards of its inhabitants, and any other economic factors he deems appropriate. Section 502(d) of the 1974 Act (19 U.S.C. 2462(d)) authorizes the President to withdraw, suspend, or limit the application of duty-free treatment under the GSP with respect to any country after considering the factors set forth in sections 501 and 502(c) of the 1974 Act. Section 502(f)(2) of the 1974 Act (19 U.S.C. 2462(f)(2)) requires the President to notify the Congress and the affected country, at least 60 days before termination, of the President's intention to terminate the affected country's designation as a beneficiary developing country for purposes of the GSP.

2. Section 502(e) of the 1974 Act (19 U.S.C. 2462(e)) provides that the President shall terminate the designation of a country as a beneficiary developing country if the President determines that such country has become a ''high income'' country as defined by the official statistics of the International Bank for Reconstruction and Development. Termination is effective on January 1 of the second year following the year in which such determination is made.

3. Pursuant to section 502(e) of the 1974 Act, I have determined that Croatia has become a ''high income'' country, and I am terminating the designation of that country as a beneficiary developing country for purposes of the GSP, effective January 1, 2011.

4. Pursuant to section 502(e) of the 1974 Act, I have determined that Equatorial Guinea has become a ''high income'' country, and I am terminating the designation of that country as a beneficiary developing country for purposes of the GSP, effective January 1, 2011.

5. Section 502(a)(2) (19 U.S.C. 2462(a)(2)) of the 1974 Act provides that the President may designate any beneficiary developing country as a least-developed beneficiary developing country for purposes of the GSP, based on the considerations in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 19 U.S.C. 2462(c)).

6. Pursuant to section 502(d)(1) of the 1974 Act, and having considered the factors set forth in sections 501 and 502(c) of the 1974 Act, I have

determined that Cape Verde should be removed from the list of least-developed beneficiary countries.

7. In Proclamation 8272 of June 30, 2008, the President determined that Trinidad and Tobago had become a ''high income'' country, and the designation of Trinidad and Tobago as a beneficiary developing country for purposes of the GSP shall be terminated, effective January 1, 2010. I have determined that technical rectifications should be made to the Harmonized Tariff Schedule of the United States (HTS) to reflect that determination.

8. Pursuant to sections 501 and 502(a)(1) of the 1974 Act, the President is authorized to designate countries as beneficiary developing countries for purposes of the GSP and to provide duty-free treatment for eligible articles from beneficiary developing counties.

9. In Proclamation 6813 of July 28, 1995, the President suspended the designation of the Republic of Maldives (Maldives) as a beneficiary developing country under the GSP.

10. Pursuant to sections 501 and 502(a) of the 1974 Act, and taking into account the factors set forth in sections 501 and 502(c), I have determined that it is appropriate to terminate the suspension of preferential treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Maldives and to redesignate Maldives as a beneficiary developing country for purposes of the GSP.

11. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the ''USIFTA''), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Act'') (19 U.S.C. 2112 note).

12. Section 4(b) of the USIFTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be required or appropriate to carry out the USIFTA.

13. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the ''2004 Agreement'').

14. In Presidential Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, the President determined, pursuant to section 4(b) of the USIFTA Act, that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

15. On December 10, 2008, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2009, to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement.

16. In Presidential Proclamation 8334 of December 31, 2008, the President determined that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA to extend such duty-free treatment through December 31, 2009. In Proclamation 8334, the President modified the HTS to provide duty-free access into the United States through December 31, 2009, for specified quantities of certain agricultural products of Israel. In Proclamation 8405 of August 31, 2009, I further modified the HTS to provide the intended tariff treatment.

17. On December 6, 2009, the United States entered into a further agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2010, to allow for further negotiations on an agreement to replace the 2004 Agreement.

18. Pursuant to section 4(b) of the USIFTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2010, for specified quantities of certain agricultural products of Israel.

19. Presidential Proclamation 6641 of December 15, 1993, implemented the North American Free Trade Agreement (NAFTA) with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act'') (Public Law 103–182), incorporated in the HTS the schedule of duty reductions and rules of origin necessary or appropriate to carry out the NAFTA.

20. Section 202 of the NAFTA Implementation Act (19 U.S.C. 3332) provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA.

21. Presidential Proclamation 8405 of August 31, 2009, modified the HTS to provide for modifications to the rules of origin under the NAFTA. I have determined that technical corrections to the HTS are necessary to provide for the intended rules of origin.

22. Presidential Proclamation 7747 of December 30, 2003, implemented the United States-Singapore Free Trade Agreement (USSFTA) with respect to the United States, including certain rules for determining whether a good is an originating good for the purposes of implementing tariff treatment under the USSFTA. I have determined that certain rules of origin under the USSFTA were inadvertently deleted in the HTS and that technical rectifications to the HTS are necessary to restore the intended rules of origin.

23. Presidential Proclamation 7746 of December 30, 2003, implemented the United States-Chile Free Trade Agreement (USCFTA) with respect to the United States, including certain rules for determining whether a good is an originating good for the purposes of implementing tariff treatment under the USCFTA. I have determined that technical corrections to the HTS are necessary to provide for the intended rules of origin.

24. Presidential Proclamations 7987 of February 28, 2006; 7991 of March 24, 2006; 7996 of March 31, 2006; 8034 of June 30, 2006; 8111 of February 28, 2007; and 8331 of December 23, 2008, implemented the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) with respect to the United States, including certain rules for determining whether a good is an originating good for the purposes of implementing tariff treatment under the CAFTA-DR. Section 203(f)(3)(A)(ii) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the ''CAFTA-DR Act'') (19 U.S.C. 4033) provides rules of origin for certain yarns described in section 204(b)(3)(B)(vi)(IV) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(vi)(IV)) (as in effect on the date of enactment of the CAFTA-DR Act).

25. Presidential Proclamations 8097 of December 29, 2006, and 8240 of April 17, 2008, modified the HTS pursuant to section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3006(a)) to conform it to amendments in the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention''). They contained certain modifications that affected the rules of origin under the Andean Trade Preference Act. Modifications to the HTS are necessary to conform the rules of origin for certain yarns described in section 204(b)(3)(B)(vi)(IV) of the Andean Trade Preference Act to the Convention. I have determined

that additional conforming changes to the HTS are necessary to provide for the intended rules of origin under the CAFTA-DR.

26. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act and section 4 of the USIFTA Act, do proclaim that:

(1) The designation of Croatia as a beneficiary developing country for purposes of the GSP is terminated, effective on January 1, 2011.

(2) In order to reflect this termination in the HTS, general note 4(a) of the HTS is modified by deleting ''Croatia'' from the list of independent countries, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2011.

(3) The designation of Equatorial Guinea as a beneficiary developing country for purposes of the GSP is terminated, effective on January 1, 2011.

(4) In order to reflect this termination in the HTS, general note 4(a) of the HTS is modified by deleting ''Equatorial Guinea'' from the list of independent countries, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2011. General note 4(b)(i) of the HTS is modified by deleting ''Equatorial Guinea'' from the list of least-developed beneficiary developing countries, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2011.

(5) In order to reflect in the HTS the termination of the designation of Cape Verde as a least-developed beneficiary developing country for purposes of the GSP, general note 4(b)(i) of the HTS is modified by deleting ''Cape Verde'' from the list of least-developed beneficiary developing countries, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2010.

(6) In order to reflect in the HTS the termination of the designation of Trinidad and Tobago as a beneficiary developing country for purposes of the GSP, general note 4(d) and general note 4(a) to the HTS, and the Rate of Duty 1-Special subcolumn for HTS subheading 7411.21.50, are modified as set forth in Annex I to this proclamation.

(7) In order to reflect in the HTS the redesignation of Maldives as a beneficiary developing country under the GSP, general note 4(a) is modified by adding in alphabetical order ''Maldives'' to the list of ''Independent Countries'' and by adding in alphabetical order ''Maldives'' to the list of ''Member Countries of the South Asian Association for Regional Cooperation (SAARC).''

(8) In order to make technical corrections and rectifications necessary to provide the intended rules of origin under the NAFTA, the USSFTA, and the USCFTA, the HTS is modified as set forth in Annex II to this proclamation.

(9) In order to reflect modifications to the HTS made to conform the rules of origin for certain yarns described in section 204(b)(3)(B)(vi)(IV) of the Andean Trade Preference Act to the Convention, general note 29 of the HTS is modified as set forth in Annex II to this proclamation.

(10) The modifications to the HTS set forth in Annexes I and II to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the respective annex.

(11) In order to implement U.S. tariff commitments under the 2004 Agreement through December 31, 2010, the HTS is modified as provided in Annex III to this proclamation.

(12)(a) The modifications to the HTS made by Annex III to this proclamation shall be effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2010.

(b) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by Annex III to this proclamation, shall continue in effect through December 31, 2010.

(13) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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

Billing code 3195–W0–P

ANNEX I

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Section A: Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2010, General Note 4(d) to the Harmonized Tariff schedule of the United States (HTS) is modified as follows:

(1). Deleting the following subheading number and the country set out opposite such subheading number:

7411.21.50 Trinidad and Tobago

(2). Deleting the following country set out opposite the following subheading number:

2905.11.20 Trinidad and Tobago

Section B: Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2010, the HTS is modified as follows:

(1). For the following subheading, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*" and inserting an "A" in lieu therof:

7411.21.50

Section C: Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2010, General Note 4(a) to the HTS is modified as follows:

Deleting from the section "Associations of Countries (treated as one country), Member Countries of the Caribbean Common Market (CARICOM), currently qualifying":

Trinidad and Tobago

ANNEX II

TECHNICAL CORRECTIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

In order to make technical corrections in the Harmonized Tariff Schedule of the United States (HTS), the following provisions of the HTS are hereby modified as follows:

1. Effective with respect to goods of Mexico or of Canada, under the terms of general note 12 to the HTS, that are entered, or withdrawn from warehouse for consumption, on or after October 2, 2009, subdivision (t) of such note is modified--

(a) by deleting from the subheading rule for chapter 7, chapter 8, chapter 9 (appearing immediately above tariff classification rule (TCR) 17), chapter 13 (appearing immediately above TCR 2) and chapter 20 (appearing immediately above TCR 2) the expression "(f)(I)" and by inserting in lieu thereof "(f)(i)";

(b) by deleting from TCR 44 for chapter 29 the number "2922.21" at each instance and by inserting in lieu thereof "2921.21"; and

(c) by deleting from TCR 44A for chapter 29 the number "2922.29" at each instance and by inserting in lieu thereof "2921.29".

2. Effective with respect to goods of Singapore, under the terms of general note 25 to the HTS, that are entered, or withdrawn from warehouse for consumption, on or after February 7, 2008, the following new TCRs for chapter 62 are inserted in subdivision (o) of such general note:

"72. A change to subheading 6212.10 from any other chapter, except from headings 5208 through 5212, 5407 through 5408, 5512 through 5516, 5803 through 5804, 5806 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Singapore or of the United States, or both.

72A. A change to subheading 6212.20 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802, or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Singapore or of the United States, or both.

73. A change to subheading 6212.30 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802, or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Singapore or of the United States, or both.

73A. A change to subheading 6212.90 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54 or headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the territory of Singapore or of the United States, or both."

3. Effective with respect to goods of Chile, under the terms of general note 26 to the HTS, that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004, TCR 41 for chapter 85 as set forth in subdivision (n) of such general note is modified by deleting "8518.29 or" and by inserting in lieu thereof "8518.29 through" at each instance.

4. Effective with respect to goods of a Party to the Dominican Republic-Central America-United States Free Trade Agreement, as defined in subdivision (a) to general note 29 of the HTS, that are entered, or withdrawn from warehouse for consumption, on or after February 3, 2007, subdivision (d)(i)(B) of such general note 29 is modified by deleting "5402.10.30, 5402.10.60," and by inserting in lieu thereof "5402.11.30, 5402.11.60, 5402.19.30, 5402.19.60,"; and by deleting "5402.41.10, 5402.41.90," and by inserting in lieu thereof "5402.45.10, 5402.45.90,".

ANNEX III

TO EXTEND TEMPORARILY CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to eligible agricultural products of Israel which are entered, or withdrawn from warehouse for consumption, on or after January 1, 2010 and before the close of December 31, 2010, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by deleting "December 31, 2009" and by inserting in lieu thereof "December 31, 2010."

2. U.S. note 3 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2010 466,000."

3. U.S. note 4 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2010 1,304,000."

4. U.S. note 5 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2010 1,534,000."

5. U.S. note 6 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2010 131,000."

6. U.S. note 7 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2010 707,000."

[FR Doc. E9–31096
Filed 12–29–09; 8:45 am]
Billing code 7020–02–C

Presidential Documents

Proclamation 8468 of December 23, 2009

To Take Certain Actions Under the African Growth and Opportunity Act

By the President of the United States of America

A Proclamation

1. Section 506A(a)(1) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (title I of Public Law 106–200) (AGOA), authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a ''beneficiary sub-Saharan African country'' if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the 1974 Act (19 U.S.C. 2462).

2. Section 104 of the AGOA authorizes the President to designate a country listed in section 107 of the AGOA as an ''eligible sub-Saharan African country'' if the President determines that the country meets certain eligibility requirements.

3. Section 112(c) of the AGOA, as added in section 6002 of the Africa Investment Incentive Act of 2006 (Division D, title VI of Public Law 109–432) (19 U.S.C. 3721(c)), provides special rules for certain apparel articles imported from ''lesser developed beneficiary sub-Saharan African countries.''

4. In Proclamation 7350 of October 2, 2000, President Clinton designated the Republic of Guinea (Guinea), the Republic of Madagascar (Madagascar), and the Republic of Niger (Niger) as beneficiary sub-Saharan African countries pursuant to section 506A(a) of the 1974 Act and provided that they would be considered lesser developed beneficiary sub-Saharan African countries for purposes of section 112(b)(3)(B) (subsequently redesignated as section 112(c)) of the AGOA.

5. Section 506A(a)(3) of the 1974 Act (19 U.S.C. 2466a(a)(3)) authorizes the President to terminate the designation of a country as a beneficiary sub-Saharan African country for purposes of section 506A if he determines that the country is not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act.

6. Pursuant to section 104 of the AGOA and section 506A(a)(1) of the 1974 Act, I have determined that the Islamic Republic of Mauritania (Mauritania) meets the eligibility requirements set forth or referenced therein, and I have decided to designate Mauritania as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

7. Mauritania satisfies the criterion for treatment as a ''lesser developed beneficiary sub-Saharan African country'' under section 112(c) of the AGOA.

8. Pursuant to section 506A(a)(3) of the 1974 Act, I have determined that Guinea, Madagascar, and Niger are not making continual progress in meeting the requirements described in section 506A(a)(1) of the 1974 Act. Accordingly, I have decided to terminate the designations of Guinea, Madagascar, and Niger as beneficiary sub-Saharan African countries for purposes of section 506A of the 1974 Act, effective on January 1, 2010.

9. Section 604 of the 1974 Act (19 U.S.C. 2483), as amended, authorizes the President to embody in the Harmonized Tariff Schedule of the United

States (HTS) the substance of relevant provisions of that Act, or other acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 104 of the AGOA (19 U.S.C. 3703), and title V and section 604 of the 1974 Act (19 U.S.C. 2461–67, 2483), do proclaim that:

(1) Mauritania is designated as an eligible sub-Saharan African country and as a beneficiary sub-Saharan African country.

(2) In order to reflect this designation in the HTS, general note 16(a) to the HTS is modified by inserting in alphabetical sequence in the list of beneficiary sub-Saharan African countries ''Islamic Republic of Mauritania.''

(3) For purposes of section 112(c) of the AGOA, Mauritania is a lesser developed beneficiary sub-Saharan African country.

(4) The designations of Guinea, Madagascar, and Niger as beneficiary sub-Saharan African countries for purposes of section 506A of the 1974 Act are terminated, effective on January 1, 2010.

(5) In order to reflect in the HTS that beginning on January 1, 2010, Guinea, Madagascar, and Niger shall no longer be designated as beneficiary sub-Saharan African countries, general note 16(a) to the HTS is modified by deleting ''Republic of Guinea,'' ''Republic of Madagascar,'' and ''Republic of Niger'' from the list of beneficiary sub-Saharan African countries.

Further, note 2(d) to subchapter XIX of chapter 98 of the HTS is modified by deleting ''Republic of Guinea,'' ''Republic of Madagascar,'' and ''Republic of Niger'' from the list of lesser developed beneficiary sub-Saharan African countries.

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

[FR Doc. E9–31097
Filed 12–29–09; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Executive Order 13525 of December 23, 2009

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303 and section 744 of Division C of the Consolidated Appropriations Act, 2010 (Public Law 111–117, December 16, 2009), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), and section 140 of Public Law 97–92) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and section 601 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111–84, October 28, 2009), and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.*

(a) Pursuant to section 5304 of title 5, United States Code, and section 744 of Division C of the Consolidated Appropriations Act, 2010 (Public Law 111–117, December 16, 2009), locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register*.

Sec. 6. *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2010. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2010.

Sec. 8. *Prior Order Superseded.* Executive Order 13483 of December 18, 2008, is superseded.

THE WHITE HOUSE,

December 23, 2009.

Billing code 3195–W0–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2010)

	1	2	3	4	5	6	7	8	9	10
GS-1	$17,803	$18,398	$18,990	$19,579	$20,171	$20,519	$21,104	$21,694	$21,717	$22,269
GS-2	20,017	20,493	21,155	21,717	21,961	22,607	23,253	23,899	24,545	25,191
GS-3	21,840	22,568	23,296	24,024	24,752	25,480	26,208	26,936	27,664	28,392
GS-4	24,518	25,335	26,152	26,969	27,786	28,603	29,420	30,237	31,054	31,871
GS-5	27,431	28,345	29,259	30,173	31,087	32,001	32,915	33,829	34,743	35,657
GS-6	30,577	31,596	32,615	33,634	34,653	35,672	36,691	37,710	38,729	39,748
GS-7	33,979	35,112	36,245	37,378	38,511	39,644	40,777	41,910	43,043	44,176
GS-8	37,631	38,885	40,139	41,393	42,647	43,901	45,155	46,409	47,663	48,917
GS-9	41,563	42,948	44,333	45,718	47,103	48,488	49,873	51,258	52,643	54,028
GS-10	45,771	47,297	48,823	50,349	51,875	53,401	54,927	56,453	57,979	59,505
GS-11	50,287	51,963	53,639	55,315	56,991	58,667	60,343	62,019	63,695	65,371
GS-12	60,274	62,283	64,292	66,301	68,310	70,319	72,328	74,337	76,346	78,355
GS-13	71,674	74,063	76,452	78,841	81,230	83,619	86,008	88,397	90,786	93,175
GS-14	84,697	87,520	90,343	93,166	95,989	98,812	101,635	104,458	107,281	110,104
GS-15	99,628	102,949	106,270	109,591	112,912	116,233	119,554	122,875	126,196	129,517

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2010)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$99,628	$80,728	$65,413	$53,003	$42,948	$38,394	$34,324	$30,684	$27,431
2	102,617	83,150	67,375	54,593	44,236	39,546	35,354	31,605	28,254
3	105,695	85,644	69,397	56,231	45,564	40,732	36,414	32,553	29,102
4	108,866	88,214	71,479	57,918	46,930	41,954	37,507	33,529	29,975
5	112,132	90,860	73,623	59,655	48,338	43,213	38,632	34,535	30,874
6	115,496	93,586	75,832	61,445	49,789	44,509	39,791	35,571	31,800
7	118,961	96,393	78,107	63,288	51,282	45,844	40,985	36,638	32,754
8	122,530	99,285	80,450	65,187	52,821	47,220	42,214	37,737	33,737
9	126,206	102,264	82,863	67,143	54,405	48,636	43,481	38,870	34,749
10	129,517	105,332	85,349	69,157	56,037	50,095	44,785	40,036	35,791
11	129,517	108,492	87,910	71,232	57,719	51,598	46,129	41,237	36,865
12	129,517	111,746	90,547	73,369	59,450	53,146	47,512	42,474	37,971
13	129,517	115,099	93,263	75,570	61,234	54,741	48,938	43,748	39,110
14	129,517	118,552	96,061	77,837	63,071	56,383	50,406	45,060	40,283

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2010)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

Assistant Under Secretaries for Health $157,279**
(Only applies to incumbents who are not physicians or dentists)

	Minimum	Maximum
Service Directors	$116,844	$145,113
Director, National Center for Preventive Health	99,628	145,113

Physician and Dentist Base and Longevity Schedule***

Physician Grade	$97,987	$143,725
Dentist Grade	97,987	143,725

Clinical Podiatrist, Chiropractor, and Optometrist Schedule

Chief Grade	$99,628	$129,517
Senior Grade	84,697	110,104
Intermediate Grade	71,674	93,175
Full Grade	60,274	78,355
Associate Grade	50,287	65,371

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

Director Grade	$99,628	$129,517
Assistant Director Grade	84,697	110,104
Chief Grade	71,674	93,175
Senior Grade	60,274	78,355
Intermediate Grade	50,287	65,371
Full Grade	41,563	54,028
Associate Grade	35,766	46,494
Junior Grade	30,577	39,748

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* This schedule does not apply to the Deputy Under Secretary for Health, the Associate Deputy Under Secretary for Health, Assistant Under Secretaries for Health who are physicians or dentists, Medical Directors, the Assistant Under Secretary for Nursing Programs, or the Director of Nursing Services.

** Pursuant to 38 U.S.C. 7404(d), the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $145,700.

*** Pursuant to section 3 of Public Law 108-445 and 38 U.S.C. 7431, Veterans Health Administration physicians and dentists may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2010)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$119,554	$179,700
Agencies without a Certified SES Performance Appraisal System	$119,554	$165,300

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2010)

Level I	$199,700
Level II	179,700
Level III	165,300
Level IV	155,500
Level V	145,700

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2010)

Vice President	$230,700
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2010)

Chief Justice of the United States	$223,500
Associate Justices of the Supreme Court	213,900
Circuit Judges	184,500
District Judges	174,000
Judges of the Court of International Trade	174,000

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2010)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10**	-	-	-	-	-	-	-	-	-	-	-
O-9	-	-	-	-	-	-	-	-	-	-	-
O-8	$9,399.00	$9,706.80	$9,911.10	$9,968.40	$10,223.40	$10,649.10	$10,748.40	$11,152.80	$11,268.60	$11,617.20	$12,121.20
O-7	7,809.90	8,172.90	8,340.60	8,474.10	8,715.60	8,954.40	9,230.40	9,505.50	9,781.80	10,649.10	11,381.40
O-6	5,788.50	6,359.40	6,776.70	6,776.70	6,802.50	7,094.10	7,132.50	7,132.50	7,537.80	8,254.80	8,675.40
O-5	4,825.50	5,436.00	5,812.50	5,883.30	6,117.90	6,258.60	6,567.60	6,794.10	7,086.90	7,535.10	7,748.10
O-4	4,163.70	4,819.80	5,141.40	5,213.10	5,511.60	5,831.70	6,230.10	6,540.60	6,756.60	6,880.20	6,951.90
O-3***	3,660.60	4,149.90	4,479.30	4,883.40	5,117.10	5,373.90	5,540.10	5,813.40	5,955.60	5,955.60	5,955.60
O-2***	3,162.90	3,602.40	4,149.00	4,289.10	4,377.30	4,377.30	4,377.30	4,377.30	4,377.30	4,377.30	4,377.30
O-1***	2,745.60	2,857.50	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	-	-	-	$4,883.40	$5,117.10	$5,373.90	$5,540.10	$5,813.40	$6,043.50	$6,175.80	$6,355.80
O-2E	-	-	-	4,289.10	4,377.30	4,516.80	4,752.00	4,933.80	5,069.10	5,069.10	5,069.10
O-1E	-	-	-	3,454.20	3,688.80	3,825.00	3,964.80	4,101.60	4,289.10	4,289.10	4,289.10
WARRANT OFFICERS											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$3,783.00	$4,069.50	$4,186.50	$4,301.10	$4,499.10	$4,695.00	$4,893.00	$5,191.80	$5,453.40	$5,702.10	$5,905.50
W-3	3,454.50	3,598.50	3,746.10	3,794.70	3,949.50	4,254.00	4,571.10	4,720.20	4,892.70	5,070.90	5,390.40
W-2	3,057.00	3,346.20	3,435.30	3,496.50	3,694.80	4,002.90	4,155.30	4,305.90	4,489.50	4,633.20	4,763.40
W-1	2,683.50	2,971.80	3,049.80	3,213.90	3,408.30	3,694.20	3,827.70	4,014.30	4,197.90	4,342.20	4,475.40

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month for officers at pay grades O-7 through O-10, and limited to the rate of basic pay for level V of the Executive Schedule, which is $12,141.60 per month, for officers at O-6 and below.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $19,983.60 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2010)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
COMMISSIONED OFFICERS											
O-10**	$15,188.10*	$15,262.20*	$15,579.60*	$16,132.50*	$16,132.50*	$16,939.20*	$16,939.20*	$17,785.80*	$17,785.80*	$18,675.30*	$18,675.30*
O-9	13,283.70	13,475.10	13,751.40	14,233.80	14,233.80	14,946.00	14,946.00	15,693.30*	15,693.30*	16,477.80*	16,477.80*
O-8	12,586.20	12,896.70	12,896.70	12,896.70	12,896.70	13,219.20	13,219.20	13,549.80	13,549.80	13,549.80	13,549.80
O-7	11,381.40	11,381.40	11,381.40	11,439.30	11,439.30	11,668.20	11,668.20	11,668.20	11,668.20	11,668.20	11,668.20
O-6	9,095.70	9,334.80	9,577.20	10,047.00	10,047.00	10,247.70	10,247.70	10,247.70	10,247.70	10,247.70	10,247.70
O-5	7,959.00	8,198.40	8,198.40	8,198.40	8,198.40	8,198.40	8,198.40	8,198.40	8,198.40	8,198.40	8,198.40
O-4	6,951.90	6,951.90	6,951.90	6,951.90	6,951.90	6,951.90	6,951.90	6,951.90	6,951.90	6,951.90	6,951.90
O-3***	5,955.60	5,955.60	5,955.60	5,955.60	5,955.60	5,955.60	5,955.60	5,955.60	5,955.60	5,955.60	5,955.60
O-2***	4,377.30	4,377.30	4,377.30	4,377.30	4,377.30	4,377.30	4,377.30	4,377.30	4,377.30	4,377.30	4,377.30
O-1***	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20	3,454.20
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	$6,355.80	$6,355.80	$6,355.80	$6,355.80	$6,355.80	$6,355.80	$6,355.80	$6,355.80	$6,355.80	$6,355.80	$6,355.80
O-2E	5,069.10	5,069.10	5,069.10	5,069.10	5,069.10	5,069.10	5,069.10	5,069.10	5,069.10	5,069.10	5,069.10
O-1E	4,289.10	4,289.10	4,289.10	4,289.10	4,289.10	4,289.10	4,289.10	4,289.10	4,289.10	4,289.10	4,289.10
WARRANT OFFICERS											
W-5	$6,726.60	$7,068.00	$7,322.10	$7,603.50	$7,603.50	$7,983.90	$7,983.90	$8,383.20	$8,383.20	$8,802.60	$8,802.60
W-4	6,104.10	6,396.00	6,635.40	6,909.00	6,909.00	7,047.00	7,047.00	7,047.00	7,047.00	7,047.00	7,047.00
W-3	5,606.70	5,736.00	5,873.40	6,060.00	6,060.00	6,060.00	6,060.00	6,060.00	6,060.00	6,060.00	6,060.00
W-2	4,918.80	5,021.40	5,102.70	5,102.70	5,102.70	5,102.70	5,102.70	5,102.70	5,102.70	5,102.70	5,102.70
W-1	4,636.80	4,636.80	4,636.80	4,636.80	4,636.80	4,636.80	4,636.80	4,636.80	4,636.80	4,636.80	4,636.80

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month for officers at pay grades O-7 through O-10, and limited to the rate of basic pay for level V of the Executive Schedule, which is $12,141.60 per month, for officers at O-6 and below.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $19,983.60 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2010)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
						ENLISTED MEMBERS					
E-9*	-	-	-	-	-	-	$4,570.80	$4,674.30	$4,804.80	$4,958.40	$5,112.90
E-8	-	-	-	-	-	$3,741.60	3,907.20	4,009.50	4,132.50	4,265.40	4,505.40
E-7	$2,601.00	$2,838.90	$2,947.50	$3,091.80	$3,204.00	3,396.90	3,505.50	3,699.00	3,859.50	3,969.00	4,085.70
E-6	2,249.70	2,475.30	2,584.50	2,690.70	2,801.40	3,051.00	3,148.20	3,336.00	3,393.60	3,435.60	3,484.50
E-5	2,061.30	2,199.30	2,305.50	2,414.40	2,583.90	2,761.80	2,906.70	2,924.70	2,924.70	2,924.70	2,924.70
E-4	1,889.70	1,986.30	2,094.00	2,199.90	2,293.80	2,293.80	2,293.80	2,293.80	2,293.80	2,293.80	2,293.80
E-3	1,705.80	1,813.20	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00
E-2	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10
E-1**	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20
E-1***	1,338.60	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,386.30 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2010)

Part I-MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
						ENLISTED MEMBERS					
E-9*	$5,361.60	$5,571.30	$5,792.40	$6,129.90	$6,129.90	$6,436.20	$6,436.20	$6,758.40	$6,758.40	$7,096.50	$7,096.50
E-8	4,626.90	4,833.90	4,948.50	5,231.40	5,231.40	5,336.40	5,336.40	5,336.40	5,336.40	5,336.40	5,336.40
E-7	4,131.30	4,282.80	4,364.40	4,674.60	4,674.60	4,674.60	4,674.60	4,674.60	4,674.60	4,674.60	4,674.60
E-6	3,484.50	3,484.50	3,484.50	3,484.50	3,484.50	3,484.50	3,484.50	3,484.50	3,484.50	3,484.50	3,484.50
E-5	2,924.70	2,924.70	2,924.70	2,924.70	2,924.70	2,924.70	2,924.70	2,924.70	2,924.70	2,924.70	2,924.70
E-4	2,293.80	2,293.80	2,293.80	2,293.80	2,293.80	2,293.80	2,293.80	2,293.80	2,293.80	2,293.80	2,293.80
E-3	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00	1,923.00
E-2	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10	1,622.10
E-1**	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20	1,447.20
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,386.30 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II-RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $960.90.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2010)

Locality Pay Area[1]	Rate
Atlanta-Sandy Springs-Gainesville, GA-AL	19.29%
Boston-Worcester-Manchester, MA-NH-RI-ME	24.80%
Buffalo-Niagara-Cattaraugus, NY	16.98%
Chicago-Naperville-Michigan City, IL-IN-WI	25.10%
Cincinnati-Middletown-Wilmington, OH-KY-IN	18.55%
Cleveland-Akron-Elyria, OH	18.68%
Columbus-Marion-Chillicothe, OH	17.16%
Dallas-Fort Worth, TX	20.67%
Dayton-Springfield-Greenville, OH	16.24%
Denver-Aurora-Boulder, CO	22.52%
Detroit-Warren-Flint, MI	24.09%
Hartford-West Hartford-Willimantic, CT-MA	25.82%
Houston-Baytown-Huntsville, TX	28.71%
Huntsville-Decatur, AL	16.02%
Indianapolis-Anderson-Columbus, IN	14.68%
Los Angeles-Long Beach-Riverside, CA	27.16%
Miami-Fort Lauderdale-Pompano Beach, FL	20.79%
Milwaukee-Racine-Waukesha, WI	18.10%
Minneapolis-St. Paul-St. Cloud, MN-WI	20.96%
New York-Newark-Bridgeport, NY-NJ-CT-PA	28.72%
Philadelphia-Camden-Vineland, PA-NJ-DE-MD	21.79%
Phoenix-Mesa-Scottsdale, AZ	16.76%
Pittsburgh-New Castle, PA	16.37%
Portland-Vancouver-Beaverton, OR-WA	20.35%
Raleigh-Durham-Cary, NC	17.64%
Richmond, VA	16.47%
Sacramento—Arden-Arcade—Yuba City, CA-NV	22.20%
San Diego-Carlsbad-San Marcos, CA	24.19%
San Jose-San Francisco-Oakland, CA	35.15%
Seattle-Tacoma-Olympia, WA	21.81%
Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA	24.22%
Rest of U.S.	14.16%

SCHEDULE 10-ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2010)

AL-3/A	$103,900
AL-3/B	111,800
AL-3/C	119,900
AL-3/D	127,800
AL-3/E	135,900
AL-3/F	143,700
AL-2	151,800
AL-1	155,500

[1]Locality Pay Areas are defined in 5 CFR 531.603.

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